

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0615-001234 / Case Ref No: 0415-17776**

<b>Appellant Landlord:</b>	Patrick Dunphy
<b>Respondent Third Party:</b>	Carol McNulty, Tom Begley
<b>Address of Rented Dwelling:</b>	25 Warrenstown Walk, Blanchardstown , Dublin 15, D15A5NR
<b>Tribunal:</b>	Nesta Kelly (Chairperson) Orla Coyne, Finian Matthews
<b>Venue:</b>	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2,
<b>Date &amp; time of Hearing:</b>	02 September 2015 at 2:30
<b>Attendees:</b>	Patrick Dunphy Landlord Tom Begley Third Party Carol McNulty Third Party Garda Sergeant Vincent Carroll
<b>In Attendance:</b>	Gwen Malone Stenographers.

**1. Background:**

On 10/04/2015 the Third Party made an application to the Private Residential Tenancies Board ("the PRTB") pursuant to Section 78 of the Act. The matter was referred to an Adjudication which took place on 05/06/2015. The Adjudicator determined that

1. That there was a breach in the duty owed by the Respondent Landlord to the Applicant Third Parties under section 15 of the Residential Tenancies Act 2004 to enforce the obligations of the tenant under the tenancy at 25 Warrenstown Walk, Blanchardstown, Dublin 15.
2. Damages in the sum of €6,206.94 are awarded which are to be paid within 28 days of the date of this Determination Order.

This Order was made by the Private Residential Tenancies Board on the 18/06/2015.

Subsequently the following appeal was received:

Landlord : received PRTB on 26/06/2015. The grounds of the appeal: Anti-social behaviour ; approved by the Board on 10/07/2015

The PRTB constituted a Tenancy Tribunal and appointed Orla Coyne, Finian Matthews, Nesta Kelly as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Nesta Kelly to be the chairperson of the Tribunal ("the Chairperson").

On 11/08/2015 the Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing.

On 02/09/2015 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

**2. Documents Submitted Prior to the Hearing Included:**

1. PRTB File

**3. Documents Submitted at the Hearing Included:**

None

**4. Procedure:**

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received the PRTB document entitled "Tribunal Procedures".

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; that the person who appealed (the Appellant) would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondents; that the Respondents would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant.

The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present and she reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of €4,000 or up to 6 months imprisonment or both.

The Chairperson also reminded the Parties that as a result of the Hearing that day, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

**5. Submissions of the Parties:**

Appellant Landlords Case

He said that he had rented the dwelling at 25 Warrenstown Way from 2009 to November 2013 to a single mother with a 5 year old son and a daughter of 14 ,who when she got married at the age of 16 moved out. The first time the Respondent Third Party Mr. Begley, the owner of 26 Warrenstown Way, approached him in relation to his concern about his tenants was in October 2013 in relation to a boundary wall which was said to have been damaged during a fight at a party at the dwelling, namely number 25. He had repaired the wall himself by replacing 3 blocks which had come away. He said that Mr.

Begley however, was not satisfied with this work, so he arranged for a builder to come and repair it and paid him €100. He was surprised that, after what he said was a gap of about 18 months, the Respondents took a case against him to the PRTB. He had never been approached by Mr Begley during the tenancy despite the fact that the Gardaí had been called to the dwelling on numerous occasions, (As corroborated by Mr Begley's witness, namely Garda Sergeant Carroll). He said that the tenant's son spent most of the period of his mother's tenancy in custody so he could not be held responsible for the burglaries and thefts at number 26 as suggested by the Third Parties. He also refuted their claim for re-imbursement of the cost of installing a CCTV as allowed in the adjudication report and further said there was no evidence to link his tenant with damage to the door of the dwelling the Respondent Third Party owned, as again allowed by the Adjudicator. He said he was not allowed to fully present his case at that adjudication hearing. He could have been contacted during the tenancy by the Third Parties contacting the PRTB or leaving a letter addressed to him at said dwelling. The only other person who occasionally stayed at the dwelling for short periods was the tenant's daughter, but this was due to her mother's periods of poor health. The youngest daughter after her marriage had intermittently called back to the house until she was tragically murdered at the dwelling in October 2013, leading to her mother ending her tenancy in November 2013. He also refuted the Respondents' claims for loss of rental income due to his tenants leaving due to the alleged anti-social behaviour of his Tenant; he said it was his view that the Respondent Third Parties had to reduce the rent for the neighbouring dwelling they owned due to the economic situation at the time. He also said he could not be held responsible for claims for loss of tools that had allegedly been stolen and all other claims quantified by the Respondents as laid out in the PRTB case files.

He said that during the tenancy he called monthly at the dwelling to collect the cash top up payment in cash from the tenant; the balance being paid to him by the Department of Social Protection, and saw no evidence of other occupants at the dwelling. At no time did the Gardaí contact him regarding any issues at the dwelling.

Respondent Third Parties Case:

The First-named Respondent Third Party

He said that he had not contacted the Appellant Landlord during the Tenancy which first commenced in 2009 as he was unable to obtain his contact details. He first spoke to him in October 2013 in relation to the broken wall and he said that it was not repaired until sometime afterwards, but he accepted that it was now restored satisfactorily. He had listed in his files to the PRTB details of economic losses as a result of alleged anti-social behaviour in the dwelling, including the loss of his tenants in the adjoining dwelling. However, when the provisions of Sections 15, 16, 17 and 77 of the Residential Tenancies Act were read out to him by the Tribunal, he accepted that the only relevant issue having regard to these provisions was the incident in relation to the damage to the wall. When asked by the Tribunal as to why he had waited so long to contact the Appellant he said it was because he was unable to obtain his contact details.

When asked by the Tribunal as to why he had not called any of his tenants to give evidence on his behalf in relation to his claims arising from the Tenancy next door he said that they had left, that he did not have their contact details and that as non-nationals they would have not known the correct procedure in relation to making their own applications to the PRTB. He accepted that this lack of direct evidence from any of these Tenants was a difficulty for him in establishing a case against the Appellant Landlord in respect of a

breach of the provisions of Section 15 of the Act. He had summonsed Garda Carroll to give evidence in relation to Garda calls made to 25 Warrenstown Way. The Respondent Third Parties also confirmed that they lived about 2 miles from the dwelling the subject of the alleged anti-social behaviour.

Witness Garda Sergeant Vincent Carroll.

He said that the Gardaí had been called to 25 Warrenstown Way on 14 occasions between 2009 and 2013 and he listed the dates of these- the majority of calls being made by the tenant herself. These ceased after the death of her daughter in October 2013, apart from one on 8th November 2013 by another person which was related to the Gardaí's ongoing murder investigation. No person had been apprehended in relation to the reported thefts and burglaries at Number 26 Warrenstown Way. He further said that the Tenant's son was not incarcerated during the period between February and April 2010. The Tribunal asked the Sergeant if the Gardaí needed to contact the Landlord would they be in a position to respond. He replied that they would as they could have obtained the Landlords details from the Tenants if necessary or from the PRTB.

## **6. Matters Agreed Between the Parties**

Matters agreed between the Parties

The following matters were agreed between the Parties:

1. The dwelling 26 Warrenstown Walk was rented to tenants of the Third Parties.
2. The tenant the subject of the complaint against the Appellant Landlord left the dwelling in November 2013.
3. The damaged party wall had now been repaired.

## **7. Findings and Reasons:**

Findings and Reasons:

Having considered all of the documentation before it, and having considered the evidence presented to it by the Parties, the Tribunal's findings and reasons thereof, are set out hereunder.

Finding No. 1

The Respondent Third Parties did not contact the Appellant Landlord in a timely manner in relation to resolving the complaint before referring the matter to the PRTB.

Further in relation to the "locus standi" of the Respondents as persons "directly and adversely affected by the breach of duty alleged in the complaint", the only matter relevant to this breach was the damage to the wall which had now been repaired.

The Tribunal does not award damages.

Reasons:

1. Sections 77 (1) (2) (a)(b) of the Act apply

2. There was no evidence before the Tribunal from the Third Parties Tenants as “persons directly and adversely affected” to support the Third Parties claims in respect of Anti-Social behaviour at the said dwelling and the Appellants subsequent alleged breach under Section 15(1) of this obligation to Third Parties.

Finding No. 2

The Tribunal finds that the Appellant Landlord was not in breach of his duty owed to the Respondent Third Parties to enforce the tenant’s obligations under Sections 15 (1)(2) of the Act.

Reasons:

1. The Tribunal is satisfied on the evidence presented before it that the Appellant Landlord was not made aware of any alleged breach of Tenant’s obligations in relation to alleged anti-social behaviour during the tenancy
2. Thus he cannot be said to be in breach of his duty owed to the Respondent Third Parties to enforce

**8. Determination:**

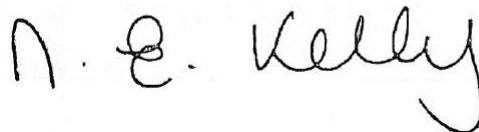
**Tribunal Reference TR0615-001234**

**In the matter of Patrick Dunphy (Landlord) and Carol McNulty, Tom Begley (Third Party) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

Patrick Dunphy Appellant Landlord and Carol McNulty and Tom Begley Respondent Third Parties, the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act 2004, determines that the Appellants Landlord’s Appeal regarding his alleged breach of duty owed to the Third parties in failing to enforce his tenant’s obligations in respect of the tenancy of 25 Warrenstown Way, Blanchardstown, Dublin 15 is upheld.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 05/09/2015.

**Signed:**



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**Nesta Kelly Chairperson**

For and on behalf of the Tribunal.