**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001236 / Case Ref No: 0415-18080**

**Appellant Tenant:** Emer Twamley

**Respondent Landlord:** Paul Daly

**Address of Rented Dwelling:** 6 Ashfield Lawn, Clonsilla , Dublin 15, D15HX6Y

**Tribunal:** Deirdre Bignell (Chairperson)

Aidan Brennan, Rosemary Healy Rae

**Venue:** Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

**Date & time of Hearing:** 11 September 2015 at 2:30

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| **Attendees:** | Fiona McGowan, Mason Estates (Representative of Respondent Landlord)  Dara McDonnell, Mason Estates (Representative of Respondent Landlord) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 27 April 2015 the Landlord made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 76 of the Act. The matter was referred to an Adjudication which took place on 27 May 2015. The Adjudicator determined that:

1. The Notice of Termination served on 24th March 2015, by the Applicant Landlord on the Respondent Tenant, in respect of the tenancy of the dwelling at 6 Ashfield Lawn, Clonsilla, Dublin 15, is invalid.

2. The Respondent Tenant shall pay the total sum of €4,158.80 to the Applicant Landlord, in 24 consecutive monthly payments of €170 on the 28th day of each month, followed by one payment of €78.80 on the 28th day of the immediately succeeding month, commencing on the 28th day of the month immediately following the date of issue of the Order, being rent arrears in respect of the tenancy of the dwelling at 6 Ashfield Lawn, Clonsilla, Dublin 15.

3. The enforcement of the Order for such payment of €4,158.80 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments by the Respondent Tenant to the Applicant Landlord, on each due date, until such time as the total sum of €4,158.80 has been paid in full.

4. For the avoidance of doubt, any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Applicant Landlord.

5. The Respondent Tenant shall also pay any further outstanding rent from 27th May 2015 (the hearing date), at the rate of €825 per month or proportionate part thereof at the rate of €27.12 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as the tenancy is lawfully terminated.

Subsequently the Tenant lodged an appeal of the Adjudicator’s findings, on the grounds of rent arrears, which appeal was received by the PRTB on 26 June 2015 and approved on 10 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed Aidan Brennan, Deirdre Bignell and Rosemary Healy Rae as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Deirdre Bignell to be the chairperson of the Tribunal (“the Chairperson”).

On 14 July 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 11 September 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:**

By Respondent: The Respondent was requested to provide the Tribunal with an up to date schedule of rent arrears, and duly did so.

**4. Procedure:**

When the Appellant Tenant failed to present by 15:00 on the scheduled date, the Tribunal, having satisfied itself that the Appellant had been notified of the details of the hearing, proceeded in her absence.

The Chairperson asked the parties present to identify themselves and to identify the capacity in which 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, that they had received and understood the PRTB document entitled “Tribunal Procedures”, and that all documentation upon which the parties were seeking to rely had already been furnished.

The Chairperson explained the procedure which would be followed, and stated that all evidence would be taken on oath or affirmation and recorded by the official stenographer present. Based on that recording a transcript could be made available to the Tribunal if necessary to assist it in preparing its report on the dispute, or to the parties for a fee.

The Chairperson reminded the attendees that it was an offence for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his or her control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide false or misleading statements or information to the Tribunal. The Chairperson informed the parties that the above offences were punishable by a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson said that members of the Tribunal would ask questions from time to time to assist in clarifying the issues in dispute between the parties, and informed them that she would clarify any queries raised at the outset, or in the course of, the hearing. The Chairperson also reminded the parties that as a result of the hearing, the Board would make a Determination Order which would be issued to both parties to the dispute and could be appealed to the High Court on a point of law only.

The parties were sworn in and the hearing commenced.

**5. Submissions of the Parties:**

The Appellant Tenant’s case:

Although the Appellant did not attend, the decision was taken, in accordance with sections 104, subsections 2, 4(e), 4(f), and (6), to proceed with the hearing, having regard to the written submissions of the Appellant.

The Respondent Landlord’s Case

Evidence of Fiona McGowan (Agent of Respondent Landlord)

The Agent indicated that the Respondent was not seeking a determination with regard to the notice of termination dated 25 March 2015, as an additional notice of termination had issued on 27 May 2015, which had been upheld as having validly terminated the Appellant’s tenancy, following a hearing by an adjudicator, whose determination had not been appealed within the period specified by section 100(2) of the 2004 Act.

The Agent stated that although the Appellant had not presented for the instant Tribunal hearing, the Respondent was keen for the Tribunal to consider the issue of rent arrears and issue a determination in relation to that element of the dispute. The Agent stated that the validity of the notice of termination dated 25 March 2015 was no longer in issue, and that the Respondent was withdrawing the notice.

The Agent indicated that the Respondent was prepared to forgo any rent arrears which arose prior to 1 January 2011, and delivered a schedule of rent payments made since that date.

Numerous items of correspondence were submitted into written evidence dating back to 2011, in which the Respondent had requested the payment of arrears.

**6. Matters Agreed Between the Parties**

None, as the Appellant did not attend.

**7. Findings and Reasons:**

Having considered all the evidence, the Tribunal’s findings and reasons therefore, are set out hereunder:

Rent arrears

Finding:

The Tribunal finds that the Appellant Tenant is in breach of her obligations under section 16(a)(i) of the Act, to pay rent as it fell due.

Reason:

Under sub-section (a)(i) of section 16 of the Act, a tenant must pay to the landlord the rent provided for under the tenancy concerned on the date it falls due for payment. In failing to pay her rent when it became due, the Appellant Tenant was in breach of this requirement. The Appellant is deemed to owe the sum of €4,422.72 to the Appellant, since 1 January 2011, calculated as follows:

Rent unpaid in respect of:

2011: €388.70

2012: €124.10

2013: €904.60

2014: €1598.20

2015: €1407.12 to date of hearing (11 September 2015): €1,407.12 [Rent due = 8 months x €825 = €6,600, plus rent due for period 1-11 September = €825 x 12 divided by 365, multiplied by 11) = €298.32 . Total rent due: €6,898.32, Less rent paid of €5,491.20 = €1407.12

Total €4422.72

Total due for the period 1 January 2011 to 11 September 2015 = €4422.72.

In arriving at its decision, bearing in mind that the Appellant failed to attend the Tribunal Hearing, the Tribunal had regard to the various correspondence sent from the Respondent to the Appellant requesting repayment of the arrears, and to the findings of the Adjudicator in the hearing of 27 May 2015, in which an agent of the Appellant accepted the calculations of arrears presented by the Respondent at that time.

**8. Determination:**

**Tribunal Reference TR0615-001236**

**In the matter of Emer Twamley (Tenant) and Paul Daly (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Appellant Tenant shall pay the total sum of €4,422.72 to the Respondent Landlord in five consecutive monthly instalments of €800 on the 28th day of each month followed by one further instalment of €422.72 on the 28th day of the immediately succeeding month commencing on the 28th day of the month immediately following the issue of the Determination Order by the Board, being rent arrears due from 1 January 2011 to 11 September 2015, in respect of the tenancy of the dwelling known as 6 Ashfield Lawn, Clonsilla, Dublin 15.

2. The enforcement of the Order for payment of €4,422.72 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments made by the Appellant Tenant to the Respondent Landlord on each due date, until such time as the sum of €4,422.72 has been paid in full.

3. For the avoidance of doubt, any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Respondent Landlord.

4. The Appellant Tenant shall continue to pay rent at the monthly rate of €825 per month, or proportionate part thereof at the daily rate of €27.12 where a whole month does not apply unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement, for each month or part thereof until such time as the Appellant Tenant and all persons residing in the dwelling give up vacant possession of the above dwelling.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 23 September 2015.

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| **Signed:** |  |

**Deirdre Bignell Chairperson**

For and on behalf of the Tribunal.