**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001239 / Case Ref No: 0215-16989**

**Appellant Landlord:** Kevin O'Brien

**Respondent Tenant:** Hanora Dolan

**Address of Rented Dwelling:** 4 Woodbrook Drive, Bishopstown , Cork, T12AWK2

**Tribunal:** Andrew Nugent (Chairperson),Dervla Quinn, Ciara Doyle

**Venue:** Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork.

**Date & time of Hearing:** 16 September 2015 at 10:30

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| **Attendees:** | Kevin O’Brien (Appellent Landlord)  Dylan Cullen (Agent for the Landlord)  David Jones (Threshold representing Tenant)  Barbara Dolan (Tenant’s sister) |
| **In Attendance:** | Hanora Dolan (Respondent Tenant)  Gwen Malone Stenographers |

**1. Background:**

On 26 February 2015 the Tenant 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 06 May 2015. The Adjudicator determined that:

1. The Respondent/Applicant Landlord shall pay the total sum of €1,177.00 to the Applicant/Respondent Tenant, within 35 days of the date of issue of the Determination Order, being damages of €1,400.00 for the Respondent/Applicant Landlord unjustly depriving the Applicant/Respondent Tenant of her tenancy of the dwelling at 4 Woodbrook Drive, Bishopstown, County Cork, having deducted €223.00 being damages for damage in excess of normal wear and tear and for breach of the Applicant/Respondent Tenant’s obligations pursuant to Section 16(f) of the Residential Tenancies Act 2004, plus rent arrears of €700.00 having deducted the entire of the justifiably retained security deposit of €700.00 in respect of the tenancy of the aforementioned dwelling.

Subsequently a valid appeal was received from the Appellant Landlord on the 29 June 2015. The grounds of the appeal were breach of tenant obligations, rent arrears and the appeal was approved by the Board on the 10 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed Ciara Doyle, Andrew Nugent, Dervla Quinn as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Andrew Nugent to be the chairperson of the Tribunal (“the Chairperson”).

On 11 August 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 16 September 2015 the Tribunal convened a hearing at Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork.

**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 Respondent; that the Respondent would then be invited to present her 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 he reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine or 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.

**5. Submissions of the Parties:**

Appellant Landlord’s Case:

The Appellant Landlord’s agent outlined the circumstances in which the Notice of Termination had been served on the Respondent Tenant on the 21st of January, 2014. Specifically he submitted that the Appellant Landlord had at the time of serving the Notice of Termination intended to sell the dwelling. The Appellant Landlord’s agent stated that arising from the service of the Notice of Termination a separate adjudication hearing had arisen and that a Determination Order in the matter had been received on the 29th of September, 2014, which allowed the Respondent Tenant a period of 56 days to deliver vacant possession of the dwelling. It was accepted by the parties that the Respondent Tenant had vacated the dwelling on the 5th of November, 2014.

The Appellant Landlord’s agent stated that the reason the Landlord wished to terminate the tenancy was so that he could sell the dwelling. He submitted that an auctioneer had been retained to advise in relation to the sale. He further stated that having viewed the property after the Respondent Tenant had vacated, the advice of the auctioneer was that it would be necessary to carry out works on the property in order to achieve the best possible sale price. The Appellant Landlord’s agent also submitted that the retained auctioneer had advised potential investors would wish to avail of the Capital Gains Tax Amnesty which was due to expire on the 31st of December, 2014. In support of these submissions the Appellant Landlord’s agent referred to letter dated the 10th of November, 2014, from the auctioneers. The Appellant Landlord’s agent stated that on account of the delay in getting vacant possession of the property and on the basis that works were required to be carried out, the property wasn’t fit for sale until January, 2015. At this stage the Capital Gains Tax Amnesty had expired and in the opinion of the Appellant Landlord there had been a slow down in the property market. The Appellant Landlord’s agent stated that whilst it had been the Appellant Landlord’s intention to sell the property a decision was made not to at that time as it was felt that a good sale price would not be achieved.

The Appellant Landlord’s agent submitted that after the Respondent Tenant had vacated the dwelling an inspection had taken place on the 6th of November, 2014. He stated that the house had been left dirty and untidy and further that personal items had been left behind by the Respondent Tenant. He also stated that thirty refuse bags had been left outside the house and that a sofa from inside the house had also been left outside. He stated that four carpets in the house also had to be replaced. The Appellant Landlord’s agent acknowledged that at the time of the initial rental of the dwelling the house had been tired but was functional and safe. He also acknowledged that he had a conversation with the Respondent Tenant when he informed her that a skip would be coming to the dwelling as it was being gutted.

Whilst no lease or rent book were produced in evidence the Appellant Landlord’s agent made submissions in relation to the details of the tenancy agreement and he gave evidence as to the history and manner of the rental payments made by the Respondent Tenant. Specifically he submitted that during the course of the tenancy rental payments had been made sporadically by the Respondent Tenant. He stated when the rental payments were made that the Respondent Tenant would lodge the money into a specified bank account, details of which he had provided to the Respondent Tenant. In relation to the said bank account the Appellant Landlord’s agent acknowledged that other transactions, which had no connection with the rental of the dwelling, were also administered from this bank account. He submitted that at the end of the letting a sum of €5,067 was owed by the Respondent Tenant in terms of rent arrears. He stated that after the Respondent Tenant had vacated the dwelling he had reconciled his accounts and had discovered that the said sum was outstanding in terms of rent arrears. He further stated that he had contacted the Respondent Tenant by text message dated the 25th of November, 2014, seeking details of any lodgements made and had further written to the Respondent Tenant by letter dated the 12th of January, 2015, seeking the alleged outstanding amount. The Appellant Landlord’s agent referred to the bank statements from the said bank account which he submitted proved that the Respondent Tenant had not made the rental payments as was required under the tenancy agreement.

The Appellant Landlord also stated that he had inspected the dwelling on the 6th of November, 2014. He stated that it had taken him between two and three days of cleaning to remove the refuse that had been left behind by the Respondent Tenant. He also stated that cats were living in the sofa which had been left outside by the Respondent Tenant. Furthermore the Appellant Landlord stated that he discovered numerous cigarette butts in one of the bedrooms in the house. On questioning from the Tribunal the Appellant Landlord confirmed that there was no photographic evidence available to assist the Tribunal in considering his specific claims regarding the condition of the Dwelling at the end of the letting.

Respondent Tenant’s Case:

The Respondent Tenant stated that she had vacated the dwelling on the 5th of November, 2014. She stated that she had liked the area and that moving out had been stressful and that she had experienced great difficulty in finding alternative accommodation and that she had eventually located to a property which was approximately half an hour away. She stated that she had returned to the dwelling in February 2015 to collect her post and had been upset when she discovered that the dwelling was not for sale.

The Respondent Tenant gave evidence that the furnishing within the dwelling had been old when she initially moved in. The Respondent Tenant submitted that whilst she had been living in the dwelling she had encountered numerous problems. Specifically she stated that there had been issues with the heating and that she had advised the Appellant Landlord’s agent of the problem and had incurred costs in resolving the issues. No documentation was produced to support this claim. She also stated that there had been a problem with the electrics in the house and that, when she had informed the Appellant Landlord’s agent of the issue, he had organised someone to fix it. Further she stated that only one ring of the cooker was functional and that despite informing the Appellant Landlord’s agent nothing was done to remedy the defect. Furthermore she stated that the shower had drips and as a result she had to go to her parents’ house in order to utilise their shower. She stated that despite telling the Appellant Landlord’s agent of this problem it had never been fixed. She also stated that there had been an issue with the sink and that the kitchen was damp.

The Respondent Tenant stated that, at the termination of the tenancy, she had cleaned the house. She stated that she had been told by the Appellant Landlord’s agent that the house was being gutted and that a high bin would be available for the disposal of her refuse.

In terms of outstanding rent the Respondent Tenant admitted that she had not paid the last months rent. However she disputed that any other arrears of rent were outstanding. In reply to questioning from the Tribunal the Respondent Tenant confirmed that she had always paid the rent into a bank account details of which she had been given by the Appellant Landlord’s agent. The Respondent Tenant could not clearly recollect whether or not the payments were always into the same bank account. The Respondent Tenant was sure that she was not in arrears to the amount claimed by the Appellant Landlord. She did however acknowledge not paying the last months rent.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The tenancy terminated on the 5th of November, 2014.

**7. 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.

7.1 Findings:

The Tribunal finds that the Respondent Tenant was not unjustly deprived of possession of the dwelling and accordingly no award of damages and/or an order for re-possession is made in relation to same.

Reasons:

1. Section 56 of the Act sets out that the Tenant may apply to the Board for damages, an order for re-possession or both for having been “unjustly deprived of possession of the dwelling” where the Tribunal determines it is appropriate to so do. The section expressly applies to cases specified in paragraph 3 of the table to section 34 of the Act, where the “thing mentioned in that paragraph” (the entry into an enforceable agreement for the full transfer of the interest in the dwelling) has not occurred within the time set out in the paragraph, being 3 months. It further states that the section applies notwithstanding the fact a tenant vacates on the basis of a Notice for Termination which had finally been determined to be valid.

2. The Tribunal accepts that the entry of the enforceable agreement for the full transfer of the interest in the dwelling has not occurred within three months of the termination of the tenancy, thereby engaging the jurisdiction to award damages to the Respondent Tenant if deemed appropriate by the Tribunal to so do.

3. The Tribunal accepts that but for the Notice of Termination the Respondent Tenant would not have moved from the dwelling.

4. However the Tribunal accepts that the Appellant Landlord’s evidence that, on the advice of his auctioneer and in order to maximise the sale price of the dwelling, he intended to sell the dwelling once he got vacant possession of the dwelling and had had the opportunity to refurbish it. The Tribunal accepts that as a result of the Respondent Tenant’s overholding and delay in vacating the dwelling the Appellant Landlord was denied the opportunity to ready the dwelling and place it on the market in time so as to avail of the Capital Gains Tax Amnesty by the end of the year 2014. The Tribunal determines that it would not be appropriate in the said circumstances to award the Respondent Tenant damages and/or make an order for re-possession for a failure by the Appellant Landlord to sell the property where the Respondent Tenant’s failure to vacate on time had contributed to the circumstances in which the Appellant Landlord changed his mind and did not put the dwelling on the market.

Finding 7.2

The Tribunal finds that the Respondent Tenant accrued rent arrears of €700 and the Appellant Landlord justifiably retained the security deposit of €700.

Reasons:

1. The Tribunal is satisfied that the monthly rent payable by the Respondent Tenant to the Appellant Landlord in respect of the dwelling was €700 per month. The Tribunal is also satisfied that a sum of €700 was paid by the Respondent Tenant to the Appellant Landlord by way of security deposit.

2. A tenant’s primary obligation is to pay rent pursuant to section 16 of the Act.

3. The Tribunal is satisfied that the evidence showed that the withholding of rent by Respondent Tenant for the last month was unilateral and was not with the consent of the Appellant Landlord. There is no provision in the Act which allows for the unilateral withholding of rent.

4. A Landlord is entitled to retain all or part of the deposit in two circumstances: where there has been damage in excess of normal wear and tear or where the rent arrears or other charges (such as utility bills) are owing to the Landlord: section 12(4) of the Act (as amended).

5. The Tribunal is satisfied and it is admitted by the Respondent Tenant that the last months rent of €700 was not paid. Accordingly the Tribunal is satisfied that the Appellant Landlord is entitled to retain the security deposit of €700 paid by the Respondent Tenant.

6. However the Tribunal is not satisfied that the Appellant Landlord provided sufficient clear evidence to support his claim for additional arrears of rent of €5,067 which he alleged was outstanding. The Tribunal notes that no rent book was available to support the allegations of rent arrears. The Tribunal also notes that the bank statements provided to purportedly demonstrate the said arrears of rent included transactions which did not relate to the rental of the dwelling. The Respondent Tenant acknowledged that her rent payments had all been made into a bank account details of which had been furnished by the Appellant Landlord’s agent, but on questioning by the Tribunal she could not recall if the same bank account was used for all payments. The sum of arrears claimed by the Appellant Landlord was a substantial amount of €5,067 which at a monthly rent of €700 would have taken some time to accrue. The Tribunal notes that the Appellant Landlord’s agent acknowledged that he only became aware of the extent of the arrears at the end of the letting on 5th of November, 2014, and that he waited over 2 months until the 12th of January, 2015, before writing to the Respondent Tenant seeking payment.

Finding 7.3

The Tribunal finds that insufficient evidence was adduced to prove that damage in excess of normal wear and tear had been occasioned by the Respondent Tenant.

Reasons:

1. The Tribunal notes that it was admitted by the Appellant Landlord’s agent that the dwelling was “tired” when it was initially let.

2. Accordingly the Tribunal is not satisfied that sufficient evidence was produced to prove that the Respondent Tenant had damaged the carpets in the dwelling in excess of normal wear and tear. Additionally the Tribunal is not satisfied that sufficient evidence was produced to prove that the Respondent Tenant had left numerous cigarette butts in one of the bedrooms when she had vacated the dwelling.

3. The Tribunal is satisfied a discussion took place between the relevant parties whereby the Respondent Tenant was informed that she could leave refuse at the dwelling as the house was being gutted and that the skip would be available.

Finding 7.4

The Tribunal finds that insufficient evidence was adduced to prove that the Landlord breached his obligations.

Reasons:

1. Section 16(d) of the Act requires the tenant to notify the landlord of his or her authorised agent of any defects that arises in the dwelling that require to be repaired so as to enable the landlord comply with his or her obligations, in relation to the dwelling or tenancy, under any enactment.

2. Under section 12(1)(b)(i) and (ii) of the Act the landlord is obliged to carry out such repairs to the structure of the dwelling to ensure that the structure complies with any standards for housing for the time being prescribed under section 18 of the Housing (Miscellaneous Provisions) Act, 1992, and such repairs and replacement of fittings as are, from time to time, necessary as that the interior and those fittings are maintained in, at least, the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed.

3. The Tribunal is not satisfied that sufficient evidence was produced to prove that the Appellant Landlord had been notified of the alleged maintenance issues.

**8. Determination:**

**Tribunal Reference TR0615-001239**

**In the matter of Kevin O'Brien (Landlord) and Hanora Dolan (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Appellant Landlord did not unjustly deprive the Respondent Tenant of possession of the dwelling at 4 Woodbrook Drive, Bishopstown, County Cork. The Respondent Tenant is not entitled to an order for damages pursuant to section 56 of the Residential Tenancies, Act 2004.
2. The Appellant Landlord is entitled, pursuant to section 12(4)(a)(i) of the Residential Tenancies, Act 2004, to retain the security deposit of €700 paid by the Respondent Tenant, in respect of arrears of rent owing in the sum of €700.
3. The Respondent Tenant was not in breach of her obligations not to cause a deterioration in the condition of the dwelling pursuant to section 16(f) of the Residential Tenancies Act, 2004, in respect of the dwelling at 4 Woodbrook Drive, Bishopstown, County Cork.
4. The Appellant Landlord was not in breach of his obligations to repair the dwelling pursuant to section 12(1)(b)(i) and (ii) of the Residential Tenancies Act, 2004, in respect of the dwelling at 4 Woodbrook Drive, Bishopstown, County Cork.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 08 October 2015.

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| **Signed:** |  |

**Andrew Nugent Chairperson**

For and on behalf of the Tribunal.