**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001240 / Case Ref No: 0215-16568**

**Appellant Tenant:** Lebam Macaw

**Respondent Landlord:** David Young

**Address of Rented Dwelling:** 7C Zion Road, Rathgar , Dublin 6,

**Tribunal:** Kevin Baneham (Chairperson)

Gerard Murphy, Louise Moloney

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

**Date & time of Hearing:** 15 September 2015 at 2:30

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| **Attendees:** | Lebam Macaw (Appellant Tenant)  David Walsh, Solicitor (Representative of the Respondent Landlord)  David Young (Respondent Landlord)  Jane Young (Spouse of the Respondent Landlord and Witness) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On the 4th February 2015, the tenant referred a dispute to the Private Residential Tenancies Board regarding Invalid Notice of Termination, Unlawful Termination of Tenancy, The Standard and Maintenance of the Dwelling and Breach of Landlord Obligations. As this Tribunal arises from the Tenant’s appeal, the parties are referred in this report as the “Appellant Tenant” and “Respondent Landlord” respectively.

In the Adjudication Report, the Adjudicator determined as follows:

The Applicant Tenant’s application, regarding Unlawful Termination of Tenancy, Unlawful Notice of Termination and Breach of Tenancy Obligations by the Respondent Landlord, in respect of the tenancy of the dwelling at 7c Zion Road, Rathgar, Dublin 6, is not upheld.

On the 24th July 2015, the Appellant Tenant lodged an appeal where she challenged the process and outcome of the adjudication, stating that the Respondent Landlord had been responsible for breaches of landlord obligations, penalisation and anti-social behaviour. The Appellant Tenant also listed Unlawful Termination of tenancy and the Standard and Maintenance of the Dwelling as her grounds of appeal.

The appeal was referred to a Tenancy Tribunal by the board of the Private Residential Tenancies Board. In accordance with sections 102 and 103 of the Residential Tenancies Act (‘the Act’), a Tenancy Tribunal was constituted with Kevin Baneham as Chairperson and Louise Moloney and Gerard Nicholas Murphy appointed as members.

The parties were served with notice of the date, time and venue of the Tenancy Tribunal and with copies of the Tribunal Procedures. The Tenancy Tribunal convened at 2.30pm on the 15th September 2015 in the Tribunal room at the offices of the Private Residential Tenancies Board in Dublin.

This tenancy was subject to an earlier dispute to the Private Residential Tenancies Board (reference DR0114-10147 & TR0714-000735). This addressed issues of the standard and maintenance of the dwelling, rent more than market rate, rent arrears anti-social behaviour and denial of peaceful enjoyment of the tenancy. A Tenancy Tribunal was held on the 3rd September 2014 and a Determination Order was issued by the board of the Private Residential Tenancies Board on the 17th October 2014. This earlier Tribunal is referred to in this report as the “2014 Tribunal”.

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

* 1. PRTB File

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

None.

**4. Procedure:**

At the commencement of the hearing, the Chairperson asked the parties present to identify themselves and to say in what capacity they were attending the Tenancy Tribunal. The Chairperson confirmed with the parties that they had received the relevant papers from the Private Residential Tenancies Board in relation to the case and that they had also received the Tribunal Procedures.

The Chairperson explained the procedure that would be followed; that the Tribunal was a formal procedure but that it would be held in an informal a manner as was possible; that the appellant tenant would be invited to present her case first; that there would be an opportunity for cross-examination by the respondent landlord; that the respondent landlord would then be invited to present his case, and that there would be an opportunity for cross-examination by the appellant tenant. Both parties would be given the opportunity to make final submissions. The Chairperson asked the parties whether they had any questions regarding the procedures to be followed in the Tenancy Tribunal and they both said that they did not..

The Chairperson stressed that all evidence would be taken on oath or affirmation 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 of €4,000 or up to six 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 only be appealed to the High Court on a point of law.

**5. Submissions of the Parties:**

Submissions and evidence of the Appellant Tenant:

At the hearing, the Appellant Tenant raised issues regarding the standard and maintenance of the dwelling. In respect of the windows, she said that in the bay window, only a side sash window opened. She stated that while the sash window in the kitchen opened without difficulty, the window in her bedroom proved very problematic. She outlined that while the lower part of the window was usable, she found it very difficult to open and close the upper sash window in the bedroom. She said that this was a particular problem for her as she required, for health reasons, an open window in order to sleep. She said that she could not easily or safely open the top sash window and nor could she close it fully. She stated that the window was too difficult to push. She outlined this led her to sleep with the bottom sash window open, leading to her concern about her safety from intruders. The Appellant Tenant said that while this issue had been raised at the 2014 Tribunal, it was an ongoing one that had become more serious. After the 2014 Tribunal, the Appellant Tenant said that she sought to raise this issue with the Respondent Landlord in correspondence. She outlined that the Respondent Landlord’s failure to adequately address this issue led to persistent interference with her peaceful and exclusive enjoyment of her home, referencing section 12(1)(a) of the Residential Tenancies Act. She said that this occurred because there were 10 to 15 visits to her home where workmen sought to repair the window or the Respondent Landlord was reviewing the problem. She said that the Respondent Landlord failed to repair the window and this led to excessive repair attempts and inspections. She said that she facilitated these attendances when she had been given sufficient notice, but there were occasions on which insufficient notice was given. She outlined that the first attendance was in May 2014 and the last in June or July 2015. The appellant tenant outlined that the window needed to be replaced and had been damaged by swelling during the winter and during wet weather. She contrasted the condition of her window with the windows in other parts of the building, including the window immediately above this window, which was part of the Respondent Landlord’s apartment. She said that she had inspected the windows in a neighbour’s dwelling and they were in a much better condition than hers. Concluding her evidence on the windows, the Appellant Tenant said that she had now given up on the windows and that she had to manage as best she could with the upper sash window in her bedroom. She outlined that the problems she experienced with the windows gave rise to an injury to her back.

In respect of the sweeping of the chimney, the Appellant Tenant gave an outline of the events around the arrangement that fell through where a contractor declined to do the job after having been arranged to do so by the Respondent Landlord and having been contacted by the Appellant Tenant in relation to the manner in which the chimney would be cleaned. She said that the Respondent Landlord then asked the Appellant Tenant to make her own arrangements and she said that this was not a responsibility of a Tenant and that she was not his employee. In relation to the wash hand basin, the Appellant Tenant said that this had been a problem since the commencement of the tenancy and had been resolved in the spring of 2015. She outlined that it was remedied by replacing the tubing to the sink so that it could clear water from the basin. The Appellant Tenant said that this issue had been canvassed at the 2014 Tribunal. Addressing the issue of the front door threshold, the Appellant Tenant said that there had been significant flooding some years before that damaged the carpets in the dwelling. She outlined that while the Respondent Landlord had offered to clean the carpets, no undertaking had been given about moving her furniture while the work was being carried out. In respect of the settee, the Appellant Tenant stated that because the springs had gone in the settee, she was unable to sit on this item of furniture. She had raised this with the Respondent Landlord and he had said that the settee was fine after having tried it. The Appellant Tenant identified this as an item not raised at the 2014 Tribunal. Commenting on the fridge, the Appellant Tenant said that the Respondent Landlord had replaced this item but had used the occasion of delivering the replacement item to serve the first January 2015 notice of termination. She outlined that she had received €100 in compensation for foodstuffs that had rotted due to the faulty temperature control in the original fridge. In relation to the issue of slugs, the Appellant Tenant said that this occurred because the floor was not screeded correctly and because of rotten skirting boards. She stated that she had dealt with this problem by putting down salt and that the Respondent Landlord had never addressed this issue, despite her complaints.

In submissions, the Appellant Tenant says that she was subjected to various acts of penalisation for having referred a dispute to the Private Residential Tenancies Board. She outlined that the notice of termination of the 15th January 2015 was served on her to penalise her for pursuing the complaint in 2014 that led to the 2014 Tribunal. She said that the penalisation had followed invasions of her privacy, delays in carrying out work and the patronising attitude of the Respondent Landlord.

In relation to the use of the dehumidifier by the Respondent Landlord, the Appellant Tenant outlined that her peaceful enjoyment of the dwelling as well as her sleep were disturbed by the use by the Respondent Landlord of a dehumidifier in a room immediately above her bedroom. She did not accept the Respondent Landlord’s evidence that there was no dehumidifier or that the item was a fridge. She said that there were inconsistencies in the Respondent Landlord’s letters, where he said in one that the dehumidifier had been removed and in another where he said that the machine would not be used at night time. She stated that she felt intimidated by the response of the Respondent Landlord to her complaints on this issue. In respect of the dog faeces, the Appellant Tenant said that this occurred some 8 or 9 times in 2014 and once in August 2015. She outlined that she found dog faeces deposited below her window and that the respondent landlord had admitted that their dog was responsible. She stated that this problem had only arisen after the PRTB dispute and was now suddenly happening. She outlined that the faeces would be left in place for some time before being cleared away. Addressing the surveillance complaint, the Appellant Tenant stated that from her bedroom, she could hear people on the gravel area adjacent to the window. This often occurred late at night and when she looked out, she observed the respondent landlord’s spouse and that she quickly turned away when seen. The Appellant Tenant said that this was surveillance by the Respondent Landlord’s spouse. There had been three or four incidents in recent weeks, including one on the eve of this hearing. The appeal lodged by the Appellant Tenant refers to incidents relating to her car; at the Tribunal, she said that those matters were a coincidence.

Confirming the details of the history of the tenancy, the Appellant Tenant outlined that it commenced on the 27th May 2011 and had been subject to a fixed-term for the first year. She said that there were no subsequent fixed terms and the tenancy was now periodic. In relation to the notice of termination, the Appellant Tenant said that she was unhappy that it had been served at the time that the Respondent Landlord was replacing the fridge. She said that in previous proceedings, the Respondent Landlord had stated that he had 20 properties, including six of equivalent size in the centre of Dublin to the dwelling. She outlined that they were alternatives to accommodate the Respondent Landlord’s daughter. The Appellant Tenant acknowledged that the Respondent Landlord had agreed an extension of time to remain in the dwelling, had provided a reference and had repaid her deposit of €650 in advance of her vacating the dwelling and on the understanding that she was vacating the dwelling. She outlined that she was not aware of the personal circumstances of the Respondent Landlord’s family. She said that the previous PRTB dispute was the Respondent Landlord’s motivating factor in serving the notice and that she had now no choice but to look for alternative accommodation. She stated that she had not asked for a further extension of time and acknowledged that the Respondent Landlord had extended the notice period so that it would expire on the 10th May 2015.

At the end of the hearing, the Appellant Tenant declined an invitation to make closing submissions and said that she had made her points.

Submissions and evidence of the Respondent Landlord:

At the hearing, the Respondent Landlord said that as a matter of course he dealt with complaints from Tenants in a prompt manner. In respect of this tenancy, he stated that he had recently attended promptly to issues raised by the Appellant Tenant, including the fridge, the washing machine and the sink. In respect of the windows in the dwelling, the Respondent Landlord outlined that he had replaced 80% of the windows in the building but not the bedroom window in question. He stated that this did not need to be replaced. Following complaints of the Appellant Tenant, he arranged for the bedroom window to be repaired and different repairs were carried out on three occasions. He reviewed the repair work after these jobs were completed. Responding to the evidence of the Appellant Tenant, the Respondent Landlord said that there had been one occasion where the Appellant Tenant had been given short notice of an inspection of the window and that she had facilitated such short notice for other repairs. The Respondent Landlord said that the bedroom window was raised again in a letter of the 20th February 2015 and he inspected the dwelling some days later. He said that the problem with the upper window was that it would not fully shut and he provided a pole to completely close the window. He observed that the window was opened and closed on a daily basis and that the Appellant Tenant had not complained further of this issue.

In relation to the other issues regarding the standard and maintenance of the dwelling, the Respondent Landlord said that he had offered the Appellant Tenant an alternative, more upright piece of furniture to the settee and she had declined this. He said that there was nothing wrong with the settee in place, but that a more upright item might be more comfortable for her. In relation to the chimney cleaning, he outlined that he had offered the Appellant Tenant the opportunity to have the chimney in the dwelling swept within the coming days as other chimneys in the building were to be swept. He stated that the basin had been repaired earlier this year and that he had installed a draught excluder to the front door. In relation to the flooding, he said that this had occurred on a very bad stormy night in 2011. He said that the 2014 Tribunal had made an award for the carpet. He stated that there were no recent issues regarding the slugs and he had never seen the slugs.

Addressing the notice of termination, the Respondent Landlord said that he re-issued the notice of termination on the 15th January 2015 in response to the Appellant Tenant’s request for more time and extended the notice period so that it expired on the 10th May 2015. He stated that the notice is grounded on his daughter’s wish to take up occupation of the dwelling and that she currently lives outside of Dublin. He outlined that she was currently operating a business in the midlands but intended to commence studies in Dublin and that she also wished to be near to other family members. Addressing his and his daughter’s circumstances, he outlined that the notice had been served in January and his daughter required the dwelling as soon as possible.

The Respondent Landlord said that there was no penalisation of the Appellant Tenant as there was no dispute; all their dealings had been cordial. In respect of the dehumidifier, the Respondent Landlord outlined that there had not been a dehumidifier in the dwelling since the 23rd June 2014. He denied that the dehumidifier was used to penalise the Appellant Tenant or to undermine her enjoyment of the dwelling. He outlined that there was a freezer in the room above the appellant tenant’s bedroom and that this had recently been moved to a different location in the same room.

The spouse of the Respondent Landlord gave evidence and denied that the dog fouling was an act of penalisation or that the appellant tenant was under surveillance. She said that the area in question is the access from the public road to the area in which they park their cars and that this areas is covered in gravel. She said that she would pick up her dog’s faeces regularly and when necessary. She also said that moss would fall off the roof and that this could be similar in appearance to dog faeces.

In cross-examination, it was put to the Respondent Landlord that his evidence in relation to the dehumidifier was inconsistent; he replied that the dehumidifier had been removed since 2012. In response to a question, he acknowledged that the Appellant Tenant had shown him the slug trails but that he had not seen slugs. Answering questions on the window, the Respondent Landlord said that he had provided a pole to fully close the window and that a wooden block had been installed in the bedroom window as a safety device to prevent it from falling. He did not accept that there was any reason to replace the bedroom window. In relation to his compliance with the Rent Book Regulations, the Respondent Landlord outlined that he had previously believed that the lodging by the Appellant Tenant of rent via the bank met this obligation; following the Appellant Tenant’s complaint, he had provided a Rent Book that he now wished to update.

In closing submissions, the Representative of the respondent landlord outlined that the 2014 Tribunal had dealt with many of the issues relating to the standard and maintenance of the dwelling, including the carpet and that other issues had been addressed by the Respondent Landlord.

**6. Matters Agreed Between the Parties**

The parties were in agreement that the tenancy commenced on the 27th May 2011, that the rent was €750 per month, that the respondent landlord had repaid to the appellant tenant the deposit of €650 and that a notice of termination was served by the respondent landlord on the 15th January 2015 and the period of notice was to expire on the 10th May 2015.

**7. Findings and Reasons:**

Finding: There is no breach of Landlord obligation regarding the standard and maintenance of the dwelling or the peaceful enjoyment of the tenancy.

Reasoning:

Issues determined at the 2014 Tribunal cannot be re-adjudicated upon before this Tribunal. The 2014 Tribunal made an award of damages to the Appellant Tenant regarding dampness in the dwelling and damage to the carpet. No award was made for other issues, for example the windows and the basin. The Appellant Tenant raised these latter two issues as ongoing problems that arise from a breach of landlord obligation. Having considered the oral and written evidence of the parties, the Tribunal holds that there is no breach of Landlord obligation regarding the issues before it. The Tribunal is satisfied that the issue with the top sash window in the bedroom does not amount to a breach of Landlord obligation. The Tribunal notes that the Respondent Landlord offered an alternative to the settee and that the issue with the basin was resolved. The Tribunal is also satisfied that the attendance of people to address repair issues was not done in such a way to amount to a breach of Landlord obligations regarding a Tenant’s peaceful and exclusive occupation of the dwelling.

Finding: There is insufficient evidence to determine that there has been an act of penalisation of the Appellant Tenant.

Reasoning:

The Appellant Tenant and the Respondent Landlord occupy adjoining dwellings in the same building; there are also other dwellings in the same building. It seems to the Tribunal that the ongoing dispute between the parties over the standard and maintenance of the dwelling led to a breakdown in their relationship; this is clear from the extensive correspondence in this case. The Appellant Tenant outlines that various steps have been taken against her because of this dispute, including the use of a dehumidifier, the dog fouling and surveillance. While the Tribunal notes the stress caused to the Appellant Tenant by the protracted nature of this dispute, it does not see that there is any basis to find that such acts of penalisation occurred. It also concludes that the notice of the 15th January 2015 was not an act of penalisation within the terms of section 14 of the Residential Tenancies Act.

Finding: The notice of termination of the 15th January 2015 is invalid as it does not comply with the provisions of the Residential Tenancies Act regarding the provision of contact details.

Reasoning:

The Respondent Landlord served a notice of termination on the 15th January 2015, based on the grounds that he required the dwelling to accommodate a family member. He gave evidence of her needs and her wish to move to Dublin for family and educational reasons. The Appellant Tenant states that the notice of termination is an act of penalisation following the 2014 Tribunal (as outlined above, the Tribunal has not accepted this submission). The role for the Tribunal is to determine whether the notice of termination is valid.

The notice of termination conforms with the requirements of Part 5 of the Residential Tenancies Act, for example the notice period (section 66) and the format of the notice (section 62). When the notice was served, the appellant tenant was in the fourth year of her Part 4 tenancy. The notice is served on the grounds of the Respondent Landlord’s requirement to have the dwelling to accommodate a family member; the fourth ground contained in Table to section 34 to terminate a Part 4 tenancy. This person is identified in the notice and the notice states the expected duration of her occupation. The notice also states that should the family member cease occupation within six months of the end of the tenancy or the completion of this dispute, the tenancy will offered to the Appellant Tenant. The Tribunal accepts that the Respondent Landlord requires the dwelling for use by a family member.

The notice of termination, however, does not comply with the contact details requirement provided by the Residential Tenancies Act. The fourth ground contained in the Table to section 34 refers to the contact details requirement as “The Landlord, by virtue of the notice, is required to offer to the tenant a tenancy of the dwelling if the contact details requirement is complied with.” Section 35(5) provides as follows in relation to the contact details requirement:

“the reference to the contact details requirement being complied with is a reference to the following requirement being complied with, namely, a requirement (which shall be specified in the statement concerned) that the former tenant notify in writing the landlord—

(a) within 28 days from the service of the notice of termination concerned, or, if a dispute as to the validity of the notice was referred to the Board under Part 6 for resolution, the final determination of the dispute, of the means by which he or she can be contacted by the Landlord so that the offer concerned can be made to him or her, and

(b) as soon as practicable after any such change occurs, of any change in the means (as so notified) by which the former tenant can be contacted for that purpose.”

Section 35(5) states that the contact details requirement shall be specified in the statement contained in or accompanying the notice of termination; the use of “shall” denotes the mandatory nature of this provision. As the notice of termination of the 15th January 2015 lacks the contact details statement, it is invalid.

**8. Determination:**

**Tribunal Reference TR0615-001240**

**In the matter of Lebam Macaw (Tenant) and David Young (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 15th January 2015, by the Respondent Landlord on the Appellant Tenant, in respect of the tenancy of the dwelling at 7C Zion Road, Rathgar, Dublin 6 is invalid.
2. The Appellant Tenant’s application in relation to breaches of landlord obligations regarding the standard and maintenance and peaceful and exclusive occupation in respect of the tenancy of the above dwelling is not upheld.
3. The Appellant Tenant’s application in relation penalisation is not upheld.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 18 October 2015.

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| **Signed:** |  |

**Kevin Baneham Chairperson**

For and on behalf of the Tribunal.