**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001242 / Case Ref No: 0415-17813**

**Appellant Landlord:** Alan Cuddihy

**Respondent Tenant:** Mark Denner, Brian Cosgrave

**Address of Rented Dwelling:** 89 Castledawson, Maynooth , Kildare, W23R2T9

**Tribunal:** Elizabeth Maguire (Chairperson)

John Keane, Aidan Brennan

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

**Date & time of Hearing:** 18 September 2015 at 2:30

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| **Attendees:** | Alan Cuddihy (Appellant Landlord)  Mark Denner (Respondent Tenant)  Brian Cosgrave (Respondent Tenant) |
| **In Attendance:** | Gwen Malone Stenographers. |

**1. Background:**

On 13 April 2015 the Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 76 of the Residential Tenancies Act 2004 as amended “the Act”. The matter was referred to an Adjudication which took place on 27 May 2015. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €250 to the Applicant Tenant Mark Denner and shall pay the total sum of €250 to the Applicant Tenant Brian Cosgrave within 14 days of the date of issue of this Order being the balance of the unjustifiably retained security deposit of €550 having deducted €50 in damage to the dwelling in excess of ordinary wear and tear in respect of the tenancy of the dwelling at 89 Castledawson, Maynooth, County Kildare.

Subsequently the following appeal was received 30 June 2015 on the ground of deposit retention and this appeal was approved by the Board of the PRTB on 10 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed John Keane, Aidan Brennan and Elizabeth Maguire as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Elizabeth Maguire to be the chairperson of the Tribunal (the Chairperson).

On 21 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 18 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:**

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 their 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 asked the parties if there were any queries in relation to the procedures, there were no queries.

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present. She said that the Hearing is a Public Hearing and that members of the public were free to attend. 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] (hereinafter referred to as “the Act”).

The parties intending to give evidence were sworn in.

**5. Submissions of the Parties:**

Appellant Landlord’s Case:

Evidence of Mr. Alan Cuddihy (Landlord).

The Appellant Landlord said that the dwelling had been rented out from 2009/2010, and before that had been his principal private residence. He had employed an agent in 2010 to find tenants. He had not inspected the dwelling before the Respondent Tenants had moved into it in March 2011.

He said that he had not retained an agent for the purpose of managing the dwelling, but merely for the purpose of finding good tenants and organising the letting. He gave evidence that at all times the Respondent Tenants had his mobile telephone number, and he would contact them on occasion to enquire about late rent payments, and they would respond to him on this number.

The Appellant Landlord said he never had any issue with the Respondent Tenants. He said that the first he heard of an issue with a smell in the en suite shower room was in June 2014. He gave evidence that he instructed the firm of the agent which had organised the letting of the dwelling to procure a plumber to fix the problem, but had no response from them. He contacted the Respondent Tenants in August 2014 to enquire as to whether the problem had been fixed, and was informed that it had not been fixed.

The Appellant Landlord gave evidence that he did not organise for it to be fixed, but when he obtained possession of the dwelling it seemed to be a problem with the vent and slow refill of water into the toilet cistern, which his father fixed.

The Appellant Landlord’s wife made contact by telephone with the Respondent Tenants in or about November 2014, stating that they needed to sell the dwelling, and requesting that the Respondent Tenants vacate the dwelling by the end of February 2015. The Respondent Tenants agreed to vacate the dwelling, and in fact vacated on 7 January 2015.

The Appellant Landlord gave evidence that he attended at the dwelling on 2 January 2015 and met the Respondent Tenants there. He gave evidence that by and large the dwelling was in an acceptable state. He said that he did remark to the Respondent Tenants about two missing doors on the cabinets in the kitchen. The primary purpose of his visit was to check the colours on the walls to ascertain what paint would be needed to prepare the dwelling for sale.

The Appellant Landlord said that when he obtained possession of the dwelling after 7 January 2015 he noticed holes in the floor, from darts missing a dart board on a wall in the dwelling. He also found one of the kitchen cabinet doors in the garden in a very poor state. He gave evidence about a large amount of items left behind by the Respondent Tenants, including electrical items in the attic, an old couch, old bicycles, rubbish at the side of the dwelling and a large number of bottles. He gave evidence that as a result of the amount of items left behind by the Respondent Tenants, he was obliged to hire an extra skip to remove these items.

He gave evidence to the effect that as a result of the damage to the floor from the darts, it was necessary to carpet the whole area, as it was not possible to repair part of the floor, which was a semi-solid laminate floor.

The Appellant Landlord submitted that he was unhappy with the Adjudication Report, which made no reference to the missing kitchen cabinet doors.

Respondent Tenant’s Case:

Evidence of Mark Denner and Brian Cosgrave (Tenants)

The Respondent Tenants confirmed that the Appellant Landlord had not inspected the dwelling before they went into possession. They gave evidence to the effect that the floor was in a damaged state when they took possession, and had not worsened during their tenancy. They also gave evidence that the kitchen cabinet doors were missing when they went into occupation, but they did not raise this with the Appellant Landlord at the time as they did not consider it affected their enjoyment of the dwelling.

They gave evidence that the dart board was hanging on the wall when they went into possession. They gave evidence that only occasionally had they played darts. They also gave evidence that there was a lot of rubbish at the side of the dwelling when they went into possession, including an old dishwasher and washing machine, and bins, and any electrical goods in the attic did not belong to them. They said that the attic was full by the time they went into occupation.

The Respondent Tenants acknowledged that they had the Appellant Landlord’s mobile telephone number, and had contacted him on this number. They had notified the agency which had organised the tenancy in relation to the problems regarding the en suite bathroom and shower.

The Respondent Tenants gave evidence regarding the meeting on 2 January 2015, and said that they had raised the issues regarding the plumbing and the drain. They said that the Appellant Landlord had told them that the houses in the area were built on marshy land and that there were ongoing problems regarding drainage even when he lived in the dwelling. They said that the cabinet doors in the kitchen were not mentioned by the Appellant Landlord, and that he gave them a reference for their next landlord.

The Respondent Tenants submitted that they felt they were being penalised for the actions of previous tenants, as they were the last tenants in the dwelling, and it was their evidence that the matters complained of by the landlord were the fault of previous tenants in the dwelling.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The tenancy commenced on 15 March 2011.

2. The rent was €1100.00 per month for the dwelling, but each of the Respondent Tenant’s rent was €275.00 per month.

3. The security deposit paid by each Respondent Tenant was €275.00.

4. The tenancy terminated on 7 January 2015.

**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 therefore, are set out hereunder.

7.1 Finding:

The Tribunal find that the Appellant Landlord is in breach of his obligations under section 12 (1)(d) of the Residential Tenancies Act 2004 in failing to return or repay promptly the Respondent Tenants’ security deposit of €275.00 in respect of each Respondent Tenant, without justification, being €550.00 in total.

Reasons:

1. A landlord is entitled to retain all or part of the deposit in 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).

2. The Appellant Landlord accepted that he had not inspected the dwelling prior to the commencement of the tenancy. He was therefore not in a position to give any evidence as to the state of the floor, whether the kitchen cabinet doors were in situ, or what rubbish was in the dwelling or at the back and side of the dwelling , at the commencement of the tenancy.

3. The Respondent Tenants gave evidence that the state of the floor had not deteriorated during their tenancy, and that the kitchen cabinet doors were missing before they went into occupation, and that they removed all of their items of rubbish, and left items that did not belong to them but had been at the dwelling on commencement of the tenancy.

4. As the Appellant Landlord had not inspected the dwelling prior to the commencement of the tenancy, he was not in a position to contradict the evidence of the Respondent Tenants.

7.2 Finding

The Tribunal makes no order for damages against the Appellant Landlord for unjustifiably retaining the Respondent Tenants security deposit.

Reasons:

The Tribunal is empowered under section 115(2) of the Act (as amended) to direct that damages would be paid in respect of the unjustified retention of a security deposit by a landlord. However, when the Respondent Tenants were asked directly by the Tribunal what redress they sought, they said that they were seeking the return of the security deposit and were not seeking anything further.

**8. Determination:**

**Tribunal Reference TR0615-001242**

**In the matter of Alan Cuddihy (Landlord) and Mark Denner, Brian Cosgrave (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlord shall pay the sum of €275 to each of the Respondent Tenants, being €550.00 in total, within 14 days of the date of the issue of the order. This sum represents the unjustifiably retained security deposit of €550.00 in respect of the tenancy of the dwelling at 89 Castledawson, Maynooth, County Kildare.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 22 September 2015.

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| **Signed:** |  |

**Elizabeth Maguire Chairperson**

For and on behalf of the Tribunal.