

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0714-000735 / Case Ref No: 0114-10147

Appellant Tenant:	Lebam Macaw
Respondent Landlord:	David Young
Address of Rented Dwelling:	7C Zion Road, Rathgar , Dublin 6
Tribunal:	John Tiernan (Chairperson) Gene Feighery, Finian Matthews
Venue:	Tribunal Room, Floor 2, PRTB, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	03 September 2014 at 2:30
Attendees:	Lebam Macaw - Tribunal Appellant Tenant David Young - Tribunal Respondent Landlord Jane Young - Respondent Landlord's Spouse and witness David Bracken - Estate Agent and witness on behalf of Respondent Landlord
In Attendance:	Gwen Malone Stenographers

1. Background:

On 30/01/2014 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 29/05/2014. The Adjudicator determined that:

- 1.The Applicant/Respondent Tenant's application for rent more than market rate in respect of the tenancy of the dwelling at 7C Zion Road, Rathgar, Dublin 6, is not upheld.
- 2.The Applicant/Respondent Tenant's application for standard and maintenance of dwelling in respect of the tenancy of the dwelling at 7C Zion Road, Rathgar, Dublin 6, is not upheld.
- 3.The Respondent/Applicant Landlord's application for rent arrears in respect of the tenancy of the dwelling at 7C Zion Road, Rathgar, Dublin 6, is upheld.
- 4.The Applicant/Respondent Tenant shall pay the total sum of €400 to the Respondent/Applicant Landlord within 56 days of the date of this order being rent arrears in respect of the period 27th of January 2014 to the 27th day of May 2014 in respect of the tenancy of the dwelling at 7C Zion Road, Rathgar, Dublin 6.

Subsequently the following appeals were received:

Tenant : received on 03/07/2014. The grounds of the appeal: Rent arrears, Rent more than market rate, Anti-social behaviour. The appeal was approved by the Board on 18/07/2014.

The PRTB constituted a Tenancy Tribunal and appointed Gene Feighery, John Tiernan, Finian Matthews as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Tiernan to be the chairperson of the Tribunal ("the Chairperson").

On 14 August 2014 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 03/09/2014 the Tribunal convened a hearing at Tribunal Room, Floor 2, PRTB, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

None

4. Procedure:

The Chairperson asked the Parties present and their witnesses to identify themselves and to identify in what capacity they were attending the Tribunal. He 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". He explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be conducted in a manner that would be as informal as was possible. He said that members of the Tribunal might ask questions of both Parties from time to time.

The Chairperson explained to the parties that in the event that agreement is reached between them the terms of any such agreement can be incorporated in to a determination of the Tribunal and thus become enforceable through the Courts.

He 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 of €4,000 or up to 6 months imprisonment or both.

He 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 enforced by either of the Parties or in some cases by the Board of the PRTB at its discretion. He also advised the parties that the Tribunal process was the final step in the dispute resolution process unless appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

He asked the Parties if they had any queries about the procedure. There were none.

The parties intending to give evidence were sworn in.

5. Submissions of the Parties:

a) Standard and Maintenance of the Dwelling

The Appellant Tenant provided photographic evidence of the effects of dampness and rot in parts of the Dwelling. She supported this evidence with clear verbal descriptions of the effects of such dampness including the appearance of slugs in her bedroom and the hallway on at least two occasions. She gave evidence of the bases of door-frames showing signs of rot and that in other locations the plasterwork was 'blown' or had swollen. She provided photographic evidence of two slugs on the floor and a slug on her bedroom door. She said that she believes the slugs come up through the floor due to the absence of an appropriate barrier. She said that she has an aversion and a phobia relating to slugs.

The Respondent Landlord gave evidence that the Dwelling is one of three apartments in a house that is a protected structure and which is a listed building under the relevant statutory Development Plan. He said that the Dwelling was last substantially refurbished in 2002. He said that there are some isolated elements of timber rot in skirting boards and swollen plaster work apparent in the Dwelling but that in general these are minor. He said that close-up photographs such as those that were submitted by the Appellant Tenant can present images that appear significant and prevalent but that when zoomed out as in the photographs he himself submitted the image presents the more accurate perspective on the minimal extent of the phenomenon. He said that his belief is that the slugs referred had come in to the Dwelling under the front door.

The Appellant Tenant gave evidence that on an occasion in October/November 2011 the Dwelling had flooded following heavy rainfall due to the surface water drainage system outside her front door having backed up. She said that it had taken a week for the carpet to dry out with the aid of a dehumidifier provided by the Respondent Landlord. The Respondent Landlord said that the dwelling was affected by flooding as described which was due to a backup in the public surface drainage system during a period of unusually heavy and sustained rainfall. He confirmed that he had provided the dehumidifier and added that he had allowed the Appellant Tenant €60 towards the electricity in respect of extra usage involved.

The Appellant Tenant gave evidence of an incident of the presence of water on the floor in the kitchen area that had occurred in early 2012 when she said she noticed water coming up from the floor tiles. She described how when she mopped it the water reappeared. She gave evidence that she called the Respondent Landlord to witness this. She said that she believes that this emanated from poor construction that was not capable of keeping out water which could have been coming from an underground stream. When asked to describe the flow of water she said that it appeared to seep up through the tile joints and then flow in those joints. She said that when the Respondent Landlord saw it and could not determine the source he said that it could be an underground stream. In response to a query from the Tribunal she confirmed that the phenomenon happened once only and had not recurred. The Appellant Tenant also denied that the water could have come from the fridge and in response to a suggestion by the Respondent Landlord that the reappearance after mopping could have been back-seepage flowing from then wetted cardboard boxes on the floor she said that this was ridiculous.

The Respondent Landlord said that he had seen the wet floor when asked to attend by the Appellant Tenant. He said that he could not determine the source of the problem and whereas he cannot recall saying anything about the possibility of an underground stream at the time he may have said so as a matter of conjecture.

The Appellant Tenant said that the wash-hand basin in the bathroom was slow to empty. She acknowledged that the Respondent Landlord had attempted to rectify this matter but that the problem had recurred. In response to a query from the Tribunal she estimated that if the hand basin was filled it would take approximately five minutes to drain away. She said that she should not have to endure this waste of her time. The Respondent Landlord said that he had cleared the 'p-trap' under the sink and that the outflow pipe was discharging adequately in his opinion.

The Appellant Tenant gave evidence that the vacuum cleaner provided with the Dwelling was faulty. She said that it lost its suction power on occasions. In response to a query from the Tribunal she said that she does not clean the filter. The Respondent Landlord said that he rectified this problem and that this merely involved clearing the filter.

The Appellant Tenant said that following her recent expression of concerns in regard to any further flooding event from the surface water drainage system that might occur the Respondent Landlord had deposited sandbags close to her front door. She said that this could cause difficulty for her when parking and then emerging from her car as space was tight. She also said that she would not be strong enough to put the bags in place in the event of a flood. The Respondent Landlord said that he had provided the sandbags because the Appellant Tenant had asked for them. He said that on foot of the comments he will now take them away again.

The Appellant Tenant said that she needs to have the chimney cleaned and that she has observed soot on the hearth. The Respondent Landlord gave evidence that he has agreed with the Appellant Tenant that he will arrange for this work to be carried out on her behalf for the winter season this month.

The Appellant Tenant said that from the outset of the tenancy she had a difficulty with the sliding sash windows in the Dwelling. She said that the Respondent Landlord had now addressed these matters but that there was the legacy issue of the difficulties she had endured until the matter was rectified.

b) Anti Social Behaviour/Denial of Peaceful Enjoyment

Whereas the issues as categorised by the Appellant Tenant under this aspect of the dispute as being anti-social behaviour may be more appropriately described as a claim in regard breach of Landlord's obligations through denial of peaceful enjoyment the Tribunal has set out hereunder the evidence of the parties on matters giving rise to such claim.

The Appellant Tenant said that she has difficulty sleeping at night. She said that she has insomnia and feels exhausted much of the time. She said that in the room above her bedroom there is a constant humming noise at night time that she can hear and feel vibrating through her body and which she originally perceived to emanate from a washing machine in the Respondent Landlord's dwelling which is overhead taking advantage of on night rate electricity. However she said that she has more recently concluded that the source of the noise is from a dehumidifier in the Respondent Landlord's dwelling. She said that she has concluded this because the Respondent Landlord admitted at the adjudication hearing on 29th May 2014 that he had such an apparatus in his apartment.

The Respondent Landlord said that since 4th June 2014 there has been a dehumidifier in his apartment which is positioned beside a shower and which was run only for short periods. He confirmed that when in use its position is above the Appellant Tenant's bed in her bedroom. However he said that he believes the most likely source of the humming noise that was described by the Appellant Tenant is a small freezer in the kitchen/living area of his apartment that makes negligible noise but that it does cut in and out as is normal. He said that the freezer is not positioned above the Appellant Tenant's bed but that it is positioned above the bedroom. He said that he does not accept that the very low level of noise from the freezer could constitute a denial on his part of peaceful enjoyment of the Dwelling below on the part of the Appellant Tenant. In response to a query from the Tribunal the Respondent Landlord said that the dehumidifier is used beside the shower which is in a room with no windows though there is an extractor fan. He said that he had given an undertaking to the Appellant Tenant by letter dated 25th June 2014 which was adduced in evidence to the Tribunal confirming to her that he would not use the dehumidifier between 11pm and 8am each day.

The Appellant Tenant said that she considers the attitude of the Respondent Landlord's wife towards her to be anti-social. She said that she does not greet her as she does the other tenants. She also cited an occasion when the Respondent Landlord spoke to her on the phone regarding the rent increase following an occasion when she had not answered her door to him because it was after 9pm and she knew that his tone was hostile and she could detect covert aggression. The Respondent Landlord said that he does not accept that either he or his wife ever acted in a discourteous manner towards the Appellant Tenant.

c) Rent greater than Market Rent and any Consequential Rent Arrears

This issue arose between the parties following a notification by the Respondent Landlord dated 26th April 2012 of a rent increase from €650 per month to €710 per month which was subsequently reduced to €690 per month following representations on the part of the Appellant Tenant and which increase has never been paid by the Appellant Tenant. The Respondent Landlord issued a further notification dated 17th December 2013 to increase the rent from the then purported €690 per month to €750 per month to commence in January 2014 and which the Appellant Tenant has also never paid.

The Appellant Tenant said that she believed that the current rent she is paying at the rate of €650 per month is about the appropriate market rent. She said that she feels that the Dwelling is not worth more than €650 a month particularly when one considers that it has dampness issues, rotting doorposts and is characterised with swelling or blown plaster patches. She submitted a set of details downloaded from an established property website in relation to some 32 one bed-roomed apartments with associated parking facilities which she said comprised a reasonable set of comparators. These were in various postal districts throughout both the south-side and the north-side of Dublin City. All of these were displaying asking rents of less than or equal to €650 per month and some as low as €400. In response to a query from the Tribunal in regard to the rights of a landlord to increase rent and the current trend of increased rents in Dublin the Appellant Tenant said that she finds it unacceptable that tenants are squeezed to pay for the profits of landlords just because there may be a supply and demand issue in the market.

The witness on behalf of the Respondent Landlord said that he is an Estate Agent specialising in the rental and property management field and that he has some 18 years experience in renting out properties in the Rathgar and Dublin 6 vicinity. He gave evidence that he was the Agent involved with the letting and drawing up the original lease agreement in 2011 relating to the tenancy of the Dwelling the subject of this dispute. He said that he had provided the Respondent Landlord with the assessment of the market rent of the Dwelling in April 2012 being in his assessment €775 per month.

The witness further commented that the set of details of properties submitted in evidence by the Appellant Tenant being from diverse localities around the city were not direct comparators. He said that many were studio apartments and that some purporting to have parking had on-street parking with the necessity to purchase a residents permit which cost €80 by comparison with the free secure private parking available with the subject Dwelling. He also cited the fact that the subject Dwelling had its own front door which he said was another preferred factor in the rental market. He gave evidence that Rathgar is a much sought after residential location and that demand at present is good. He said that following the property market crash in 2007/2008 the rental market in Dublin began to creep up in late 2011 early 2012. He reiterated that the current market rent for a comparable Dwelling in Rathgar in a similar location and of similar quality would be €900 per month.

The Respondent Landlord also provided a set of details downloaded from property websites in relation to some 17 comparable Dwellings in the Rathgar Dublin 6 and south-side areas of Dublin all showing current asking rents of equal to or greater than €800 per month and up to €1,500 per month. He gave evidence that on 26th April 2012 he had given notice of an increase in the rent to commence on 27th May 2012 following the first 12 months of the tenancy. He said that the market rent as advised by his agent was €775 per month but that he had notified the Appellant Tenant of an increase to just €710 per month. He gave evidence that the notification had been processed in accordance with the prescribed procedures under the Act of 2004. He said that when the Appellant Tenant had protested that this was too much he had reduced his demand to €690 per month which the Appellant Tenant had never paid and that she continued to pay the original rent of €650 per month. Accordingly he calculated that the accumulated arrears at €40 per month from May 2012 to December 2013 being 20 months inclusive is €800.

The Respondent Landlord gave evidence of a further rent increase that he had notified to the Appellant Tenant on 17th December 2013 which was to commence on 27th January 2014 and which purported to increase the rent to €750 per month. He said that the Appellant Tenant had not paid the increased demanded amount and has continued to pay the original rent of €650 per month. He submitted that this resulted in a further accumulation of arrears at a rate of €100 per month from 27th January 2014 to 27th August 2014 being 8 months inclusive giving rise to further arrears of €800.

6. Matters Agreed Between the Parties

- 1) The tenancy commenced on 27th May 2011
- 2) The initial rent was €650 per month

3) The Appellant Tenant paid a deposit of €650 which is still retained by the Respondent Landlord

7. Findings and Reasons:

On the basis of the evidence provided and on the basis of the balance of probabilities the Tribunal has made the following findings:

Finding No.1

The Tribunal finds that the Respondent Landlord has failed in his duty in regard to the standard and maintenance of the Dwelling in accordance with the provisions of Section 12(1)(b) of the Act. The Respondent Landlord shall pay to the Appellant Tenant the sum of €750 in damages in respect of the consequences of this failure.

Reason:

The Tribunal accepts the evidence presented by the Appellant Tenant in regard to the presence of dampness in the Dwelling resulting in timber rot and the intrusion of slugs. This condition constitutes a breach of the Respondent Landlord's obligations under the provisions of the Act of 2004 and S.I. No. 534 of 2008 Housing (Standards for Rented Houses) Regulations 2008.

Having regard to the evidence of the Appellant Tenant and of the Respondent Landlord the Tribunal considers that the clean-up response of the Respondent Landlord in relation to his standard of maintenance of the carpet in the bedroom of the Dwelling having suffered a surface water flooding incident has been inadequate and that this is in breach of the Respondent Landlord's obligations under the provisions of Section 12 (1)(b) of the Act of 2004. The Tribunal assesses that the appropriate amount in damages in respect of the distress, anxiety and inconvenience to the Appellant Tenant as a consequence of the above failure is €750.

The Tribunal does not consider that the evidence adduced by the Appellant Tenant relating to the difficulties with the windows, the vacuum cleaner, the slow discharging wash hand-basin outlet, soot from the chimney, the incident of flooding on the kitchen floor to be sufficient to constitute breaches of obligations on the part of the Respondent Landlord.

Finding No.2

The Tribunal finds that the Appellant Tenant's case in respect of the denial of peaceful enjoyment and/or anti-social behaviour towards her on the part of the Respondent Landlord or of the Respondent Landlord's spouse is not upheld.

Reason:

The Tribunal considers that the evidence provided on the part of the Appellant Tenant in regard to the alleged denial of peaceful enjoyment and/or of antisocial behaviour towards her on the part of the Respondent Landlord or of his spouse is not sufficient to uphold such a charge.

Finding No.3

The Tribunal finds that Respondent Landlord's case in respect of the validity of the process and notification of a rent increase on 26th April 2012 to take effect on 27th May

2012 in respect of the Dwelling is not upheld. The Tribunal finds that no rent increase shall be payable on foot of that purported rent increase.

Reason:

The Respondent Landlord has not presented sufficient credible or consistent evidence in relation to the market rent at that time in 2012 to justify the rent increase sought. The Tribunal notes that the witness on behalf of the Respondent Landlord gave evidence that rents had been noticed to increase slightly at the end of 2011 early 2012. On the other hand he had provided an assessment of the market rent of the Dwelling being €775 in April 2012 which represented an increase of almost 20% on the rent which had been set one year earlier and to which letting he had acted on behalf of the Respondent Landlord. No comparator evidence was presented to the Tribunal to enable a realistic assessment of the then market rent.

Finding No.4

The Tribunal finds that the assessment and process in respect of the purported rent increase dated 17th December 2013 to take effect on 27th January 2014 in respect of the Dwelling has been properly conducted and is valid. In accordance with the provisions of Section 115(2)(a) the Tribunal directs that the monthly rent payable in respect of the Dwelling from 27th January 2014 onwards is €750 until such time as it may be lawfully varied.

Finding No.5

The Tribunal finds that the Appellant Tenant is in arrears of rental payments to the value of €800 at the date of the Tribunal hearing.

Reason:

In accordance with the provisions of Section 16(a)(i) of the Act of 2004 a tenant is obliged to pay the rent provided for under the tenancy concerned on the date it falls due for payment. The witness on behalf of the Respondent Landlord presented clear and credible evidence of the rental market in the relevant vicinity. Furthermore the Tribunal accepts the evidence adduced by the Respondent Landlord who has provided evidence of relevant comparator Dwellings. On the basis of the evidence provided the Appellant Tenant has continued to pay rent at the rate of €650 per month up to the date of the Tribunal hearing. The monthly shortfall therefore commencing with the first payment due on 27th January 2014 when the rent was lawfully increased to €750 per month is €100. Arising out of Finding No.4 above there are eight monthly rental payments due from 27th January 2014 to 27th August 2014 which gives rise to an accumulated shortfall of rental payments of €800.

8. Determination:

Tribunal Reference TR0714-000735

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:

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

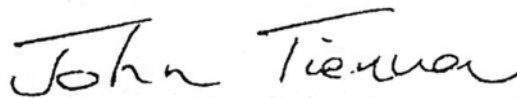
1) The Appellant Tenant shall pay the sum of €50 to the Respondent Landlord within 28 days of the date of issue of the Determination Order by the Board being arrears of rent in the amount of €800 having deducted the sum of €750 in damages to be paid by the Respondent Landlord to the Appellant Tenant arising out of the consequences of the Respondent Landlord's failure in his obligations in respect of the standard and maintenance of the Dwelling in the course of the tenancy at 7C Zion Road, Rathgar, Dublin 6.

2) The appropriate rent in respect of the tenancy of the Dwelling at 7c Zion Road, Rathgar, Dublin 6 commencing from 27th January 2014 onwards is €750 per calendar month and shall remain so until such time as it may be lawfully varied in accordance with the provisions of the Act of 2004.

3) The Appellant Tenant shall continue to pay rent in respect of the tenancy of the Dwelling at 7C Zion Road, Rathgar, Dublin 6 at the rate of €750 per calendar month until such time as it may be lawfully varied in accordance with the provisions of the Act of 2004.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 25/09/2014.

Signed:

A handwritten signature in black ink, reading "John Tiernan". The signature is written in a cursive, flowing style.

John Tiernan Chairperson

For and on behalf of the Tribunal.