

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0714-000737 / Case Ref No: 0214-10413

Appellant Landlord:	Olive Neary
Respondent Tenant:	Deborah Gallagher, Darragh Crehan
Address of Rented Dwelling:	24 Lios Ealtain, Nile Lodge, Lower Salthill , Galway
Tribunal:	John Tiernan (Chairperson) Vincent P. Martin, Aidan Brennan
Venue:	Room G01, Galway County Council, County Buildings, Prospect Hill, Galway, Galway
Date & time of Hearing:	11 September 2014
Attendees:	Darragh Crehan - Tribunal Respondent Tenant Deborah Gallagher - Tribunal Respondent Tenant Olive Neary - Tribunal Appellant Landlord
In Attendance:	Gwen Malone Stenographers

1. Background:

On 13/02/2014 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 26/05/2014. The Adjudicator determined that 1. I find that it was agreed that the tenants could break the lease in this matter. However, I find that the tenants did not serve a Notice of Termination on the Respondent Landlord and I also find that the applicant tenants did not notify the landlord of the date they had vacated the property. Therefore, I find that the respondent landlord is entitled to retain all of the security deposit held of €775.

2. The Respondent Landlord shall pay the sum of €300 to the First Named Applicant Tenant within 7 days of the date of issue of the Order being damages for breach of the landlord obligations in breach of S12 of the Residential Tenancies Act 2004.

3. The Respondent Landlord shall pay the sum of €450 to the Second Named Applicant Tenant within 7 days of the date of issue of the Order being damages for breach of the landlord obligations in breach of S12 of the Residential Tenancies Act 2004.

Subsequently the following appeals were received:

Landlord : received on 04/07/2014. The grounds of the appeal: Standard and maintenance of dwelling, Breach of landlord obligations ; approved by the Board on 18/07/2014.

The PRTB constituted a Tenancy Tribunal and appointed John Tiernan, Aidan Brennan 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 12/8/2014 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 11/09/2014 the Tribunal convened a hearing at Room G01, Galway County Council, County Buildings, Prospect Hill, Galway, Galway.

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

A list of personal items allegedly damaged due to mould growth in the Dwelling.

4. Procedure:

The Chairperson asked the Parties present 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 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 up to €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 were sworn in.

5. Submissions of the Parties:

The Appellant Landlord's Case:

The Dwelling as described by the Appellant Landlord was constructed in circa 1997, is a modern ground floor apartment incorporating three external walls with a townhouse above it. She described that the external walls have pumped cavity insulation and are fitted with air vents. She said that along with this there are trickle vents included into the window frames and an 'xpelair' type extractor fan in the kitchen. She said that the washing machine includes a condenser drier. She said that the heating is provided through a Gold Shield electric heating system that relies upon electric storage heaters with thermostatic controls and panel heaters in the two bedrooms. She described that there is an external lobby leading to the front door of the Dwelling.

The Appellant Landlord gave evidence that she had received a call from the first named Respondent Tenant during mid October 2013 to the effect that the Respondent Tenants were very concerned about mould growth in the Dwelling and in particular its possible detrimental effects on the health of the second named Respondent Tenant due to his underlying asthmatic condition. She said that she had not visited immediately because she had been booked to go on a vacation on the same day. She said that she decided that if the Respondent Tenants were unhappy about residing in the Dwelling she was not going to hold them to the 12 months lease notwithstanding that they were only 2 months in to that lease period. The Appellant Landlord gave evidence that she had agreed to come and view the situation in the first week of November 2013 but that on the evening before the appointed date she rang the first named Respondent Tenant to advise her that following discussion with her husband she had made a decision to not hold the Respondent Tenants to the terms of the lease agreement and that therefore there was no need to meet but that she was to be informed well in advance of their intended departure date in order that she could put in place arrangements with her agent for re-letting.

She said that she had been awaiting a follow up call from the Respondent Tenants to confirm their intended date of departure. She gave evidence that on 6th of December 2013 when she noticed the rent which had been due on 29th November 2014 had not been paid in to her account she began to follow up on the matter and commenced her inquiries with the property management agents who had let the Dwelling to the Respondent Tenants on her behalf who confirmed that they had heard nothing. She said that she then rang the second named Respondent Tenant who advised her that the Respondent Tenants had left the Dwelling. She said that he later that evening he texted her to say that the first named Respondent Tenant had sent a text message on 27th November 2013 to inform her that they had vacated. She stated that she did not receive the text message referred to and that she did not receive any written Notice of Termination as also averred by the Respondent Tenants. She said that this communication on the evening of 6th November 2013 was the only notification she had received from the Respondent Tenants concerning their departure date which in any case was after the event. Photocopied photographs of this received text message on the Appellant Landlord's mobile phone were submitted in evidence.

The Appellant Landlord pointed out that under the terms of the written lease agreement there is a provision whereby any notification to be given to the landlord shall be duly served if delivered by hand or sent by registered or recorded post to the address provided in the agreement neither option of which had not been taken.

The Appellant Landlord said that she went to the Dwelling on 9th December and noted that the heat was not on. She gave evidence that there was mould growth in two locations

on the wall of one of the bedrooms. She said that the control thermostats were set to 20° C and 10° C whereas they should both have been aligned to the same temperature.

The Appellant Landlord stated that she considered the mould phenomenon to have arisen due to poor air management on the part of the Respondent Tenants. She said that the Dwelling had been let to numerous tenants and that this was the first occasion that a complaint arose in respect of condensation or mould. She said that the immediately preceding tenant had resided in the Dwelling for 4 years and had run a crèche there. She averred that the first named Respondent Tenant had complained that the place was cold which could indicate that the Respondent Tenants were cutting back on heating and electricity use. When questioned as to the reason for the presence of a dehumidifier in the Dwelling she stated that she is landlord in respect of a number of properties and that it is her policy to provide such in all of her properties as a matter of good practice.

The Appellant Landlord stated that she had withheld the Appellant Tenants' security deposit in lieu of one month's rent because she had not received notice of the Respondent Tenants' vacation of the tenancy.

The Respondent Tenants' Case:

The first named Respondent Tenant said that she had viewed the Dwelling and had signed the lease on 30th September 2013. She said that she had an initial concern that the letting agents had been engaged on a 'let only' basis and would not be managing the tenancy throughout the lease period. She averred that there was a verbal agreement made with the letting agents that the tenancy could be reviewed following the first three months.

The first named Respondent Tenant said that she contacted the Appellant Landlord in mid-October when she and the second named Respondent Tenant noticed heavy mould growth in the Dwelling. She said that she had requested the Appellant Landlord to come and see for herself and that she had advised the Appellant Landlord that the second named Respondent Tenant had visited a doctor due to his asthmatic condition. She described the condition of the Dwelling including that there was mould growth on clothing in the wardrobes, that there was condensation on the walls and that the bed was wet. She said that there was a dehumidifier in the Dwelling. She also averred that they had never been shown how to operate the heating in the Dwelling.

The first named Respondent Tenant stated that they didn't wash or dry clothes in the Dwelling when they resided there and that they had always used a commercial facility for same. The second named Respondent Tenant asserted that they had regularly opened the windows and had not blocked up any of the ventilation.

The Respondent Tenants adduced photographic evidence depicting mould growth on clothing footwear and other personal items. They submitted a pre-typed list of items that had to be discarded as a result of the effects of mould growth that had arisen in the Dwelling with a total combined value €200. Prior to submission to the Tribunal this list was amended by hand to remove one item with a value of €100 from same.

The first named Respondent Tenant said that she sourced a new apartment on 14th November 2013 and had that they had subsequently moved out of the subject Dwelling even though the rent was paid up until 29th November 2013.

Both the first and second named Respondent Tenants stated to the Tribunal that a written Notice of Termination had been posted to the Appellant Landlord in the first week of

October 2013. When queried by the Tribunal in regard to this they asserted that the notice had been handwritten and because they had not anticipated any issue arising they had not kept a copy. The second named Respondent Tenant asserted that they had sent numerous text messages to the Appellant Landlord but that they had not retained them. When queried by the Appellant Landlord as to whether they had sought records from their service providers to present in evidence at the Tribunal he confirmed that they had not done so.

The first named Respondent Tenant stated that when they were vacating the Dwelling she had placed the keys and fob to the Dwelling through the letter-box because she knew that the Appellant Landlord had a spare set of keys.

The second named Respondent Tenant gave evidence that he is conscious of and sensitive to mould due to his asthmatic condition and that the mould in the Dwelling grew on stuff in the bedrooms and wardrobes. He said that the sheets and bedclothes were saturated from damp. He told the Tribunal that the Dwelling gets no sunlight and is tucked away in a corner.

The first named Respondent Tenant asserted that the reason they had initiated the dispute resolution process was in order to have their deposit returned. She said that they had to do what was right for themselves, that they had been perfect tenants and had left the Dwelling in perfect condition. She said that the Appellant Landlord was aware that they were moving out.

6. Matters Agreed Between the Parties

- 1) The tenancy agreement was committed to writing in the form of a 12 month lease that commenced on 30th September 2013.
- 2) The rent in respect of the Dwelling was €775 per month.
- 3) The Dwelling was left in a clean and neat condition at the end of the tenancy.
- 4) The Respondent Tenants paid a security deposit of €775.
- 5) The Appellant Landlord still retains the full security deposit.

7. Findings and Reasons:

Finding No. 1

The Tribunal finds that the Notice of Termination purported to have been issued by the Respondent Tenants to the Appellant Landlord was not valid.

Reason:

The Tribunal accepts the evidence of the Appellant Landlord that no written Notice of Termination in accordance with the provisions of the Act of 2004 was received by her from the Respondent Tenants. The Respondent Tenants did not adduce sufficient evidence to support their assertions that they had adequately informed the Appellant Landlord in advance of the date of their impending vacation of the tenancy in accordance with the provisions of Section 6, Section 58 and Section 62 of the Act of 2004 or by any other means.

Finding No. 2

The Tribunal finds that the Appellant Landlord was not in breach of her obligations under the provisions of Section 12(1)(b) of the Act of 2004 in regard to the standard and maintenance of the Dwelling.

Reason:

On the basis of the evidence as adduced the Tribunal considers that on the balance of probabilities the mould, condensation and dampness phenomenon that occurred at the Dwelling was due to lack of appropriate air and heat management on the part of the Respondent Tenants in the course of the tenancy.

Finding No. 3

The Tribunal finds that the Appellant Landlord justifiably retained the entire of the Respondent Tenants' security deposit in the sum of €775 in accordance with the provisions of Section 12(4) of the Act of 2004.

Reason:

As a consequence of Findings Numbers 1 & 2 above the Tribunal consider that the tenancy was not terminated properly in accordance with the provisions of the Act of 2004 and that it continued in accordance with the 12 month lease agreement or until such time as agreed by the Appellant Landlord. The Appellant Landlord has sought to retain the Respondent Tenants' security deposit in the sum of €775 being equivalent to rent for one month. The Tribunal notes that the Dwelling was re-let in January 2014 and that the loss arising on the part of the Appellant Landlord had been accordingly mitigated. In accordance with the provisions of Section 12(4) of the Act of 2004 the landlord is not obliged to return any amount of the deposit in the circumstance if there is a default in the payment of rent which in this case was still due because the tenancy had not been terminated.

Finding No. 4

The Tribunal finds that the Appellant Landlord's appeal against the award of damages to the Respondent Tenants in respect of compensation for damage to personal property in the Dwelling during the course of the tenancy is upheld.

Reason:

Having regard to Finding No 2 above it follows that the Appellant Landlord bears no liability for compensation to the Respondent Tenants in respect of damage to clothing and other personal items as a result of mould growth in the Dwelling.

8. Determination:

Tribunal Reference TR0714-000737

In the matter of Olive Neary (Landlord) and Deborah Gallagher, Darragh Crehan (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The termination of the tenancy of the Dwelling at 24 Lios Ealtain, Nile Lodge, Lower Salthill, Galway by the Respondent Tenants was not validly effected.

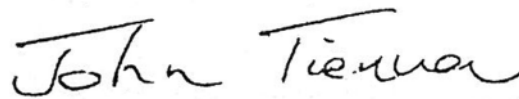
The Appellant Landlord has justifiably retained the Respondent Tenants' security deposit in the sum of €775 in lieu of rent for one month arising from the invalid termination of the tenancy on the part of the Respondent Tenants.

The Respondent Tenants' claim in respect of breach of obligations on the part of the Appellant Landlord under the provisions of the Act of 2004 is not upheld.

The Appellant Landlord's appeal in respect of the award damages to the Respondent Tenants is upheld, all in respect of the tenancy of the Dwelling at 24 Lios Ealtain, Nile Lodge, Lower Salthill, Galway.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 30/09/2014.

Signed:

A handwritten signature in black ink, reading "John Tiernan". The signature is written in a cursive style with a horizontal line underneath the name.

John Tiernan Chairperson

For and on behalf of the Tribunal.