

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0714-000739 / Case Ref No: 0313-05084

Appellant Tenant:	Cormac Murphy
Respondent Landlord:	Elaine Dunne
Address of Rented Dwelling:	The Stewards House, St Helens Road, Booterstown Avenue , Dublin
Tribunal:	Finian Matthews (Chairperson) John Tiernan, Thomas Reilly
Venue:	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	18 September 2014 at 2:30
Attendees:	Cormac Murphy, Tribunal Appellant Tenant
In Attendance:	Gwen Malone, Stenographers

1. Background:

On 19/03/2013 the Landlord 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 27/03/2014. The Adjudicator determined that Ref: DR0313-05084

In the matter of Elaine Dunne, Applicant Landlord and Cormac Murphy, Respondent Tenant, it is determined that:

1. The Respondent Tenant shall pay the total sum of €18,362.09 to the Applicant Landlord at the rate of €1,530.17 per calendar month, for 12 consecutive months, on the 28th day of each month, commencing the next month after the issue of the Order by the Board. This sum represents rent arrears in the amount of €16,300.00 and damages of €4,362.09, having deducted the entire of the justifiably retained security deposit of €2,300.00, in respect of the tenancy of the dwelling at The Stewards House, St Helens Road, Booterstown Avenue, County Dublin.
 2. The enforcement of the Order for such payment will be deferred and the total sum owing will be reduced by the number of monthly instalments of €1,530.17 made to the Applicant Landlord on each due date until the sum of €18,362.09 has been paid in full.
 3. For the avoidance of doubt any default in the payment of the monthly instalments of €1,530.17 shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Applicant Landlord.
 4. The Notice of Termination with a date of service of the 20th September 2012 is valid.
- Subsequently the following appeals were received:

Tenant : received on 07/07/2014. The grounds of the appeal: Rent arrears, Invalid Notice of Termination ; approved by the Board on 18/07/2014.

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

On 21 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 18/09/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, 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:

Immediately prior to the commencement of the hearing the Tribunal received a written submission dated 18 September from a representative of the Respondent Landlord. A number of other documents were attached to the submission. The submission and attached documents were shown to the Appellant Tenant, who was given an opportunity to read same during a 15 minute adjournment of the hearing. On the resumption of the hearing the Appellant Tenant stated that he had no objection to the submission and attached documentation being entered in evidence.

4. Procedure:

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Tenant against a determination made following an adjudication held on 24 March, 2014 in the case of a dispute between the Tenant and the Respondent Landlord in respect of a tenancy at the Stewards House, St. Helen's Road, Booterstown Avenue, Dublin. He introduced the members of the Tribunal to the parties.

He asked the Party present to identify himself and to state the capacity in which he was attending the Tribunal hearing. He confirmed that the attending party had received the relevant papers from the PRTB in relation to the case and that he had received and understood the PRTB document entitled "Tribunal Procedures". The attending party confirmed that he had done so. The Chairman said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson then explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the attending Party must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the stenographer present, and that based on that recording a transcript could be made available to the Tribunal if necessary, to assist it in preparing its report on the dispute. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by

the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the PRTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Tenant would in the normal course be invited first to present his case; this would be followed by an opportunity for cross-examination by the Respondent Landlord if present or represented; that the Respondent Landlord or his representative would then be invited to present his case, followed by an opportunity for cross-examination by the Appellant Tenant. He said that members of the Tribunal would ask questions of both Parties from time to time.

He also said that at the end of the hearing, both the Appellant Tenant and the Respondent Landlord if present would be given the opportunity make a final submission should they so wish. The Appellant Tenant was then sworn in.

Adjournment request on behalf of the Respondent Landlord

The Chairperson advised the Appellant Tenant in attendance that during the course of the morning of 18 September, 2014 - the day of the hearing - the PRTB had been contacted by a representative of the Respondent Landlord stating that the representative was tied up in an urgent and time consuming matter overseas and was unable to attend in person at the hearing. The representative had also stated that he intended on sending through a written submission in the next hour regarding the dispute itself. However in the mean time the Respondent Landlord's representative had said that he would like to know if it is possible for him to attend the tribunal by way of telephone / teleconference facility. Alternatively, the Landlord's representative respectfully requested that the tribunal be postponed to a date in October or the first available date around that time.

The Chairperson said that the Tribunal had considered the request for an adjournment of the hearing and had decided that there was no basis for agreeing to such a request and no adjournment to a new date was accordingly being granted. The Tribunal was then adjourned for a short period to give the Appellant Tenant an opportunity to read the Landlord's representative's submission dated 18 September, 2014.

On the resumption of the hearing the Chairperson reminded the attending Party that the Determination Order of the PRTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

5. Submissions of the Parties:

Appellant Tenant's Case:

The Appellant Tenant in his evidence accepted that there were rent arrears in relation to the tenancy but said there were reasons for that which he wished to explain. He said that his relationship with the Respondent Landlord was fine until he was contacted by phone in April 2012 stating that the Landlord was considering the sale of the dwelling and asking for access to assess a sales value. He said that an agent of the Landlord subsequently came by arrangement to look around the dwelling. The agents subsequently contacted him sometime before the end of April and told him that they were not proceeding with any sale. He said that this was a relief to him because he had a children including a teenage daughter attending school locally and he wished to avoid disruption in mid-year.

The Appellant Tenant said he heard nothing further from the Landlord's agents until August 2012 just after he returned from holidays when the agents told him that they were now going to sell the dwelling. He said he was quite upset about this because the proposal to sell was coming at a time when he was in the course of making arrangements for his children to return and settle into school. In response to his concerns he said that the Appellant Landlord's agents agreed that his family could stay in the dwelling until it was sold. He said that an initial viewing of the dwelling was arranged with his consent but he felt this was handled very unprofessionally when about 20 people converged on the dwelling at the same time and were allowed to roam freely throughout the house some of whom were using photographic equipment creating security concerns and upsetting his wife who was present. He said that he subsequently rang the Landlord's agent and told him that what had happened during the viewing was totally unacceptable. He told the agent that he would have no objection to 2 viewings per week with 2 people at a time, but said that what the agent was seeking was an 'open' house 2 or 3 times a week to facilitate viewings. He said he also made it clear to the agent that his wife, who worked from home, would be present in the dwelling during the viewings. The Appellant Tenant said that he subsequently received a text from the agent saying "No deal on wife" in response to which he said he was not prepared to facilitate further viewings. He said that a short time after that on 20 September, 2012 he received notice requiring him to vacate the dwelling by no later than 14 December, 2012 or earlier should he chose to leave before that date.

The Appellant Tenant said that he realised at that point that his relationship with the Respondent Landlord had broken down and that he and his family would have to move. He said that he found an alternative dwelling quite quickly and moved out on 20 October, 2012 without giving any notice to the Landlord of his intention to do so. He said that he cleaned the house thoroughly before leaving and left it in an immaculate condition.

In relation to an alleged outstanding gas bill, the Appellant Tenant said that he contacted all the relevant utility companies before leaving and paid any outstanding balances. On questioning by the Tribunal he said that he could not explain why a gas bill submitted by the Landlord's agents relating to the period 25 October, 2012 to 5 December, 2012 showed a 'previous balance' of €116.93. He said that all of his utility bills had remained in the name of Mountbrook Homes but were delivered to the dwelling throughout the tenancy. In relation to the cleaning bill for €200 he said that no maintenance works had been carried out in the dwelling over the 4 years of his tenancy. He said he had no photographs showing the condition of the dwelling at the end of the tenancy but was adamant that he had left it clean and tidy throughout.

In relation to rent arrears the Respondent Tenant said the amount of €16,300 referred to in the Adjudicator's report came as a complete surprise to him and he was disputing that he owed that amount in rent. He said he accepted that 4 months rent was outstanding and drew the Tribunal's attention to an e-mail dated 10th October, 2012 from the Appellant Landlord's agent noting that his rent was paid up until 16th May 2012 (and) therefore there were five months rent at €1,900 currently outstanding and an additional month due on 16th October. He said that he was satisfied that he had paid his rent in full up to 16th May, 2012. He added that he had initially been instructed to pay his rent to Mountbrook Homes or Group, then to Mountbrook Group or Homes and finally to the named Respondent Landlord. He said that for the first two years he was based in Dublin the rent was paid by his employer and that he subsequently took over the payments. He

said he paid either by cheque or cash lodgements in to the Landlord's accounts, but had not kept the relevant cheque stubs or lodgement slips.

In relation to the monthly rent payable the Appellant Tenant referred to an e-mail dated 18th April 2011 from an agent for the Respondent Landlord which he said offered unconditionally to rent the dwelling at €1,900 per month. He said he did not accept that this offer was linked to a prior e-mail exchange approximately one hour beforehand related to his agreement to an extension of his lease.

Referring to whether he was contactable after he vacated the dwelling the Appellant Tenant said that he had not been trying to hide and could be contacted easily. He said he re-directed his post from the dwelling to his new address, which was not far away. He said also that the two houses shared the same postman and that even up to the present the postman from time to time delivers letters sent to his previous address. He pointed that it was clear that the Respondent Landlord's solicitors had been able to communicate with him after he vacated. He added that the Respondent Landlord's agents had his e-mail address and this had never changed.

In other evidence to the Tribunal the Appellant Tenant said that it would have made no sense for the Respondent Landlord to have allowed him to accumulate substantial rent arrears, while at the same time offering to extend his lease; he accepted that his monthly rent payments had been of an erratic nature, with a number of monthly payments being missed, but he said that the outstanding balance had always been brought up to date, in the period before 16th May, 2012; he pointed out again that the Landlord's representatives admitted that they had given an incorrect figure for the rent arrears, and also that the Landlord's solicitors in their letter of 24th October, 2012 had given a different figure again; he believed that he had made a reasonable effort to come to an arrangement with the Respondent Landlord in relation to the outstanding arrears for the last four months of the tenancy, which he had decided not to pay when due because he said he was under duress. He also submitted that the notice of termination served on him was invalid because it was not in the same format as the sample notice on the PRTB's website and because it did not contain the Respondent Landlord's address. He also disputed the Respondent Landlord's claim for interest costs incurred as a result on non-payment of rent.

Respondent Landlord's case

The Respondent Landlord did not attend, nor was she represented at the hearing. The Tribunal has however, had regard to the previous submissions made in relation to the dispute on behalf of the Respondent Landlord and has also had regard to the submission dated 18th September 2014 and accompanying documentation made on behalf of the Respondent Landlord. The Tribunal has considered in particular the submissions made in relation to the amount of rent arrears owed by the Appellant Tenant, the amount of rent payable, the validity of the notice of termination served on the Appellant Tenant, the bona fides of the Landlord in the decision taken to sell the dwelling, the arrangements for viewings of the dwelling and the Respondent Landlord's claims for costs and damages.

The Chair thanked the Appellant Tenant for attending and advised him that following the hearing the Tribunal will prepare a report and make its Determination in relation to the dispute and will notify the PRTB of that Determination.

6. Matters Agreed Between the Parties

Before inviting the Appellant Tenant to make submissions the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute:

- The address of dwelling is the Steward's House, St. Helen's Wood, Booterstown Avenue, Co.Dublin.
- The tenancy commenced on 17 April, 2009
- The term of the tenancy specified in the initial letting agreement was 12 months
- On 26 July, 2010 the lease was extended up to 16 March, 2011
- The rent payable was €2,300 per month from 17 April, 2009 to 16 August, 2010 and was €2000 per month from 17 August 2010 to 16 March, 2011
- The rate of monthly rent payable from 17 March, 2011 up to the termination of the tenancy was in dispute.
- The tenant vacated the dwelling on 20 October, 2012
- The Appellant Tenant paid a deposit of €2,300
- The deposit has been retained by the Respondent Landlord.

The Appellant Tenant confirmed that he was in agreement with the foregoing matters.

The Appellant Tenant was then invited to open his case.

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 therefor are set out hereunder.

Finding: The Tribunal finds that the Appellant Tenant was in breach of his obligations under section 16(a)(i) of the Act.

Reasons: Under sub-section (a)(i) of section 16 of the Act, a tenant must pay to the landlord the rent provided for under the tenancy concerned on the date it falls due for payment.

The Appellant Tenant admitted at the Tribunal hearing that his rent in respect of the tenancy was in arrears. The amount of such rent arrears is dependent on the rate of monthly rent payable and the period or periods in respect of which rent was unpaid. As already noted the initial rent of €2,300 per month payable by the Appellant Tenant was reduced to €2000 per month with effect from 17th August, 2010. The Tribunal notes that by e-mail dated 18th April, 2011 a representative of the Respondent Landlord offered to reduce the rent to €1,900 per annum as a gesture of goodwill given that the Tenant had been in the dwelling for a reasonable period of time. However, that e-mail was preceded by an e-mail dated 31st March, 2011 from the agent asking the Tenant to confirm whether he was looking for a lease extension and if so for what period. In a response dated 18th April, 2011 the tenant stated that he was interested in extending the lease for a further year but would need a substantial reduction in the rent. The Tribunal is satisfied

that the subsequent offer to reduce the rent to €1,900 per month was subject to and contingent upon the Tenant's entering into a further 12 month lease agreement. A proposed extension to the lease agreement was issued to the Tenant but was never completed and returned by him to the representatives of the Respondent Landlord. The Tribunal further considers that the content of the email of 30th September 2011 referring to the return of the 'extension of the lease' and rent arrears to be instructive in the matter. In those circumstances it is the Tribunal's view that the rent payable by the Appellant Tenant remained at €2,000 per month with effect from 17th May, 2011 up to and including the date on which the Tenant vacated the dwelling on 20th October, 2012.

The Tribunal concludes, therefore, that the Appellant Tenant uni-laterally reduced the rent payable by him with effect from 17th May, 2011 from €2,000 per month to €1,900 per month without the Respondent Landlord's agreement. The Appellant Tenant therefore owes an additional €100 per month in rent for each of the 12 months from 17th April 2011 to 16th May 2012 i.e. a total of €1,200. The Appellant Tenant also owes rent in the amount of €2000 per month for each of the 5 months from 17th May 2012 to 16th October, 2012, i.e. a total of €10,000. In addition the Tenant owes rent for the 4 days between 17th October and 20th October 2012. The Tribunal has calculated that the amount owing for those 4 days at a daily rate of €65.75 is €263.30 - the daily rate being the monthly rent of €2,000 multiplied by 12 and then divided by 365.

Based on the foregoing the Tribunal determines that the total amount of rent arrears due and owed by the Appellant Tenant to the Respondent Landlord amounts to €11,463.30.

On the question of whether arrears of rent are outstanding in respect of the period of the tenancy prior to 17th May, 2011, the Tribunal notes that the Respondent Landlord's representative in his submission dated 18th September, 2014 accepts that in his initial application to the PRTB for dispute resolution he made a claim for rent arrears in the amount of €7,600. The Respondent Landlord's representative further states in that submission that in his investigations prior to the adjudication in the case it became apparent that there were further arrears due and that he made a detailed submission in that regard on the basis of which he made a revised claim that the total rent arrears due amounted to €16,300. The Tribunal accepts that the Respondent Landlord was entitled to revise his initial claim in relation to rent arrears.

However, apart from the Landlord's initial claim and revised claim, the Tribunal notes that solicitors acting on behalf of the Respondent Landlord wrote to the Appellant Tenant on 24th October, 2012 stating that they had been instructed that the sum of €10,000 is due and owing to the Respondent Landlord on foot of 5 months rent for the period from 16th May to 16th October 2012. The solicitors also stated that they had been instructed that the rent was uni-laterally reduced by the tenant in March 2011 from €2,000 to €1,900 per annum and that the additional sum of €1,200 was due and owing to the Respondent Landlord on foot of this. The solicitors added that the Respondent Landlord proposed to hold and offset the deposit of €2,300 paid by the Appellant Tenant against the rent arrears owed leaving a balance due of €8,900, which the solicitors demanded be paid by close of business on 25th October, 2012. In terms of establishing the amount of rent arrears owed by the Respondent Tenant in a situation where differing amounts relating to outstanding rent arrears have been quoted, the Tribunal found the letter of 24th October, 2012 from the Respondent Landlord's legal representatives to the Appellant Tenant to be persuasive in assisting it to determine the position in relation to rent arrears.

The Tribunal has also examined the spreadsheets and accompanying extracts from bank statements submitted on behalf of the Respondent Landlord, but is not satisfied that this documentation represents a full, true and accurate reflection of the position in relation to rent payments made by the Appellant Tenant over the course of the tenancy. The Tribunal notes in particular that the bank statements furnished were not sequential and that there were a number of gaps in the periods they purported to cover.

Finding: The Tribunal finds that the Appellant Tenant was in breach of his obligations under section 16(a)(ii) of the Act.

Reasons: Under sub-section (a)(ii) of section 16 of the Act, a tenant must pay to the landlord any charges or taxes payable by the tenant, where the lease or tenancy agreement provides that any such charges or taxes are payable by the tenant. Under the lease agreement between the Appellant Tenant and the Respondent Landlord, the Tenant was required to discharge all sums due in respect of telephone, ESB, Cable TV and any other services connected to the dwelling during the term of the agreement.

The Tribunal notes that a gas bill furnished in the context of the dispute relates to a period from 25th October, 2012 to 5th December 2012, which is after the dwelling was vacated by the Appellant Tenant. However, the bill clearly specifies that there was a previous balance of €116.93. The Tribunal is satisfied that this previous balance relates to the period during which the Appellant Tenant was in occupation of the dwelling and that the tenant is accordingly liable for the amount of the previous balance in accordance with the terms of the lease agreement between him and the Respondent Landlord.

Finding: The Tribunal finds that the security deposit paid by the Appellant Tenant has been lawfully retained by the Respondent Landlord

Reason: Under sub-section (1)(d) of section 12 of the Act, the Respondent Landlord was obliged, subject to sub-section (4) of section 12, to return or repay promptly the deposit paid to him by the Appellant Tenant on his entering into the Tenancy Agreement.

Sub-section (4) of section 12 of the Act provides that no amount of a deposit is required to be returned where rent is in arrears and the amount of such arrears is equal to or exceeds the deposit. The Appellant Tenant owed rent in the amount of €11,463.30 at the date on which he terminated the tenancy. As the amount involved was greater than the deposit of €2,300, the Respondent Landlord is entitled to retain that deposit.

Finding: The Tribunal finds that the Respondent Landlord is not entitled to any damages or costs as claimed.

Reason: The Respondent Landlord has made claims for €245.16 in respect of a cleaning fee, €1,230 for the cost of preparing the dispute documentation, submissions and responses, €1,867.20 for the cost of engaging a private detective to locate the Appellant Tenant's address, damages of an unspecified amount but greater than those awarded by the Adjudicator, and interest costs of €1,000 arising from the non-payment of rent.

The claim for a cleaning fee is disallowed on the grounds that no evidence was provided to the Tribunal in relation to the condition of the dwelling following its vacation by the Appellant Tenant.

Having regard to the provisions of sub-section (4) of section 5 of the Act, the Tribunal, being of the opinion that the exceptional circumstances envisaged therein do not exist on balance in the case of this dispute, finds that an award of the costs incurred in preparing the dispute in favour of the Respondent Landlord is unwarranted and has decided that its

determination of the dispute shall not include costs referred to sub-section (3)(b) of section 5 of the said Act. In reaching this decision the Tribunal notes that it received no submissions on behalf of the Respondent Landlord setting out the reasons, if any, why such an award of costs should be granted.

The Tribunal accepts the Appellant Tenant's evidence that he made arrangements after he vacated the dwelling for diverting his post from the address of the dwelling to his new address. The Tribunal also accepts that he provided his business e-mail address to the Respondent Landlord's representatives and that the e-mail address remains unchanged up to the present. In those circumstances the Tribunal considers that the employment of a private detective to discover the Tenant's new address was excessive and the Tribunal accordingly disallows the claim for payment of these costs.

No evidence was provided to the Tribunal in relation to any losses incurred by the Respondent Landlord in compensation for which an award of damages might be considered by the Tribunal. The Tribunal accordingly makes no award of damages to the Respondent Landlord.

No details were provided to the Tribunal of any interest costs alleged to have been incurred as a result of non-payment of rent on the part of the Appellant Tenant. The Tribunal accordingly makes no award of damages in respect of interest costs to the Respondent Landlord.

8. Determination:

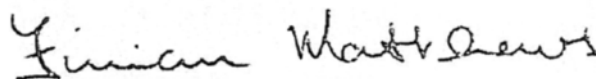
Tribunal Reference TR0714-000739

In the matter of Cormac Murphy (Tenant) and Elaine Dunne (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Tenant shall pay the total sum of €9280.23 to the Respondent Landlord within 21 days of the date of the issue of the Order by the Board, being rent arrears in the amount of €11,463.30 plus unpaid utility charges in the amount of €116.93, having deducted the entire of the lawfully retained security deposit of €2,300.00, in respect of the tenancy of the dwelling at The Stewards House, St Helens Road, Booterstown Avenue, County Dublin.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 23/09/2014.

Signed:



Finian Matthews Chairperson

For and on behalf of the Tribunal.