

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0714-000742 / Case Ref No: 0414-11838

Appellant Tenant: Faye Murphy

Respondent Landlord: Brenda Mackin, Stephen Millar

Address of Rented Dwelling: 14B Camac Park, Bluebell , Dublin 12,

Tribunal: Patricia Sheehy Skeffington (Chairperson)
Tim Ryan, Gene Feighery

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

Date & time of Hearing: 06 October 2014 at 10:30

Attendees: Faye Murphy (Appellant Tenant)
Brenda Mackin (First Named Respondent Landlord)
Stephen Millar (Second Named Respondent
Landlord)

In Attendance: Gwen Malone Stenographers

1. Background:

On 28 April 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 a mediation which took place by telephone in June 2014. No agreement was reached.

Subsequently, on 11 July 2014, the Appellant Tenant referred the matter to a Tenancy Tribunal. The referral was approved by the Board on 18 July 2014.

The PRTB constituted a Tenancy Tribunal and appointed Patricia Sheehy Skeffington, Tim Ryan and Gene Feighery as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Patricia Sheehy Skeffington to be the chairperson of the Tribunal ("the Chairperson").

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 6 October 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:

None.

4. Procedure:

The Chairperson asked the Parties to identify themselves and to identify in what capacity they were attending the Tribunal. She asked the Parties to confirm 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 Tenant in this case) would be invited to present her case first; that there would be an opportunity for cross-examination by the Respondent Landlords; that the Respondent Landlords would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant Tenant. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present and she 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.

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 (pursuant to section 123(3) of the Residential Tenancies Act, 2004, hereafter referred to as "the Act").

The Chairperson also informed the parties that if it seemed that they might be able to resolve their dispute by agreement, the Tribunal would facilitate any such negotiations.

The Parties intending to give evidence were then sworn in.

5. Submissions of the Parties:

The parties confirmed that issues relating to the deposit and gas utility payments had been resolved. The outstanding issue was whether the cost of electricity powering an external light was attributable to the Appellant Tenant or the Respondent Landlords. As this issue had not formed part of the initial dispute application form, the parties gave their express consent to the Tribunal determining this aspect of the dispute.

Appellant Tenant's submissions

The Appellant Tenant said that it had come to her attention in August 2013 that the electricity supply for an outside light was connected to the dwelling's electricity supply. She said that her new housemate had drawn this to her attention and that when she so did, she switched the RCD at the fuse box controlling that light off so that the light no longer functioned.

The Appellant Tenant said that she had not missed the light being on and she said that it had illuminated an area which was used as a car parking space for the adjoining business rather than being for her benefit or the benefit of the dwelling. She said that the light had

come on at night for set periods of time for the first two years of the tenancy but that she had not agreed to paying for the electricity for the external light and that payment for it was not provided for in the lease. She said she had examined the lease after she had discovered the dwelling's electricity supply was powering the external light and that it did not provide for the tenants being liable for this cost. She said that she would not have agreed to such a term and that she had been a resident in apartment complexes previously in which communal lighting was a matter for the management company which interacted with the landlords, rather than being a tenant issue. She argued that any insurance policy impacted which the Respondent Landlords raised was not a matter for her as a tenant.

The Appellant Tenant said that in June 2014 the First Named Respondent Landlord had arranged for an electrician to visit to see why the external light was not functioning. She said that she explained that she had switched the light off and was not willing to pay for the electricity for use of the adjoining business. However the issue became connected with other matters in dispute and was not fully explored, she said she made it clear that she required payment for past expenditure on electricity which was not attributable to the tenants.

Upon questioning, the Appellant Tenant said that she did not miss the light in the period in which it was switched off: it took approximately sixteen seconds to traverse the unilluminated area to her back door and that this was not a problem for her. She said that the area was not pitch black as there was some street lighting was nearby. She said that some of the lighting was attached to other dwellings. She said that she accepted the pricing of the electricity for the light as set out by the Respondent Landlords. She said that she had had primary responsibility for paying the bills for the duration of the period when the light had been on, rather than that of any previous tenants who had resided at the dwelling during the tenancy.

Respondent Landlords' submissions

The Second Named Respondent Landlord said that the external light in question primarily was for the benefit of the dwelling as it illuminated a laneway which gave access to the dwelling. He said that the dwelling was part of a privately owned complex which was not in control of the local authority and that the dwellings and business premises on the complex shared the electricity for the external lights equally. Being asked how they shared this cost equally, he explained that other premises had external lights illuminating common areas which they paid for and which the Appellant Tenant would have benefited from. He said the external lighting was necessary from the point of view of health and safety. However he said that this light did not benefit any other premises other than the dwelling, pointing out that the gate through which access was obtained was 152cm high and a light was needed to ensure that a person got through it without difficulty.

The First Named Respondent Landlord said that the tenants of the dwelling would have benefitted from lights paid for by other dwellings and premises. The Second Named Respondent Landlord said that the leases in respect of the dwellings in the complex now had a provision governing the external lighting and nobody had had a problem with this arrangement. He opined that it was reasonable for the tenants of the dwelling to pay for this external light. On being questioned in respect of a photograph of a minibus in a parking space in front of the passageway to the dwelling, the Second Named Respondent Landlord maintained that the primary beneficiary of the light was whoever occupied the dwelling at issue in this case.

The Respondent Landlords said that the daily rate of 400W bulb in the external light had been assessed by an electrician on their behalf. They said that the summer rate was 69 cent per day and the winter rate, when the light would have been on for longer, was 95 cent per day. They therefore said that the cost of the two years' electrical supply for the external light amounted to €598.58.

The Second Named Respondent Landlord said that in his experience where the local authority did not take an estate in charge the occupants of the dwellings in the estate had to share the charge for the external lighting. He therefore submitted that the cost of the electricity for the external light should fall at the door of the Appellant Tenant.

However he noted that any payment in respect of back-dated electricity was attributable to other tenants who were not included in the application for dispute resolution.

6. Matters Agreed Between the Parties

1. The Tenancy commenced on 5 August 2011 and terminated on 4 August 2014;
2. The gas bills were in the Respondent Landlords' name during the course of the tenancy, however any issue in respect of overpayment of these bills was resolved prior to the hearing;
3. A deposit was paid by the Appellant Tenant and it was returned by the Respondent Landlords after the termination of the tenancy.

7. Findings and Reasons:

Finding One:

The Respondent Landlords are liable for the cost of the external light in the sum of €598.58, which sum is payable to the Appellant Tenant.

Reasons:

1. The Respondent Landlords submitted the costs for the electricity to the external light in the sum of €598.58 which costing was accepted by the Appellant Tenant.
2. The parties gave evidence that the external light illuminated the laneway to the dwelling, but not the curtilage of the dwelling itself. A tenant, by accepting utility charges attributable to a dwelling, may implicitly accept charges for lighting the curtilage of the dwelling where they can control that lighting. However in the absence of an express agreement to the contrary, there is no legal obligation on tenants of a dwelling to assume responsibility for the cost of lighting the roads surrounding their dwelling or giving access to it.
3. The Tribunal accepted the Appellant Tenant's submissions that she had discharged the electricity bills in the first two years of the tenancy. Further she was the only party who had applied for the return of any such monies. Therefore the Tribunal finds it appropriate that the charges attributable to the external light are repaid to her.

8. Determination:

Tribunal Reference TR0714-000742

In the matter of Faye Murphy (Tenant) and Brenda Mackin, Stephen Millar (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlords shall pay the Appellant Tenant €598.58 within 14 days of the issue of this order, which sum represents electricity charges wrongly attributed to the tenancy of the dwelling at 14B Camac Park, Bluebell, Dublin 12.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 09/10/2014.

Signed:



Patricia Sheehy Skeffington Chairperson

For and on behalf of the Tribunal.