

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0714-000744 / Case Ref No: 0114-10193

Appellant Landlord:	Brian Griffin, Jan Marie Griffin
Respondent Tenant:	Diarmuid Cunniffe, Anna Cunniffe
Address of Rented Dwelling:	1 Trimleston Drive, Booterstown , Dublin
Tribunal:	Tim Ryan (Chairperson) Orla Coyne, Vincent P. Martin
Venue:	Tribunal Room, Floor 2, PRTB, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	15 September 2014 at 10:30
Attendees:	Brian Griffin - Representative of the Appellant Landlord Deirdre Carroll - Representative of the Respondent Tenants
In Attendance:	Gwen Malone Stenographers

1. Background:

On 31/01/2014 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 28/05/2014. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €1,550 to the Applicant Tenants, within 14 days of the date of issue of the Determination Order, being the unjustifiably retained portion of the security deposit of €1,600, having deducted the sum of €200 in respect of the outstanding Invoice for work to the garden and having off set the sum of €150 due to the Applicant Tenants for GSM installation in respect of the tenancy of the dwelling at 1 Trimleston Drive, Booterstown, County Dublin.

Subsequently an appeal as received from the Landlord on 16/07/2014. The grounds of the appeal were deposit retention. The appeal was approved by the Board on 18/07/2014.

The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Orla Coyne, Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Tim Ryan 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 15/09/2014 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:

N/A

4. Procedure:

The Chairperson asked the parties 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".

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be as informal as possible; that the person who appealed (in this case the Representative of the Appellant Landlord) would be invited to present his case first, that there would be an opportunity for cross-examination by the Representative of the Respondent Tenants; that the Representative of the Respondent Tenants would then be invited to present her case and that there would be an opportunity for cross-examination by the Representative of the Appellant Landlord.

He also said that members of the Tribunal might ask questions of both parties from time to time. The Chairperson explained that, following this, both parties would be given an opportunity to make a final submission.

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 and/or up to 6 months imprisonment or both.

The Chairperson noted that should the parties indicate that they would be able to resolve the dispute through negotiation, the Tribunal would facilitate any such settlement. The terms of any such agreement can be incorporated into a Determination Order of the Tribunal that would also become enforceable through the Courts.

The Chairperson also reminded the parties that, as a result of the Hearing that they, the Board, would make a Determination Order which would be issued to the parties and would be posted on the PRTB website. It could be appealed to the High Court on a point of law only under Section 123(3) of the Residential Tenancies Act of 2004, hereafter referred to as the Act of 2004.

The Parties giving evidence were then sworn in and the hearing commenced.

5. Submissions of the Parties:

Preamble: At the outset it was agreed between the parties that the Landlord had agreed to pay an outstanding invoice of €150 for GSM installation and that the Respondent Tenant would comply with the decision of the Adjudicator to pay an outstanding gardening invoice of €200. Accordingly, it was agreed that the Respondent Tenant would pay the Appellant Landlord the balance in the sum of €50.

It was agreed between the parties that the only issue before the Tribunal was the retention of the deposit of €1,600 by the Appellant Landlord.

Appellant's case:

Evidence of Brian Griffin:

The Representative of the Appellant Landlord told the Tribunal that he had experienced difficulty in having to read and respond to a seven page document of submissions produced in evidence on the day of the Adjudication Hearing and equal difficulty with a new 10 page document of submissions which he only read two days before the Tribunal Hearing as he had been away on holiday. He said the fundamentals of the case were that the Respondent Tenants had agreed to a one year lease which commenced on 3 July 2012. He said that on 7 December 2012 he had received an email from the Respondent Tenants explaining that they would not be able to complete the tenancy agreement to 2 July 2013 due to changed work circumstances and were planning to vacate the dwelling on 3 February 2013. He said the Respondent Tenants wished to assign the tenancy to another tenant whom, he had understood, were eager to take up the lease from February. He met the proposed assignees in the dwelling on 21 December 2012, as he understood it, to give consent to them taking up the assignment which still had five months remaining from February 2013.

The Representative of the Appellant Landlord told the Tribunal that the meeting which he attended had been very different from what he believed it should have been. One of the Respondent Tenants had served tea to them, exchanged pleasantries and then left. At the meeting the proposed assignees had told the Representative of the Respondent Landlord that they were concerned as to what might happen when the fixed term ended in July 2013. He had replied that the Landlord, who was his daughter, was on a temporary work visa in the United States and he would check with her and get back to them. He said there would be some increase in the rent. He said the proposed assignees were unhappy with the uncertainty of the situation and wished to have a two year lease from the beginning of March. He said they had said they had other options to consider and would revert after Christmas to him. The Representative of the Appellant Landlord said the proposed assignees had come back subsequently on New Year's Eve and said they were prepared to sign a new two year lease at a rent of €1,630 per month from the beginning of March 2013. Therefore, he stated that this was not an assignment but a new lease with different terms contained therein. He said the rent increase was in fact a reduction as the new Local Property Tax (LPT) had been introduced at this time and was not covered by the new rent. He sent them an unsigned copy of a new lease for their review.

The Representative of the Appellant Landlord told the Tribunal that, following a telephone conversation between the Respondent Tenants and the new tenants, the Respondent Tenants pre-empted further discussions by sending a Notice of Termination to him by email on 3 January 2013. He replied to the email stating he had not, as claimed by the Respondent Tenants, refused to consent to an assignment. Rather he said it was the proposed assignee who had declined to accept the old lease. He said he had made a deliberate effort to engage with the new tenants in order to minimise the potential vacancy period that might arise when the Respondent Tenants vacated. He said he believed the issue was fairly straight forwarded but had been clouded in a fog of exchanges with the Respondent Tenants. He said he had been "bombarded" with

submissions and arguments of all kinds. In summary, he said at all times it was the responsibility of the Respondent Tenants to assign the lease.

Respondent Tenants' case:

Evidence of Deirdre Carroll:

The Representative of the Respondent Tenants told the Tribunal that they had explained to the proposed assignees about assigning the existing lease. She referred to a written submission from the Respondent Tenants which made clear that their understanding of the meeting of 21 December 2012 between the Representative of the Appellant Landlord and the proposed assignees was to assess their suitability to take over the existing lease. She said the Respondent Tenants had lined up other potential tenants in the event that the assignees declined to agree to take over the lease. She said they had only discovered that a new tenancy lease was being discussed between the proposed assignees and the Appellant Landlord when they telephoned them on 3 January 2013. She said they had not been privy to any discussions or negotiations which had gone on over the Christmas period nor could they be held responsible for any alternative outcome.

The Representative of the Respondent Tenants said consent to take over the lease was never expressly given by the Representative of the Appellant Landlord and therefore it was appropriate for them to serve a Notice of Termination pursuant to Section 66 of the Act of 2004. Alternatively, she said in line with the Adjudicator's Determination, the Appellant Landlord had implicitly accepted the proposed assignment and the tenancy had therefore terminated on 3 February, 2013. She wished the Tribunal to consider these two scenarios as outlined in the most recent written submission from the Respondent Tenants.

6. Matters Agreed Between the Parties

1. A one year fixed term tenancy commenced on 3 July 2012.
2. The tenants vacated on 3 February 2013
3. The rent was €1,600 per month.
4. A deposit of €1,600 was paid and is retained by the landlords.
5. The Appellant Landlord will be responsible for an outstanding invoice of €150 for a GSM installation.
6. The Respondent Tenants will be responsible for a gardening invoice of €200.

7. Findings and Reasons:

Finding:

The Respondent Tenants are in breach of their obligation by breaking a fixed term tenancy agreement, without assigning the fixed term lease to new tenants.

Reasons:

Section 68 of the Act of 2004 states that a tenancy may not be terminated by the landlord or tenant by means of a notice of forfeiture, a re-entry or any other means not provided for in Part 5 of the Act. A fixed term tenancy can only be terminated by a tenant if there has been a failure by the landlord to comply with his/her obligations under the terms of

the Act of 2004 and for which notice to comply has been served by the tenant. Section 69(2) of the Act of 2004 provides for a lesser term of notice provided that there is agreement by the landlord. While the Appellant Landlord agreed to meet the prospective tenants on 21 December 2012 initially for the purposes of considering giving his consent to assigning the lease to them, his consent was never actually sought as the prospective never agreed to having it assigned to them. The new tenants did not wish to take an assignment of the lease as the term was not suitable and was too short for them.

Section 186(2) of the Act of 2004 states that in a situation where a landlord of a dwelling refuses his/her consent to an assignment or sub-letting, the tenant may serve a notice of termination in respect of the tenancy. However, as stated above, the Appellant Landlord never refused consent as he was never asked to give his consent to assign the existing lease to the new tenants. Under the terms of the Act of 2004, it is the existing tenant's clear responsibility to firstly obtain the landlord's consent and then to assign the existing fixed term lease to the new tenant.

However, the Appellant Landlord did move to mitigate his losses and the dwelling was rented again from 1 March 2013 leaving the dwelling vacant for the month of February 2013 only. Accordingly, the Tribunal finds the Respondent Tenants liable for the rent for the month of February and should forfeit the entire deposit of €1,600 in lieu of rent with the said security deposit deemed to be justifiably retained by the Appellant Landlord.

8. Determination:

Tribunal Reference TR0714-000744

In the matter of Brian Griffin, Jan Marie Griffin (Landlord) and Diarmuid Cunniffe, Anna Cunniffe (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Appellant Landlord's appeal in relation to the retention of the whole of the sum of the deposit of €1,600 in respect of the tenancy at 1 Trimleston Drive, Booterstown, Co. Dublin is upheld.
2. The Respondent Tenants shall pay the Appellant Landlord the sum of €50 being the balance of a gardening invoice of €200 less an invoice for a GSM installation of €150 to be paid by the Appellant Landlord in respect of the above tenancy.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 17/09/2014.

Signed:



Tim Ryan Chairperson

For and on behalf of the Tribunal.