**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001249 / Case Ref No: 0415-17876**

**Appellant Tenant:** Charles McCarthy

**Respondent Landlord:** Michael Watters, Kieran Foley

**Address of Rented Dwelling:** Flat 1, 11 Mountjoy Street Middle , Dublin 7, D07WK80

**Tribunal:** Vincent P. Martin (Chairperson)

Gene Feighery, Aidan Brennan

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

**Date & time of Hearing:** 09 September 2015 at 2:30

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| **Attendees:** | Michael Watters (Respondent Landlord)  Kieran Foley (Respondent Landlord)  Charles McCarthy (Appellant Tenant) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 15 April 2015 the Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 76 of the Act. The matter was referred to an Adjudication which took place on 25 May 2015. The Adjudicator determined that:

1. The Applicant Tenant’s application regarding the Respondent Landlord’s breach of obligations under the Act in respect of the tenancy of the dwelling at Flat 1, 11 Mountjoy Street Middle, Dublin 7 is not upheld.

2. The Applicant Tenant’s application regarding the Respondent Landlord’s breach of their duty owed to certain third parties in failing to enforce tenant obligations in respect of the tenancy of the dwelling at Flat 2, 11 Mountjoy Street Middle, Dublin 7 is not upheld.

Subsequently the following appeal was received from the Tenant on 02 July 2015. The grounds of the appeal were the standard and maintenance of dwelling, breach of landlord obligations, anti-social behaviour and said application was approved by the Board on 10 July 2015. The PRTB constituted a Tenancy Tribunal and appointed Vincent P. Martin, Gene Feighery, Aidan Brennan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Vincent P. Martin to be the chairperson of the Tribunal (“the Chairperson”). The Parties were notified of the constitution of the Tribunal 19 August 2015 and provided with details of the date, time and venue set for the hearing. On 09 September 2015 the Tribunal convened a hearing at Board Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.

**2. Documents Submitted Prior to the Hearing Included:**

* 1. PRTB File

**3. Documents Submitted at the Hearing Included:**

N/A

**4. Procedure:**

The Chairperson asked the parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson 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”. Both parties confirmed that they had done so.

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. The Chairperson said that members of the Tribunal might ask questions of both parties from time to time. He also stated that the parties must follow any instructions given by the Chairperson and directed that neither party should interrupt the other when oral testimony is being given. He stated that the party who appealed (the Appellant Tenant) would be invited to present his case first and that there would be an opportunity for cross-examination by the Respondent Landlords. 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 said that he would be willing to clarify any queries in relation to the procedures either then or at any stage during the course of the Tribunal hearing. He also stated that the Tribunal would be willing to consider an application made at any stage during the Hearing seeking a short adjournment for the purpose of allowing the parties to try to negotiate, on a without prejudice basis, a consent settlement of the dispute.

The Chairperson stated 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.

The Chairperson advised 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 only on a point of law.

The parties giving evidence were then sworn in.

**5. Submissions of the Parties:**

After both parties gave their evidence, the Chairperson recommended that the parties consider entering without prejudice negotiations with view to resolving their dispute on consent. The parties agreed to accept this recommendation and the Chairperson therefore afforded the parties time to endeavour to reach an agreement.

At the resumption of the Tribunal Hearing, both parties informed the Tribunal that a consent agreement had been reached which resolved the dispute in full. The terms and conditions of the said agreement were read into evidence and a written and signed copy of the said terms and conditions of the settlement was provided to the Tribunal.

The Chairperson thanked both parties for their co-operation and stated that both parties displayed a common sense approach in settling the matter in dispute. He advised them that following the hearing the Tribunal would prepare a report and that the Tribunal will notify the PRTB of that Determination.

**6. Matters Agreed Between the Parties**

The parties reached agreement amongst themselves in relation to the matters under dispute between them and having committed the full and final terms and conditions of the said settlement agreement to writing, submitted a written, signed copy of the said agreement to the Tribunal.

**7. Findings and Reasons:**

Having considered all the evidence, the Tribunal’s findings and reasons therefor are set out hereunder:

The Tribunal finds in accordance with the terms and conditions of the agreement reached between the parties a written and signed copy of which was provided to the Tribunal during the course of the hearing.

Reason: To give effect to the full and final agreement reached between the parties.

**8. Determination:**

**Tribunal Reference TR0715-001249**

**In the matter of Charles McCarthy (Tenant) and Michael Watters, Kieran Foley (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Tribunal makes an order as per the terms and conditions of the agreement reached between the parties, a copy of which is annexed hereto and forms part of the Order, in respect of the tenancy of the dwelling at Flat 1,

11 Mountjoy Street Middle, Dublin 7.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 16/09/2015.

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| **Signed:** | \\v-1-hq-fs-01\HOME\Common\Signatures\TribunalMembers\Vincent P. Martin.png |

**Vincent P. Martin Chairperson**

For and on behalf of the Tribunal.