**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001250 / Case Ref No: 0415-18183**

**Appellant Tenant:** Shaun Daly

**Respondent Landlord:** Patricia Cove

**Address of Rented Dwelling:** Templemartin, Craughwell, Co. Galway.

**Tribunal:** John FitzGerald (Chairperson)

Jack Nicholas, Helen-Claire O'Hanlon

**Venue:** Executive Lounge, Hotel Meyrick, Eyre Square, Galway

**Date & time of Hearing:** 02 September 2015 at 2:30

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| **Attendees:** | Shaun Daly (Appellant Tenant)  Mary Ann Cheshire, (Appellant Tenant’s Witness)  Ann Greene (Respondent Landlord’s Sister) |
| **In Attendance:** | Gwen Malone Stenographers. |

**1. Background:**

On 30 April 2015 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 15 June 2015. The Adjudicator determined that The Applicant Tenant’s application, regarding deposit retention, in respect of the tenancy of the dwelling at Templemartin, Craughwell, County Galway is abandoned.

Subsequently the following appeal was received by the PRTB on 03 July 2015. The grounds of the appeal was Deposit retention and this was approved by the Board at their meeting on 10 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed Jack Nicholas, Helen-Claire O'Hanlon and John FitzGerald as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John FitzGerald to be the chairperson of the Tribunal (“the Chairperson”).

The Parties were notified on 05 August 2015 of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing.

On 02 September 2015 the Tribunal convened a hearing at Executive Lounge, Hotel Meyrick, Eyre Square, Galway.

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

* 1. PRTB File

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

None.

**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”.

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) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant.

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 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 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 [reference section 123(3) of the 2004 Act].

The Parties were then sworn in.

**5. Submissions of the Parties:**

Appellant Tenant’s Case:

Evidence of Shaun Daly (Tenant)

The Appellant Tenant gave evidence of trying to contact the Respondent Landlord by telephone and text prior to vacating the dwelling on 30 June 2014. He outlined that he had always made her fully aware of his intention to leave at the end of the one year fixed term tenancy, but had signalled that it may suit to remain on for a short extended period which he stated was agreed by the Respondent Landlord.

He went on to outline how the Respondent Landlord at all times appeared happy to allow him this flexibility regarding the date of termination and never during their phone conversations advised him that this arrangement might be unsatisfactory. He told the Tribunal that the Respondent Landlord was living in the United Kingdom and went on to say that no final inspection took place because she was not available at that time, however he stated that he had made contact to advise her of his movements.

The Appellant Tenant told the Tribunal that he had cleaned the dwelling throughout prior to termination and he had organised to clean the carpets himself, and had left the dwelling in good condition. He stated to the Tribunal that there had been a dampness problem in the dwelling during the tenancy and did not accept that the damage caused to a bedroom wall was as a result of condensation but rather from water entering the building from outside or by an underground leak. He stated that the had made complaints about this to the Respondent Landlord and he outlined that she eventually sent in a workman who subsequently placed a dehumidifier in the dwelling and he gave evidence that this machine pulled considerable water from the atmosphere in the dwelling. He went on to state that this issue was never rectified during his tenancy as it required more detailed attention. The Appellant Tenant accepted responsibility for the broken window of the stove heater. He intended to have it fixed and priced a new window at €80. He also accepted that he may have been responsible for damage to the cream coloured carpets close to the fireplace area in the sitting room, where coal dust was he stated, possibly walked into the carpet causing staining.

On questions from the Tribunal regarding the payment of two months rent as a security deposit, the Appellant Tenant outlined that it had been agreed with the Respondent Landlord that he and his girlfriend could keep a pet dog in the dwelling and it was his suggestion to pay a double deposit to cover any matters which may occur with the dog and as a gesture of goodwill.

The Appellant Tenant told the Tribunal that the Respondent Landlord ignored all his attempts to repay his security deposit, and had accused him of trying to ‘trick her’ by leaving ‘prematurely’ and subsequently found fault after fault with the condition of the dwelling in the weeks after termination. He stated that on each occasion which he sought payment there would appear to be another excuse not to refund the monies and it was at this stage that he approached threshold for their advice. He stated that Threshold then took up the case with the Respondent Landlord directly and up to 30 or 40 emails were exchanged but to no avail. He accepted that he had caused some damage beyond normal wear and tear but wanted his security deposit refunded. He apologised to the Tribunal and the Respondent Landlord for missing the adjudication hearing which was as a result of getting his dates for the hearing wrong. He denied that he had caused damage to the kitchen draining board, a single mattress or to a large broken vase which he stated was in an open porch area and subject to damage by the elements. He also denied knowledge of two missing kitchen cushions out of a set of six which the Respondent Landlord had listed as part of her claim. He stated that he had not acted outside the terms of his fixed term tenancy and had always notified the Respondent Landlord of his movements. He outlined that the handed the key back to the Respondent Landlord’s niece on termination of the tenancy.

On questions regarding the broken vase, he stated that it was left outside in an open porch area of the dwelling. He stated that it was a very bad winter and may have blown over in the wind. He understood it to be a semi outdoor ornamental vase and not a domestic one.

In summary he stated that the Respondent Landlord carried out many works to the dwelling following his termination and that there appeared to be no hurry to ‘re let’ the dwelling as he passed by for up to 7 months later while work was continuing and was aware that no re-letting had taken place. He took the view that his giving up possession of the dwelling had in fact rendered opportunity to the Respondent Landlord to carry out long term works which the dwelling would require for future tenancies.

Respondent Landlord’s Case:

Evidence of Ann Greene (Respondent Landlord’s Sister)

The Respondent Landlord’s sister gave evidence of damage to the dwelling beyond normal wear and tear totalling €4,300 which she accepted was not all the responsibility of the Appellant Tenant. She stated that her sister who resided in the UK had asked her to inspect the dwelling on termination of the tenancy and that she noticed the damage to carpets which had to be replaced, the draining board in the kitchen, a single mattress, a broken glass door on the stove, a broken vase and two missing cushions from the kitchen. She outlined that they had to have the carpets in the sitting room cleaned and eventually replaced. She outlined to the Tribunal about a dampness and mildew in the dwelling which she could not confirm with her ‘hand on her heart’ had been caused by a leak or bad condensation. She outlined that her sister, the Respondent Landlord was fully justified in retaining the entire of the security deposit as the contractor’s quote of €4,300 for total works which she stated her sister could not carry out due to financial constraints.

On questions from the Tribunal regarding a breakdown of the costs outlined in her workman’s overall assessment of works, she stated that new carpets in three rooms came to €450 and that the dwelling could not be re-let without getting rid of the badly stained carpets following the tenancy. She stated that the wooden kitchen worktop or draining board required much re-sanding and oiling after the ‘wet damage caused’ and she stated it had been made clear to the Appellant Tenant at commencement of the tenancy that it needed this level of care. She also stated that a mattress in a spare bedroom was covered top to bottom in the mildew and wetness and had to be replaced. On questioning from the Appellant Tenant on how he could be responsible for this, given that he had never used the spare room, the Respondent Landlord’s sister stated that there was evidence that someone used the room on occasions.

The Respondent Landlord’s sister stated that her sister had no idea that the Appellant Tenant was leaving the dwelling on 30 June 2014 and was at a loss of some rent due to his overnight departure as he had advised her that he required the dwelling for a further month’s tenancy and changed his mind without notifying her. She stated that this action had cost the Respondent Landlord at least one month’s rent as she was firmly of the opinion that the Appellant Tenant intended to stay at least that much longer. She summed up by stating that her sister was justified in retaining the entire of the security deposit due to the condition of the dwelling on termination.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The tenancy commenced on 1 July 2013 for a fixed period of one year.

2. The rent payable was €700 per month.

3. The security deposit paid was €1,400.

4. The tenancy terminated on 30 June 2014.

5. There were no arrears of rent.

6. The Landlord holds the security deposit.

**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 thereof, are set out hereunder.

7.1 Finding: The Tribunal find that the Respondent Landlord and the Appellant Tenant had agreement to terminate the tenancy at the end of a fixed term on the 30 June 2014 under section 69 of the Act.

Reasons:

1. The Tribunal accept that the Appellant Tenant believed that there was agreement to terminate the tenancy on 30 June 2014 unless notified otherwise and understood that he has within his rights to proceed and leave at the end of June 2014. The Tribunal accept that the nature and duration of the tenancy was such as to allow the Appellant Tenant keep a pet and to gain some flexibility with the termination dates in accordance with section 69 of the Residential Tenancies Act 2004.

7.2 Finding: The Tribunal find that the Appellant Tenant is in breach of his obligations under section 16(f) for causing damage to the dwelling beyond normal wear and tear.

Reasons:

1. The Appellant Tenant has an obligation under section 16(f) not to cause a deterioration in the condition of the dwelling beyond normal wear and tear. Having regard to the acceptance by the Appellant Tennant to damage to the stove window and the sitting room carpets, the Tribunal find the Respondent Landlord was justified in retaining €80.00 in respect of the broken stove window and €300.00 as a contribution to the cost of replacing carpets in the three rooms and €30.00 for missing kitchen cushions. The Tribunal makes no award in respect of the damaged matters or broken vase. The Respondent Landlord failed to provide any evidence to the Tribunal that the dampness on a bedroom wall was caused by fault/ negligence on behalf of the Appellant Tenant. The Tribunal find that the Respondent Landlord was under section 12(4) entitled to retain from the deposit the costs of restoring the dwelling and have found that these amount to €410.00. The Respondent Landlord was entitled to retain this portion of the Appellant Tenants security deposit pending resolution of this dispute. The Tribunal award the sum of €990 to the Appellant Tenant being the unlawfully withheld portion of the security deposit in respect of the tenancy of the dwelling at Templemartin, Craughwell, Co Galway.

**8. Determination:**

**Tribunal Reference TR0715-001250**

**In the matter of Shaun Daly (Tenant) and Patricia Cove (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Respondent Landlord shall pay the total sum of €990 to the Appellant Tenant within 7 days of the date of the issue of the order being the unjustifiably retained portion of the security deposit of €1,400 having justifiably deducted €410 for damages in excess of normal wear and tear in respect of the tenancy at Templemartin, Craughwell, Co Galway.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 13 September 2015.

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| **Signed:** | \\v-1-hq-fs-01\HOME\Common\Signatures\TribunalMembers\John FitzGerald.png |

**John FitzGerald Chairperson**

For and on behalf of the Tribunal.