**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001251 / Case Ref No: 0515-18617**

**Appellant Landlord:** Doireann Counihan, Neasa Hannick

**Respondent Tenant:** Teresa Foran

**Address of Rented Dwelling:** 12 Clonard Court, Poddle Park, Kimmage , Dublin 12, D12E738

**Tribunal:** Anne Colley (Chairperson)

Brian Murray, James Egan

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

**Date & time of Hearing:** 16 September 2015 at 10:30

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| **Attendees:** | Doireann Counihan (Appellant Landlord)  Neasa Hannick (Appellant Landlord)  Teresa Foran (Respondent Tenant) |
| **In Attendance:** | Representative of Gwen Malone Stenographers |

**1. Background:**

On 22 May 2015 the Landlord made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 76 of the Act. The matter was referred to a Mediation which took place on 11 May 2015 following which a Statement of Mediation was issued to the effect that: “In the matter of Doireann Counihan and Neasa Hannick (Applicant Landlords) and Teresa Foran (Respondent Tenant) the Mediator, in accordance with section 95 of the Act, reports that:

“No Agreement was reached by the parties”.

Subsequently the unresolved matters between the parties were referred to a Tribunal following an application by the Landlord Doireann Counihan on 03 July 2015. The application related to rent arrears and overholding. The application was approved by the Board on 17 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed Brian Murray, James Egan, Anne Colley as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Anne Colley to be the chairperson of the Tribunal (“the Chairperson”).

On 26 August 2015 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 16 September 2015 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, 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:**

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 that would be followed; that the Tribunal was a “De Novo” hearing, i.e. a full re-hearing of the case; that it 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 their case, and that there would be an opportunity for cross-examination by the Appellant.

The Chairperson explained that following this, each party would be given an opportunity to make a final submission.

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

**5. Submissions of the Parties:**

Appellant Landlords’ Case:

Ms. Hannick gave the principal evidence to the Tribunal on behalf of the Landlords. She said that they owned only one property and this was the dwelling, which she and her sister, Ms. Counihan, owned jointly. She had resided in the dwelling herself for nine years prior to it being let, for the first time, to Ms. Foran. She said that the Tenant was in receipt of rent supplement, which was paid directly into their bank account, but the tenant’s portion of the rent was never paid on time during the two years since the Tenant had moved into it. They had to spend a lot of time each month following this up with the Tenant and eventually engaged an Agent to deal directly with the Tenant.

In order to assist the Tenant to pay her own portion of the rent on time, the Landlords agreed with her to amend the letting agreement to change the payment date from the 20th of each month to the 2nd of the month. This was done on the 6th November 2013. However, the rent payments continued to be late, and arrears began to build up. Despite this, a new six month letting agreement was entered into on the 15th October 2014, which provided for a rent increase to €1,100 to commence in December 2014, to cover the cost of employing the managing agents. The term of that agreement was to commence on the expiry of the first letting agreement, i.e. 18th July 2014. It was also accompanied by a letter signed by the tenant on the same date acknowledging that she had not complied with the lease terms in relation to payment of her own portion of the rent, and committing to paying rent on the due dates in the future. This was arranged with the Landlord’s letting and managing agents. In addition, the due date for the rent payments was changed again to suit the Tenant, to the 5th of the month. The rent continued to be in arrears every month, and still required regular requests to the Tenant for payment, copies of two of which had been submitted in the case file to the Tribunal.

On the 9th February 2015 a warning letter in respect of outstanding rent was served on the Tenant by the Agents on behalf of the Landlords as she had not paid her portion of the rent since December 2014. No rent was received following that notice. With the landlords’ consent the agents wrote to the Tenant in a letter dated 10th March 2015, and offered her a new letting agreement for 12 months, subject to certain conditions. These included all rent arrears being paid up to date, the setting up of a standing order for the Tenant’s own portion of the rent and an inspection of the property, failing compliance with which a notice of termination would issue to the Tenant. It appears that agreement was reached on these items on the 18th March 2014, but as no rent was subsequently paid by the Tenant the proposal was abandoned.

A Notice of Termination for non-payment of rent was first issued to the Tenant on the 26th March 2015 giving her 42 days notice to vacate the property on the 8th May 2015, in excess of the 28 days required by the Act in such cases. In fact, the Landlords themselves realised that that notice was invalid under the terms of the Act, and they instructed their Agents to issue a further replacement Notice of Termination having remedied the problems with the first notice, for the same reason, dated the 17th April 2015, terminating the tenancy on the 20th May 2015. A text was received by the Landlord from the Tenant to say she would not be leaving, and that Threshold and PRTB would be dealing with the case. A further phone call was received by the Agent from the Tenant on the 18th May 2015 saying that she would not be moving out.

The Landlords said they have made every effort to facilitate the Tenant in paying her rent, and that they had shown great restraint in their dealings with her, in the knowledge that the dwelling was her home and that of her children. However, they could not continue to do so as they had to pay the mortgage on the property and the rent arrears situation was causing them difficulty with it as it did not fully cover the mortgage even with full payment of the rent.

The landlords claimed that there was a sum of €874.19 owing in rent arrears from the tenant up to the 3rd September 2015. The amount paid to them in respect of rent supplement was €221 per week, with the balance of €34.61 payable by the Tenant.

Respondent Tenant’s Case:

The Tenant, Teresa Foran, stated that she was sorry for not paying her rent on time. She stated that she had had serious difficulties with the Landlords’ Agents and alleged that she was informed by them that she was going to be removed from the dwelling. She claimed that the agent told her that the dwelling was not her home and that she was only renting it, which she found to be very disrespectful and upsetting. The Tenant stated that she received the new lease in or around October 2014 and insisted to the Tribunal that the contract that she signed was for a term of three months. The Tenant did later accept that the term on the written letting agreement was for six months which was to run from the date the first agreement had expired in July 2014, but said she had been informed by the Agents that she only had a three month lease.

The Tenant said that she did not get adequate notice of the increase in rent and she refused to pay her portion of the rent since December 2014 for this reason, and also because of the way she was treated by the Agents. The Tenant confirmed that she received a letter notifying her of the increase in rent, but that this was only received after a text message was sent to her informing her of the rent increase. The Tenant also complained that the Agent would not provide her with written confirmation of the rental increase to enable her to apply for an increase in rent supplement, and she had to plead with the Department of Social Protection to continue her payments, which they only did after being shown her Notice of Termination.

The Tenant stated that she was shocked to discover that the rental website, daft.ie, had placed her dwelling on the market in August 2014. The Landlord stated that this was resolved when she contacted the rental website and she had received an apology from the daft.ie website for their mistakenly placing the dwelling to let on the site at that time. The Tenant stated that the Letting Agent also placed a “For Rent” sign outside her property in or around February 2015, which was a source of distress for her and for her children as they believed they were being forced out of the dwelling. The Tenant was able to confirm that the property corresponding with the sign was her own home when she asked friends to contact the letting agent about the advertisement. The Landlord said she had emailed the Agents on the 10th April 2015 to say they had no authority to advertise the apartment for letting when she was alerted to the fact that a sign was placed there.

In response to a question from the Tribunal, the Landlord confirmed that she had not instructed the Letting Agent to remove the sign, of which she was unaware, as they were no longer employed by her and her sister following the erroneous notice of termination being issued to the Tenant. The Landlords apologised to the Tenant for the behaviour of the Letting Agents over the course of the tenancy.

The Tenant said that her real grievance was with the Agents, not with the Landlords. She stated that she believed that Threshold had sent eight emails to the agents on her behalf, none of which were responded to. She was advised that if she wished to make a complaint against the Letting Agent, that she could pursue a claim with the Property Services Regulatory Authority.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The Tenancy commencement on 19th July 2013;

2. The Tenancy continued in being to date of hearing;

3. The rent was originally €1,000, and is now €1,100 per month;

4. A security Deposit of €1,000 was paid.

**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 therefore, are set out hereunder.

7.1 Finding: The Tribunal finds that the Notice of Termination served on the tenant on the 17th April 2015 is valid.

Reason:

1. The tenant acknowledged to the Tribunal that she was in arrears of rent and had not paid her own portion of the rent since December 2014.

2. The landlords had served the required 14 day warning letter on the tenant through their then agents on the 9th February 2015, indicating that €390 was due in arrears. This followed a number of previous warning letters regarding rent arrears served on the tenant. The rent remained unpaid.

3. A Notice of Termination was served on the tenant on behalf of the landlords by their then agents on the 17th April 2015, indicating that the tenancy of the dwelling would terminate on the 20th May 2015. This notice complies with the requirements of the Act.

7.2 Finding: The Tribunal finds that the Tenant, and any other person residing in the dwelling with her, shall vacate the dwelling within 28 days of the making of the Order in this case.

Reason:

In the circumstances of this case it is appropriate to allow the Tenant 28 days to vacate the dwelling.

7.3 Finding: The Tribunal finds that the Landlords are in breach of their obligation under Section 12(1)(a) of the Act requiring them to allow the Tenant of the dwelling to enjoy peaceful occupation of the dwelling and awards the Tenant the sum of €500 damages for such breach.

Reason:

The Tenant was subjected to what amounted to harassment by the then Agents of the Landlords, as evidenced by their reported comments to her that she had no rights to the dwelling, was only renting there and was going to be removed, and by their placing of a “To Let” sign outside the dwelling over a number of months without authority from the Landlords, despite the Tenant requesting them to remove it. The relationship with the Agents was fraught during the time they acted on behalf of the Landlords, which was exacerbated by their refusal to furnish her with a letter of confirmation of the increase in rent to present to the Department of Social Protection, as would have been normal for a Tenant in receipt of rent supplement. A Tenant is entitled under the Act to remain in the dwelling until a termination of the tenancy she enjoys is properly and legally terminated.

7.4 Finding: The Tribunal finds that the Tenant shall pay the sum of €844.27 to the Landlords within 28 days of the date of the issue of this order, being rent arrears of €874.19 payable up to the last due date before the hearing, being the 3rd September, and €470.08 in respect of the rent due to the date of this hearing unless she can show that that rent or a portion of it has already been paid by means of rent supplement, having allowed the sum of €500 against the total rent due in respect of the damages awarded in Finding 7.3 above.

The Tenant shall also pay any further rent outstanding from 16th September 2015, at the rate of €1,100 per month, unless lawfully varied, and any other charge as set out in the terms of the tenancy agreement for each month or part thereof, until such time as she vacates the dwelling.

Reason:

The tenant is obliged to discharge rent payments as they become due, together with all arrears of rent, up to the date of her vacating the dwelling.

**8. Determination:**

**Tribunal Reference TR0715-001251**

**In the matter of Doireann Counihan, Neasa Hannick (Landlord) and Teresa Foran (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 17th April 2015, by the Appellant Landlords on the Respondent Tenant, in respect of the tenancy of the dwelling at 12 Clonard Court, Poddle Park, Kimmage, Dublin 12 is valid;
2. The Respondent Tenant and all persons residing in the above dwelling, shall vacate and give up possession of the above dwelling within 28 days of the date of issue of this order;
3. The Respondent Tenant shall pay the sum of €844.27 to the Appellant Landlords within 28 days of the date of the issue of this order, being rent arrears of €1,344.27, having allowed the sum of €500 against that total sum in respect of the damages awarded against the Appellant Landlords for breach of their obligations under the Residential Tenancies Act 2004;
4. The Respondent Tenant shall pay any further rent outstanding at the rate of €1,100 per month or proportionate part thereof at the daily rate of €36.16, unless lawfully varied, from 16 September 2015 and any other other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as she vacates the above dwelling.
5. The Appellant Landlords shall refund to the Respondent Tenant the deposit of €1,000 on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the Residential Tenancies Act 2004, in respect of the tenancy of the dwelling at.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 21 October 2015.

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

**Anne Colley Chairperson**

For and on behalf of the Tribunal.