**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001252 / Case Ref No: 0415-17914**

**Appellant Landlord:** Paul Fitzgerald

**Respondent Tenant:** Rector Simpron

**Address of Rented Dwelling:** 133 Ivy Court, Beaumont Woods , Dublin 9, D09DT89

**Tribunal:** Anne Colley (Chairperson)

Finian Matthews, Jack Nicholas

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

**Date & time of Hearing:** 31 August 2015 at 10:30

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| **Attendees:** | Rector Simpron (Respondent Tenant)  Heidi Simpron (Tenant)  Paul Fitzgerald (Appellant Landlord) |
| **In Attendance:** | Representative of Gwen Malone Stenographers |

**1. Background:**

On 17 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 08 June 2015.

The Adjudicator determined that In the matter of Rector Simpron [Applicant Tenant] and Paul Fitzgerald [Respondent Landlord], in accordance with Section 97(4)(a) of the Residential Tenancies Act, 2004:

The Respondent Landlord shall pay the total sum of €1,030 to the Applicant Tenant, within 7 days of the date of issue of the Order, being the entirety of the unjustifiably retained security deposit of €1,030, in respect of the tenancy of the dwelling at 133, Ivy Court, Beaumont Woods, Dublin 9, Ireland.

Subsequently the following appeal was received from the Landlord on 03 July 2015. The grounds of the appeal were Standard and maintenance of dwelling, Deposit retention, Damage in excess of normal wear and tear and Breach of tenant obligations.This appeal was approved by the Board on 17 July 2015

The PRTB constituted a Tenancy Tribunal and appointed Finian Matthews, Finian Matthews, Jack Nicholas, 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 31 July 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 31 August 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:**

1. The Landlord wished to introduce a supporting document, a wages slip, relating to the cleaner he had employed in relation to the dwelling. The Tenants had no objection to this and it was then submitted to the Tribunal.

2. The Landlord also submitted a copy of a letter from his agent, Sandra Elders of REA McGee to the PRTB dated 28th August 2015, which did not appear to have been included in the case files.

**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 then 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.

All parties in attendance were sworn prior to evidence being heard.

**5. Submissions of the Parties:**

Appellant Landlord’s Case:

The Appellant Landlord, Paul Fitzgerald, gave evidence concerning the reason that he was unable to attend the adjudication hearing, which was due to his post being redirected and delays caused to delivery as a result. The Tribunal assured him that as this was a de novo hearing the case would be fully re-heard, and the Tribunal would consider all the evidence presented to it independently of the determination previously reached by the Adjudicator.

He referred to a letter he had sent to the PRTB dated the 24th June 2015, setting out his reasons for not refunding the security deposit to the tenants. He confirmed that he had retained an agent to let the dwelling to the tenants on 16th April 2012, which is one of a number of properties that he has rented through that agency over a period of some years. He referred to photographs taken by the agent, and some by his handyman, both before and after the letting to the tenants, which he said supported the points made in his letter. The landlord also referred to a letter to the PRTB from the agent in support of the landlord’s case dated 26th June 2015, which set out the items she felt needed attention after the tenants vacated the dwelling on 15th April 2015. The agent noted in that letter that she had met one of the tenants at the dwelling on the 15th April for a final inspection and to collect the keys, and had also checked the meters. The agent had carried out the final inspection after the Tenant, Ms Avila Simpron, had left the house. The Landlord said he had spoken to the tenant, Mr Simpron, prior to the inspection and had received an assurance from him that the dwelling would be returned to him in the same condition as it was when it was rented to him.

The agent’s comments were to the effect that: the dwelling needed cleaning throughout with special attention to bathrooms, kitchen, kitchen presses and appliances; the carpets needed cleaning; the paintwork needed touching up throughout; there were minor marks on walls through the house, some of which were due to pictures/ posters being placed on the walls; the door handle in the master bedroom had damaged the wall plaster behind it; a pulley on a blind, though working, didn’t draw it up fully; and the garden was quite overgrown.

The landlord referred to the letter from his agent of the 28th August 2015 to the PRTB which he said concluded that the points made in his appeal against the adjudication determination reflected “a fair overview & costs of repairs of the situation that presented” at the end of the letting. He said he had relied on her judgement in relation to the condition of the dwelling as reported in that letter.

On being asked if he had seen the dwelling himself after the Tenants vacated it, the Landlord replied that he had visited it within a day or two of that date. He said he had seen that carpets had “soiling” on them all around the house, and said that they had been new at the start of the letting. He had submitted a claim for a sum of €160 for cleaning them. He also said he had spoken with Mr Simpron, one of the Tenants, after that and told him of the general damage caused to the house. A general clean up in the house had to be carried out he said, which was done by an employee of his who works for him in his petrol stations business. He also said that this man had to call to the dwelling on a number of occasions during the tenancy, 3-4 times each summer, to cut down trees and cut the grass.

The Landlord acknowledged that the damage to the bedroom wall, which the Tenants had accepted was their responsibility, had not yet been repaired, although he had submitted an invoice from a decorator, dated 20th April 2015, indicating that the “bedroom walls had been cleaned down, filled and given two coats of emulsion”. He said that in fact it wasn’t possible to have it done at the time, before the new Tenants moved in. He also confirmed that he thought there would have been a door stop installed in the master bedroom, which should have prevented the damage to the wall.

In relation to the garden maintenance, the Landlord said that the electric lawnmower supplied by him was at the dwelling and was still working, and that the grass was very high when the Tenants vacated. He acknowledged that there had been a problem in the residential development with burglaries or attempted burglaries, of which he was aware as he was on the management committee there. However he denied he had done nothing when the Tenants informed him that they had had two attempted and one actual burglary over the three years they had lived at the dwelling. He said he had always sent his handyman to investigate if anything needed fixing, and on one such occasion an extra latch had been fitted to a window.

In relation to the Tenants’ claim that there had been dirty dishes left in the dishwasher when they first moved into the dwelling, and that the machine was rusty inside, the Landlord said his agent could verify that no dishes would have been left in it, and that he had to replace the machine during the tenancy due to the rusting, but that he had not sought damages for the replacement.

The Landlord had submitted invoices for repairing and repainting walls in the dwelling, €380; cleaning of carpets, €160; hiring of cleaner, €288; and for the loss of two days letting income, €93. He confirmed that he had carried out a notional computation of the cost for the cleaning of the dwelling, which he said was based on the weekly wages he paid to his existing employee, and that he had not claimed for the full cost of the two days he said had been spent on the job. The Tribunal noted that the total claim, as set out on page 72 (of 110) of case file number 1, amounted to €921, which left the balance of €109 remaining from the security deposit of €1,030 payable to the Tenants. When asked why he had not returned that sum to the Tenants immediately he stated that he didn’t do so due to the ongoing case before the PRTB.

The Tribunal also questioned the Landlord about his understanding of the Tenants’ duty under Section 16(f) of the Act to return the dwelling in the condition it was in when let to them, disregarding normal wear and tear, and having regard to the fact that they had resided there for three years, and that they had a young child, which was known to the Landlord. He responded that he had understood that they were obliged to return it to the condition in which it was let to them, but was now aware that normal wear and tear and other considerations must also be taken into account.

There was no cross-examination of the Landlord by the Tenants.

Respondent Tenant’s Case:

Ms Heidi Avila Simpron principally gave evidence on behalf of the Tenants. She said that she had been the person to whom the Landlord had spoken shortly after they had vacated, and it was not her husband as indicated in Mr Fitzgerald’s evidence to the Tribunal. She said she was so upset after that conversation that her husband had then taken over communications with the Landlord and agent from then on.

She confirmed that she had met the agent by arrangement at 12.30 p.m. at the dwelling on the 15th April 2015 for the final inspection and handover of the keys. She had walked 3.5 kilometres with her child in a buggy to get there, while it was raining heavily. The agent had told her that the new Tenant was arriving that day, and was expected in the dwelling shortly afterwards to sign the letting agreement. She had only gone into the hallway with the buggy and then sat at the dining room table. The agent appeared to be in a hurry and she felt that she was being rushed out once the meters were read and the key returned to the agent. The agent had offered to have her stay till after the new Tenants had signed, or to go, and the Tenant had decided she would leave, as her child had not eaten and it was continuing to rain heavily. She was in the house for only a few minutes in all and was conscious of being wet from the rain so did not want to cause damage to the property with new Tenants coming in.

The agent told her that the Landlord would return the deposit to her, but she said the Landlord had already told her that the agent would do so. She and her husband felt that this was not a good sign and began to suspect that there was no intention to return the deposit to them. She was not invited to, nor did she participate in any inspection of the dwelling, and she believed that the agent had carried it out after she left. The agent did not raise any problems with her while she was there. She texted the Landlord after she left, at 12.32 p.m. as evidenced by copy texts presented to the Tribunal, to ask him about the return of the deposit, to which he replied later that day saying he had to consult with the agent. She had phoned him then and when he told her that he was disappointed with the condition of the dwelling, as reported to him by his agent, she had felt humiliated as she said they had cleaned the dwelling to a very high standard. She and her husband made numerous attempts to contact both the landlord and the agent for the return of the deposit subsequently, but to no avail. They had made it clear that they accepted responsibility for the damage to the master bedroom wall caused by their small daughter banging the door against the wall, when the handle made a small mark on the wall, but despite that there was no effort to reach agreement on returning the remaining portion of the deposit.

Mr Rector Simpron gave evidence that the stains on the stairs carpet were merely normal wear and tear, from being a passageway near the front door. The remaining floors downstairs, including the hallway, were either wooden or tiled. There were no stains on the bedroom carpets, he said. Also, they had reported to the landlord mid-way through the first year of the tenancy that the dishwasher was faulty, having found mouldy dishes there after they moved in. In fact, he said they did not use the dishwasher at all themselves. The Landlord had replaced it after they made the report to him and his handyman had fitted the new one. It was certainly not replaced after they left as it was unused since it had been installed. He also said that any other matters complained of by the landlord amounted only to normal wear and tear, e.g. marks on the paintwork, which arose after being used by a family for a period of three years.

The Tenants said that they returned to the dwelling on the 3rd August 2015, four months after the tenancy ended, to retrieve some post, and discovered when they arrived that they were acquainted with the new Tenants. With their permission they took photographs of the house and its condition then, which was before they had received copies of invoices from the Landlord in connection with the appeal hearing. It was clear that no refurbishment work had been carried out after they vacated the dwelling, in particular to the bedroom wall, or to the stairs carpet, which they said was in the same condition as when they left. Those pictures had been submitted by the Tenants in evidence prior to the hearing.

Mr Simpron said he had cut the grass regularly once they had been supplied with a lawnmower by the handyman about four months after they moved into the dwelling. The handyman had cut it a few times before then. The Tenants had also cut back a tree in the garden while they were there. They had also submitted pictures of the garden of the dwelling during their tenancy, which showed that it was properly maintained, he said. He acknowledged that they had not cut the grass in the two weeks prior to vacating as they had already moved into their new home.

Ms Heidi Avila Simpron said they had incurred extra expenses as a direct result of the deposit not being returned to them. She explained that she had arranged a top up of €800 of a Credit Union loan, as evidenced by a copy of a loan agreement submitted to the Tribunal, to cover the cost of the deposit on their new home until they had recovered the old deposit. They had to pay the interest on this loan for much longer than they had expected or planned due to the deposit not being returned to them in a timely manner. They had expected that it might be returned to them within about a week of moving out. She said that she had been very worried about the case, and the costs they were incurring, and had lost sleep over the whole matter.

Final Submissions

The Landlord stated that his father had become ill and subsequently died over the period of the ending of the tenancy and he was not absolutely clear about some aspects of the case. He accepted that he needs to be more careful with photographs and liaising with his agent in the future.

The Tenants said they just wanted to be treated fairly and were content to pay for any legitimate damage caused by them during the tenancy, in particular the damage to the bedroom wall.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. Rent was agreed at €1,030.00 per month;

2. A deposit of €1,030.00 was paid;

3. The tenancy commenced on 16 April 2012;

4. The tenancy ended on 15 April 2015.

**7. Findings and Reasons:**

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 therefor, are set out hereunder.

7.1 Finding: The Tribunal finds that the landlord was in breach of his duty to return the security deposit, or a portion of it, to the tenants in a timely manner, having deducted the costs of any legitimate damage caused to the dwelling, and he shall therefore repay the sum of €800 to them from the deposit, allowing for damage caused by the tenants and their failure to cut the grass in the dwelling before they vacated it.

Reasons:

Section 12(1)(d) of the Act requires a Landlord “to return or repay promptly any deposit paid by the tenant to the Landlord on entering into the agreement for the tenancy or lease”. Section 12(4) sets out the provisions that limit that duty. Included in that is the requirement to take account of the duties of the Tenants not to cause a deterioration in the condition of the dwelling allowing for normal wear and tear. In assessing what would be regarded as normal wear and tear the Landlord must have regard to the length of the tenancy, the type of occupation of the dwelling, i.e. what type of Tenants were there, and any other relevant matters. It is clear to the Tribunal that a family that includes two adults and one small child living in a house for three years will, through normal wear and tear, cause a certain amount of deterioration in its condition over that period, for which they cannot be held responsible in terms of their obligations under section 16(f) of the Act. In this case, the Tribunal finds that the deterioration caused by the Respondent Tenant and his family was within the realm of normal as prescribed by the Act, except for the damage to the bedroom wall, for which responsibility was accepted by them. The Tribunal allows the sum of €200 to the Landlord for carrying out this repair.

In addition, and having regard to the photographs provided by the Landlord of the garden at the time of vacating the dwelling, the Tribunal finds that the Tenant should have cut the grass prior to handing over the keys to the dwelling, and allows the Landlord the sum of €30 for that breach of the Tenant’s duty.

7.2 Finding: The Tribunal finds that the Appellant Landlord shall pay the sum of €500 damages to the Respondent Tenants for the breach of his duty to return the security deposit promptly.

Reasons:

1. The Appellant Landlord failed to return or repay the security deposit, or any portion of it, to the Respondent Tenant, despite his own acknowledgement that there was at least a sum of €109 payable to the Tenant, and the Tenant’s acknowledgement that they were responsible for the damage to the bedroom wall. Moreover, the Landlord presented his case to the Tribunal as if he had actually incurred costs and remedied all of the perceived damage caused by the Tenants over and above normal wear and tear, when in fact he had not done so, in particular in relation to repairing the bedroom wall and having the house repainted. Neither is it clear to the Tribunal exactly what cleaning was carried out in the dwelling by his own company employee after the Tenant and his family vacated it, and when that cleaning was done. The Tribunal notes that there was no oral evidence given at the hearing from any of the persons who provided invoices to the Landlord, one of which was found not to have been an accurate reflection of the situation. The Tribunal does not therefore take the invoices submitted at face value. However, it does recognise in awarding damages to the Landlord as set out in its reasons for Finding 7.1 that he was entitled to be compensated for his losses in those matters.

2. The Landlord referred to a loss of two days rental due to having to have work carried out on the dwelling, but the evidence of the Tenants was that the agent had told Ms Simpron that the new Tenants were signing the letting agreement in the dwelling on the date she handed back the keys, and she understood they were moving in immediately. It is unrealistic, and indeed, not in keeping with the provisions of the Act, for a Landlord to require a Tenant to prepare his property for the next letting. A Landlord cannot expect not to have to spend some time and money on restoring it to the standard required for letting after a three year tenancy has ended. His claim for the loss of two days letting is not allowed.

3. The Tenants had to sustain costs associated with the interest charged on their Credit Union loan for a lengthy period over and above what they were entitled to expect, as a direct result of the failure of the Landlord to return to them the portion of the deposit to which they were entitled. They were also deprived of the use of that money for that period. In addition, evidence was given of the concern and distress caused to the Tenants as a result of their treatment by the Landlord.

**8. Determination:**

**Tribunal Reference TR0715-001252**

**In the matter of Paul Fitzgerald (Landlord) and Rector Simpron (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlord shall pay the sum of €1,300 to the Respondent Tenant within 21 days of the date of the Determination Order, comprised of €800, being a portion of the security deposit unlawfully withheld, and €500, being damages arising from breach of a landlord’s duties under Section 12(1)(d) of the Act, in respect of the tenancy of the dwelling at 133, Ivy Court, Beaumont Woods, Dublin 9.

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

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| **Signed:** |  |

**Anne Colley Chairperson**

For and on behalf of the Tribunal.