**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001259 / Case Ref No: 0114-09957**

**Appellant Tenant:** Joanna Szarmach, Karol Bankowski

**Respondent Landlord:** Barina Construction Ltd.

**Address of Rented Dwelling:** 16 Mayeston Crescent, Mayeston Hall, Saint Maragrets Road , Dublin 11.

**Tribunal:** James Egan (Chairperson)

Mervyn Hickey, Healy Hynes

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

**Date & time of Hearing:** 21 September 2015 at 2:30

|  |  |
| --- | --- |
| **Attendees:** | Gerard O’Connor (Respondent Landlord’s Representative)  Joanna Szarmach (Appellant Tenant)  Beata Laczek (Witness for the Appellant Tenant) |
| **In Attendance:** | Stenographer from Gwen Malone Stenographers, Olga Oska, Interpreter. |

**1. Background:**

On 21 January 2014 the Landlord 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 06 June 2014. The Adjudicator determined that:

1. The Respondent Tenant shall pay the total sum of € 3,221.00 to the Applicant Landlord, in equal instalments at the rate of € 750.00 per calendar month on the 28th day of each month, followed by one further instalment of € 221.00 in the immediately succeeding month, commencing the next month after the issue of the Order, being damages for the Respondent Tenants breach of their obligations under the Act in respect of the tenancy of the dwelling at 16 Mayeston Crescent, Mayeston Hall, St. Margaret’s Road, Dublin 11.

2. The enforcement of the Order for such payment will be deferred and the total sum owing will be reduced by the number of monthly instalments of € 750.00 made to the Applicant Landlord on each due date until the sum of € 3,221.00 has been paid in full.

3. For the avoidance of doubt, any default in the payment of the monthly instalments of € 750.00 shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Applicant Landlord.

4. The Respondent Landlord was entitled to retain the security deposit of € 950.00 as rent in lieu of one month’s notice in respect of the tenancy of the above dwelling.

Subsequently the following appeal was received from the Tenant on 06 July 2015. This appeal was approved by the Board on 17 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed Healy Hynes, James Egan, Mervyn Hickey as Tribunal members pursuant to Section 102 and 103 of the Act and appointed James Egan to be the chairperson of the Tribunal (“the Chairperson”).

On 29 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 21 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:**

- Email from Appellant Tenant (circulated in advance of the Tribunal)

**4. Procedure:**

The Chairperson asked the Parties present to identify themselves and the capacity in which 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 read and understood the PRTB document entitled “Tribunal Procedures”.

The Chairperson explained the procedure which would be followed. The parties were advised that while the Tribunal Hearing was a formal procedure, the Tribunal would seek to be as informal as was possible; that the person who appealed (the Tenant) would be invited to advance their case. After the Tenant's case, the Landlord (represented by Mr. O'Connor) was invited to present his case. Both parties were afforded the opportunity to cross examine and challenge the accounts provided by one another. The Chairperson said that members of the Tribunal might ask questions from time to time to clarify any issues arising.

The Chairperson stressed that all evidence would be taken on oath or affirmation and would be recorded by the official stenographer present. The Chairperson 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 drew the Parties attention to Section 7 of the Tribunal Procedures. The Chairperson reminded the Parties that the Hearing is a public hearing and that members of the public may attend the Hearing.

The Chairperson 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.

The Oaths/Affirmations of Parties giving evidence together with the Interpreter's Oath/Affirmation were then sworn/affirmed by Mr. Hynes of the Tribunal. The parties were asked if they wished to have an opportunity to discuss the matters amongst themselves if they had not already done so. The parties declined the offer and wished for the Tribunal to proceed as convened.

The Appellant Tenant advised that she had not been in contact with her co-tenant on the lease. The Tribunal was satisfied that all parties to the lease were on notice of the proceedings.

**5. Submissions of the Parties:**

Appellant Tenant:

It was the Appellant Tenant's contention that at the outset of the tenancy, she was permitted by Mr. O Connor, the Respondent Landlord's representative, to keep a dog in the dwelling. In addition, the Appellant Tenant was also permitted by Mr O'Connor to paint the walls of the dwelling, if she so wished.

The Appellant Tenant stated that the foregoing concessions by the Mr. O'Connor were not in writing. The Appellant Tenant stated that following an inspection by Mr. O'Connor that a leak in the bathroom was identified and fixed shortly after it was discovered.

The Appellant Tenant stated that the flooring deteriorated over the course of the tenancy and that she did not notify Mr. O'Connor of the damage. The damage to the floorboards in the dwelling was noticed by an employee of the Respondent Landlord who contacted Mr. O'Connor. The Appellant Tenant stated that she did not use the patio doors as an access point to the dwelling, as suggested by Mr. O'Connor. After an inspection request by Mr. O'Connor, the Appellant Tenant and Mr. O'Connor discussed resolving the issue of the damaged flooring. The parties differed as to the underlying cause of the damage and the Appellant Tenant stated that she was not liable in this regard.

The Appellant Tenant researched replacing the flooring and she made suggestions to Mr. O'Connor. According to the Appellant Tenant, Mr O'Connor insisted that the replacement flooring should be of the same make and quality as the original flooring. In late 2013, the Appellant Tenant was informed by Mr O'Connor that the flooring would need to be resolved prior to Christmas 2013. The Appellant Tenant stated that she became stressed because of the pressure she was placed under by Mr O'Connor. The Appellant Tenant was informed that the cost of replacement would be in or around €2500.00 and that this was an amount that she considered excessive. The Appellant Tenant states that she had no alternative but to return the keys to Mr. O'Connor without notice. The Appellant Tenant accepted that she should have terminated the tenancy in accordance with the lease.

In addition to the failure to provide a notice of termination, the Appellant Tenant acknowledged that she did not clean the dwelling, repaint the dwelling or remove the satellite dish. Notwithstanding these failures, the Appellant Tenant reiterated that she was not responsible for the damage to the semi-solid flooring.

In response to a question from the Tribunal, the Appellant Tenant stated that the floor deteriorated gradually over the tenancy. In response to a further question from the Tribunal, the Appellant Tenant stated that she did not notify the Respondent Landlord or Mr. O'Connor of the damage to the flooring. The Appellant Tenant stated that the damage was a result of the leak in the bathroom. In response to a question from the Tribunal, the Appellant Tenant stated that the leak came from behind the sink in the bathroom. The Appellant Tenant stated that the problem with the flooring arose some time after the bathroom leak was resolved.

Ms. Beata Laczek, a witness for the Appellant Tenant, stated that Appellant Tenant did her best to find a replacement for the flooring and did as much as she could to resolve the situation. Ms. Laczek stated that the Appellant Tenant showed great generosity to her by allowing her to reside in the dwelling with her 9-year-old child. Ms. Laczek was grateful to the Appellant Tenant for her help. Ms. Laczek stated that the responsibility of the damaged floorboards was on the Respondent Landlord and not with the Appellant Tenant.

Respondent Landlord:

Mr. O'Connor, on behalf of the Respondent Landlord, did not dispute the statements by the Appellant Tenant that she was permitted to keep a dog at the dwelling or that she was allowed to paint the dwelling. Mr O'Connor stated that in circumstances where certain matters were conceded by the Appellant Tenant that he was claiming the following amounts which he outlined were vouched by reference to Case File 1:

* The cost of removing the satellite dish in the sum of €80.00.
* The cost of cleaning the dwelling in the sum of €150.00
* The cost of repainting the dwelling in the sum of €480.00.
* The retention of the deposit to cover the notice period in the sum of €950.00.

Mr O'Connor stated that he received a quote to replace the entire floor area of the sitting room and bedroom areas for the sum of €2500.00. Mr O'Connor stated that the Appellant Tenant had vacated in or around January 2014 and that the dwelling was re-let within a short period of time. Mr O'Connor stated that the floor had not been replaced by the date of the Tribunal hearing and he advised that the Respondent Landlord was awaiting funds to replace the flooring. Mr. O'Connor stated that he was willing to accept a more competitive quote to replace the flooring if the Appellant Tenant could find one.

In response to the allegation that the bathroom leak was the cause of the stain on the floorboards in the sitting room, Mr O Connor stated that the sitting room floor was over 10 metres away. Mr O Connor highlighted that he discovered the bathroom leak and that it was addressed immediately. Mr O Connor stated that the leak from the bathroom had affected some floorboards in the hallway adjacent to the bathroom however the Respondent Landlord was not claiming for this damage. Mr. O'Connor stated that when he inspected and fixed the bathroom leak that there was no issue with the flooring and that this damage did not become apparent for some time thereafter. It was Mr. O'Connor's view that the damage was caused by the patio doors being used as an entry point to the dwelling, the presence of a dog at the dwelling and the failure to use a mat at the entrance.

Mr O'Connor stated that the Appellant Tenant failed to notify him of the damage to the flooring in the sitting room. Mr. O'Connor stated that the flooring in the sitting room and the bedroom had deteriorated beyond normal wear and tear and that the Appellant Tenants are responsible for the damage caused.

**6. Matters Agreed Between the Parties**

The Chairperson set out a number of matters in advance of the hearing which the parties could agree on. Those matters that were agreed in advance of hearing the evidence were as follows:

1. The tenancy began on 26th September 2011.
2. Rent was €950.00 per month and a deposit of €950.00 was paid at the start of the tenancy.

3. The tenants were no longer in occupation.

After the Appellant Tenant's evidence, it was apparent that certain matters were conceded by her. In this regard, it was agreed between the Appellant and by the Respondent that:

1. The Appellant Tenants vacated the dwelling without serving a valid notice of termination.
2. The Appellant Tenants did not clean the dwelling prior to vacation of the dwelling.
3. The Appellant Tenants had not repainted the walls to the original colour having painted the dwelling over the course of the tenancy.

7. The Appellant Tenants had installed a satellite dish and had not taken it down prior to the vacation of the dwelling.

**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 therefor are set out hereunder.

Finding:

The Appellant Tenants have breached their obligations under the Tenancy by causing a deterioration to the dwelling beyond normal wear and tear contrary to section 16 (f) of the Residential Tenancies Act 2004 to 2009. The Tribunal awards the sum of €1,500.00 to the Respondent Landlord for the breach by the Appellant Tenants. Both Tenants are jointly and severally liable for the deterioration to the dwelling beyond normal wear and tear.

Reasons:

The Tribunal has had regard to the evidence of all parties including the photographs of the dwelling. The damage to the flooring, consisting of dark stains in the bedroom and sitting room areas is the responsibility of the Appellant Tenants. The Appellant Tenant acknowledged that she did not draw the Respondent Landlord's attention to these issues over the course of the tenancy. This allowed the deterioration to continue unchecked.

The Tribunal finds that there was insufficient evidence to support the Appellant Tenant's claim that the bathroom leak caused the damage to the flooring in the sitting room. The bathroom leak was resolved prior to the damaged floor becoming an issue. The photographic evidence and the evidence of both parties enables the Tribunal to conclude that the flooring was damaged and this damage went beyond the threshold of normal wear and tear having regard to the duration of the tenancy and the level of occupancy of the dwelling. In the absence of sufficient evidence that the leak arose from the bathroom as alleged, the responsibility for the condition of the dwelling lies with the Tenants. In circumstances where the deterioration to the condition of the dwelling exceeded normal wear and tear, the Tenants are liable for this deterioration.

The Respondent Landlord submitted a quote of €2,500.00 to cover the cost of replacing and fitting a new floor. In circumstances where the quote is an estimate, where the dwelling is currently occupied and where the flooring remains un-replaced 21 months after the vacation of the dwelling by the Appellant Tenants, the Tribunal determines that the sum of €1,500.00 is an appropriate level of damages to award to the Respondent Landlord. Both Tenants are liable for the award on a joint and several basis.

Finding:

The Respondent Landlord is entitled to recover the costs of repainting the dwelling, the removal of the satellite dish and the cleaning of the dwelling. The costs of these items total €710.00.

Reasons:

The Appellant Tenant conceded the above matters during the Tribunal hearing. The Appellant Tenant accepted the breakdown of the costs was as follows and the Tribunal adopts the figures:

Satellite Removal €80.00

Cleaning: €150.00

Repainting: €480.00

Total: €710.00

Finding:

The Respondent Landlord, having so confined its case, is permitted to retain the deposit of €950.00 in lieu of the valid notice of termination.

Reason:

The Appellant Tenant stated that she failed to provide an adequate notice to the Respondent Landlord when she decided to vacate the dwelling. Mr. O'Connor stated that he was seeking to retain the deposit in the absence of a valid notice of termination and that he Tribunal accepts this position in circumstances where a valid notice of termination was not served.

**8. Determination:**

**Tribunal Reference TR0715-001259**

**In the matter of Joanna Szarmach, Karol Bankowski (Tenant) and Barina Construction Ltd. (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Respondent Landlord was entitled to retain the security deposit of €950.00 in lieu of the notice period.
2. The Appellant Tenants shall pay the sum of €2210.00 to the Respondent Landlord, in 10 equal instalments at the rate of €200.00 per calendar month, on the 28th day of each month, followed by one further instalment of €210.00 in the immediately succeeding month, commencing the next month after the issue of the Order, being damages for the Appellant Tenants' breaches of the obligations under the Act, in particular the deterioration to the dwelling beyond normal wear and tear pursuant to s. 16 (f) of the Act, in respect of the tenancy of the dwelling at 16 Mayeston Crescent, Mayeston Hall, St. Margaret's Road, Dublin 11.
3. The enforcement of the Order for such payment will be deferred and the total sum owing will be reduced by the number of monthly instalments of €200.00 and the final instalment of €210.00 made to the Respondent Landlord on each due date until the sum of €2210.00 has been paid in full.
4. For the avoidance of doubt, any default in the payment of the monthly instalments of €200.00 or the further instalment of €210.00 shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Respondent Landlord.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 22 September 2015.

|  |  |
| --- | --- |
| **Signed:** |  |

**James Egan Chairperson**

For and on behalf of the Tribunal.