**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001261 / Case Ref No: 0115-16354**

**Appellant Tenant:** John McGettrick, Tara Blanchfield

**Respondent Landlord:** Jeni Doyle

**Address of Rented Dwelling:** 3 Abhann Dubh, Patrick Street, Portarlington , Co. Offaly.

**Tribunal:** Deirdre Bignell (Chairperson)

Gerard Murphy, Brian Murray

**Venue:** The Ante-Chamber, Floor 2, Athlone Civic Centre, Church Street, Athlone, Co Westmeath.

**Date & time of Hearing:** 26 August 2015 at 2:30

|  |  |
| --- | --- |
| **Attendees:** | John McGettrick, Tara Blanchfield - Appellant Tenants |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 22 January 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 Mediation which commenced on 4 February 2015. The Mediator submitted to the PRTB that no agreement had been reached between the parties.

Subsequently the Tenants applied to the PRTB for a tribunal hearing, on the grounds of unlawful deposit retention, which application was received by the PRTB on 7 July 2015, and approved on 17 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed Gerard Nicholas Murphy, Deirdre Bignell, Brian Murray as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Deirdre Bignell 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 26 August 2015 the Tribunal convened a hearing at The Ante-Chamber, Floor 2, Athlone Civic Centre, Church Street, Athlone, Co Westmeath.

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

* 1. PRTB File

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

By Appellants:

The Appellants were requested to submit into evidence copies of text messages exchanged between the Appellants and the Respondent, and a copy of the messages was duly submitted.

**4. Procedure:**

There was no appearance on behalf of the Respondent, and the Tribunal confirmed that the Respondent had received due notice of the date, time, venue and purpose of the hearing.

The Chairperson asked the parties present to identify themselves and to identify the capacity in which 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 and understood 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 possible; that the Appellants would be invited to present their case and would be given an opportunity to make a final submission.

The Chairperson said that she would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson stressed that all evidence would be taken on oath or affirmation and recorded by the official stenographer present and that based on that recording a transcript could be made available to the Tribunal if necessary to assist it in preparing its report on the dispute, or to the parties for a fee.

The Chairperson reminded the attending parties that it was an offence for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his or her control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide false or misleading statements or information to the Tribunal. The Chairperson informed the parties that the above offences were punishable by a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson said that members of the Tribunal would ask questions from time to time to assist in clarifying the issues in dispute between the parties, and informed them that she would clarify any queries raised at the outset, or in the course of, the hearing.

The Chairperson also reminded the parties that as a result of the hearing, the Board would make a Determination Order which would be issued to all parties to the dispute and could be appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

The attending parties were sworn in.

**5. Submissions of the Parties:**

The Appellant Tenants’ case:

Evidence of (John McGettrick and Tara Blanchfield, Appellant Tenants)

The Appellant Tenants referred a dispute to the PRTB concerning their deposit of €600 paid at the outset of their tenancy, which ran from 17 October 2014 to 17 January 2015. The Appellants stated that they had commenced moving their belongings into the Dwelling on 15 October 2014, and that the Respondent had been content for this to happen, notwithstanding that the first month’s rent and deposit were not paid until 17 and 22 October 2014, respectively. The Appellants gave evidence that they paid the first month’s rent in cash on 17 October 2014 to the Respondent directly. The Appellants also gave evidence they paid a deposit of €600 on 22 October 2014 by lodging this amount into the Respondent’s bank account. Rent was also paid around 17 of November and 17 December 2014.

Over the course of their tenancy, the Appellants had complained to the Respondent on a number of occasions with regard to plumbing issues, and problems with the oven. When the Respondent had failed to resolve the issues, the Appellants had decided to vacate, and on 22 December 2014, had given notice by telephone to the husband of the Respondent, who agreed to the Appellants’ vacating on 17 January 2015. Over the course of the following weeks, the Appellants had accommodated a number of viewings of the Dwelling, and on 5 January 2015 had permitted the Respondent to show the Dwelling to prospective tenants while the Appellants were at work.

According to the Appellants, on 19 January 2015, the Respondent indicated that she intended to retain half of the deposit for damage to the dwelling, but failed to furnish any receipts or evidence. Subsequently, the Respondent failed to respond to the Appellants’ communications, and retained the whole of the deposit.

The Appellants claim that at the outset of the tenancy, they attempted to clean a rug from the downstairs bedroom which was stained and smelled of urine. When they could not satisfactorily clean the rug, the Appellants removed the rug to the outside shed and notified the Respondent that this had occurred. The Appellants do not consider that they should be held liable for any damage in this regard.

The Appellants also dispute liability for a cushion cover which the Respondent located in the garden at the conclusion of the tenancy, on the grounds that they had inadvertently left it outside after washing it and leaving it to dry on the line.

The Appellants claim that they notified the Respondent at the outset of the tenancy that they had a dog, and deny that they informed the Respondent that the dog would be kept outside, noting that the dog was inside the Dwelling when the Respondent’s wife attended the Dwelling on 17 November 2014.

The Appellants also note that although some damage was caused to plasterwork by the installation of a safety gate, the accusation by the Respondent that the gate was attached to the stair banister by a screw was incorrect, as the gate was a “pressure fit” model.

The Appellants similarly deny having damaged a wall through the affixing of a curtain pole to a wall, claiming that they utilised four existing holes in the wall to secure the pole.

According to the Appellants, the condition in which they left the Dwelling upon their departure outstripped the condition in which they had found it upon taking up occupation.

The Appellants refute the suggestion by the Respondent that she needed to engage a locksmith to access the Dwelling on the date of the conclusion of the tenancy, noting that the parties had agreed that the keys would be returned on 19 January 2015 and had arranged to meet the Respondent at the dwelling on that date, and that the Respondent must have had her own keys to access the Dwelling as she had shown it to prospective tenants on 5 January 2015.

The Appellants maintain that the only means they had of contacting the Respondent was via telephone. They had phoned the Respondent’s husband on 22 December 2014 and agreed to 26 days’ notice to the date of 17 January 2015: the date upon which the next rent payment would be due.

According to the Appellants, the issue of a term and the potential duration of a tenancy had never been discussed with the Respondent, either prior to, or in the course of, the tenancy. The Appellants did not recall that the “Daft” advertisement (to which they had responded with a view to renting the Dwelling) had contained a minimum term. Although there had been discussion of a lease, they had never received one.

The Appellants further note that two of the showerheads in the dwelling did not work satisfactorily due to a build-up of lime scale, and note that although they removed them from the Dwelling at the conclusion of the tenancy, they brought them with them to a meeting with the Respondent on 19 January 2015. According to the Appellants, this was the date upon which they had agreed to meet in order to return the keys, and gas and electricity meter cards, the Respondent having indicated that she would be unavailable to meet on 17 January 2015. However, the Respondent had presented at the Dwelling at 4pm on 17 January 2015, while the Appellants were in the process of moving, and had stated that the Appellants were to vacate by 7 pm that day. It was then agreed between the parties that the Appellants would have completely vacated by 9 pm on 17 January 2015, as the Respondent indicated that the new tenant would be moving in the following day.

Although the Appellants had texted the Respondent on 17 January 2015, following their meeting, and again on 20 January 2015, to ascertain whether they should leave the keys and cards in the letterbox, they claim that the Respondent failed to respond. The Appellants remain in possession of the keys and cards but consider that their attempts to arrange a handover have been thwarted by the failure of the Respondent to communicate with them.

The Appellants submitted that all bills pertaining to their tenancy had been discharged, and that any damage caused to the Dwelling lay within normal wear and tear.

Evidence of Respondent Landlord

No submissions were received from the Respondent Landlord, who did not attend the hearing.

**6. Matters Agreed Between the Parties**

None.

**7. Findings and Reasons:**

Having considered all the evidence, the Tribunal’s findings and reasons therefore, based on the balance of probabilities, are set out hereunder:

Damage in excess of normal wear and tear.

Finding:

The allegations levelled at the Appellants upon their vacating the Dwelling, that the Appellants caused a deterioration of the condition of the Dwelling beyond normal wear and tear, contrary to section 16(f), have not been established.

Reason:

The Respondent has failed to submit any evidence that the Appellants caused damage to the Dwelling in excess of normal wear and tear.

Although the Appellants accepted they had caused some damage to the plasterwork on the stairs when installing a safety gate, the Tribunal is satisfied this was minor damage within the meaning of “normal wear and tear”.

Deposit retention

Finding:

The Respondent is in breach of her obligation as a landlord to refund the security deposit of €600 to the Appellants upon the termination of their tenancy.

Reason:

The Tribunal is satisfied the Appellants paid a deposit of €600 on 22 October 2014.

Pursuant to section 12(1)(d) of the 2004 Act, a landlord is obliged to repay promptly any deposit paid by the tenant to the landlord on entering into the agreement for the tenancy or lease, provided that the landlord is not entitled to retain an amount of the deposit for the following reasons at the date of the request for return or repayment, as prescribed by section 12(4)(a) of the 2004 Act, as amended:

(i) there is a default in the payment of rent, or any other charges or taxes payable by the tenant in accordance with the tenancy agreement and the amount of rent or such other charges or taxes in arrears is equal to or greater than the amount of the deposit, or

(ii) there is a deterioration in the condition of the property since the date of commencement of the tenancy, in excess of normal wear and tear, and the amount of the costs that would be incurred by the landlord, were he or she to take them, in taking such steps as are reasonable for the purposes of restoring the dwelling, subject to normal wear and tear, is equal to or greater than the amount of the deposit.

Section 12(4)(b) further provides that where the value of outstanding rent, charges, or the cost of remedying damage in excess of normal wear and tear, is less than the value of the deposit, the landlord is only obliged to return the balance of the deposit which would remain. A landlord is thus obliged to promptly repay any deposit paid by a tenant, subject to the above prescribed reasons for retaining any or all of said deposit, as set out in section 12(4) of the 2004 Act, as amended.

The Respondent has failed to submit any evidence to support the entitlement to the retention of the Appellants’ deposit, and is deemed to have breached her obligation under section 12(1)(d) of the 2004 Act. The Appellants are awarded damages in the amount of €150, in compensation for their having been deprived of the use of the deposit of €600, which the Respondent is directed to refund in full without further delay.

**8. Determination:**

**Tribunal Reference TR0715-001261**

**In the matter of John McGettrick, Tara Blanchfield (Tenant) and Jeni Doyle (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 €750 to the Appellant Tenants, within 7 days of the date of issue of this Order, being the entire of the unjustifiably retained security deposit of €600 together with damages of €150 for its unlawful retention, in respect of the tenancy of the dwelling at 3 Abhann Dubh, Patrick Street, Portarlington, Co. Offaly.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 04 September 2015.

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

**Deirdre Bignell Chairperson**

For and on behalf of the Tribunal.