**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001264 / Case Ref No: 0415-17823**

**Appellant Tenant:** Anthony Owens

**Respondent Landlord:** Joe Duffy

**Address of Rented Dwelling:** Apartment 128, The Plaza, Coultry Road, Ballymun, Dublin 9, D09FT92

**Tribunal:** Healy Hynes (Chairperson)

Mervyn Hickey, James Egan

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

**Date & time of Hearing:** 21 September 2015 at 10:30

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| **Attendees:** | Anthony Owens (Appellant Tenant)  Joe Duffy (Respondent Landlord)  Audrius Karosas (Agent for the Respondent Landlord) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 13 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 02 June 2015. The Adjudicator determined that:

The Applicants’ claim that the Respondent has breached his obligations in relation to the tenancy of the dwelling at 128 The Plaza, Road, Coultry Road, Ballymun is not upheld.

Subsequently the following appeal was received from the Tenant on 08 July 2015. The grounds of the appeal were regarding the Standard and maintenance of the dwelling and a Breach of landlord obligations. 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 Healy Hynes 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:**

Photos & cover letter dated 8th September 2015

**4. Procedure:**

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Tenants against a determination made following an adjudication held on 02 June 2015 in the case of a dispute between the Tenants and the Respondent Landlord in respect of a tenancy at Apartment 128, The Plaza, Coultry Road, Ballymun, Dublin 9. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. He 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”. Both Parties confirmed that they had done so. The Chairman said that he 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 then explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the 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. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the PRTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Tenants would be invited first to present their case, including the evidence of any Witness; this would be followed by an opportunity for cross-examination by the Respondent Landlords; that the Respondent Landlords would then be invited to present their case, followed by an opportunity for cross-examination by the Appellant Tenants. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

He also said that at the end of the hearing, both the Appellant Tenants and the Respondent Landlords would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the PRTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

All persons giving evidence to the Tribunal were then sworn in.

**5. Submissions of the Parties:**

Appellant Tenants Case:

Mr. Owens, hereinafter (“the Appellant Tenant”) stated to the Tribunal that his case related to the Respondent Landlord being in breach of obligation for failing to maintain the property. In particular, damp began to appear shortly after the start of the tenants taking occupation of the dwelling.

The Appellant Tenant stated that he contacted the agents for the Respondent Landlord soon after taking occupation to advise that the tenants had become ill from the damp in the bedroom, sitting room and bathroom. A workman attended the property in March 2014 and a vent was placed above the door in the sitting room. The issue persisted so the Appellant Tenant requested an environmental health inspection of the dwelling. This was conducted on 7th April 2015, and a report was prepared on the 27th April 2015. The Respondent Landlord was afforded 10 weeks from that date to carry out remedial works. These works were:

• Investigate & make good the source of mould to living room;

• Investigate & make good the source of damp to bedroom;

• Fit vent to bedroom;

• Repair to switches;

• Install Fire evacuation plan;

• Repair missing fridge door;

• Fix loose press;

• Fit fire blanket.

On 12 March 2014 the Appellant Tenant contacted the Respondent Landlord’s agents in relation to a heating issue and this was addressed.

Respondent Landlord’s case:

Mr. Audrius Karosas appeared and gave evidence for the Respondent Landlord. Mr. Karosas (hereinafter “the Respondent Landlord”) and stated that he attended at the dwelling following a request by the tenants in or around March of 2014 & made good on the issue raised by fitting a vent between the living room and hallway. He stated that the Tenants were also provided with a dehumidifier at this time.

The Respondent Landlord subsequently received documentation from the Council. His case was that he had addressed the following matters:

• Repair to switches;

• Fire evacuation plan;

• Missing fridge door;

• Loose press;

• fire blanket.

The management company refused permission to fix a vent to the bedroom wall as it would interfere with the exterior & may have required planning permission.

**6. Matters Agreed Between the Parties**

Before inviting the parties to make their submissions the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

1. The names of the parties and the address of the rented dwelling are as set out above.
2. The tenancy commenced on or about 16th April 2013
3. The Tenant remains in occupation of the dwelling on the date of the Hearing.
4. The rent was €650 per month.
5. A deposit of €650 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.

Finding 1: The Tribunal finds that the Appellant Tenant’s case in respect of breach of Landlord obligations for failing to maintain the property 128 The Plaza, Road, Coultry Road, Ballymun, Ireland is not upheld.

Reasons:

The Tribunal finds that there was insufficient evidence (in the form of a letter, email, text message or phone call) to support the Appellant Tenant's claim that he reported an issue to the Landlord in advance of March 2014. It is clear that when the matter was reported to the Landlord's agent in March 2014 that action was taken almost immediately. This appeared to resolve matters until the Appellant Tenant raised an issue with the standard and maintenance of the dwelling with the local Council one year later in or around April 2015. The Respondent Landlord addressed the following issues raised by that inspection:

• Repair to switches;

• Fire evacuation plan;

• Missing fridge door;

• Loose press;

• fire blanket.

In relation to the ventilation in the bedroom, the Tribunal finds that the relevant regulations being Article 9 of the Housing (Standards for Rented Houses) Regulations 2008 (S.I. 534/2008) and the subsequent Guidelines for Housing Authorities in the implementation of Minimum Standards in Rented Accommodation 2011 set the following guidelines for Habitable rooms:

* In each habitable room there must be an openable external window/door.
* The openable section of the window/door must be a minimum of 1/20th of the
* floor area.
* In each habitable room wall/window vents must be unobstructed.
* The vent must provide 6500sq mm of ventilation.

The Respondent Landlord therefore was not required to fit a fixed vent in the bedrooms. Rather, the position is simply that if there are vents they must be unobstructed & provide 6,500 sq.mm of ventilation.

The Tribunal finds that the Respondent Landlord is not in breach of his obligations by not having a 6,500sq.m. vent in the bedrooms.

In relation to the repainting of the bedroom & living room, the Tribunal finds that the Appellant Tenant in the matter had agreed to undertake to do this himself.

**8. Determination:**

**Tribunal Reference TR0715-001264**

**In the matter of Anthony Owens (Tenant) and Joe Duffy (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Tenant’s application, regarding the Respondent Landlord’s breach of his obligations under the Act, in respect of the tenancy of the dwelling at Apartment 128, The Plaza, Coultry Road, Ballymun, Dublin 9, is not upheld.

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

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| **Signed:** |  |

**Healy Hynes Chairperson**

For and on behalf of the Tribunal.