**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001266 / Case Ref No: 0515-18270**

**Appellant Tenant:** Eoghan Connolly, Nina Connolly

**Respondent Landlord:** Teresa Murphy, Marie Murphy

**Address of Rented Dwelling:** Camelot, 4 Woodlands, Frankfield, Douglas , Cork, T12X2CC

**Tribunal:** Dairine Mac Fadden (Chairperson)

Suzy Quirke, Aidan Brennan

**Venue:** Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork

**Date & time of Hearing:** 06 October 2015 at 2:30

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| **Attendees:** | Eoghan Connolly (Appellant Tenant)  Nina Connolly (Appellant Tenant)  Regina Baylor (Appellant Tenant’s Representative)  Mark Rose (Respondent Landlord’s Representative)  Amy Buckley (Respondent Landlord’s Representative)  Marie Murphy (Landlord)  Teresea Murphy (Respondent Landlord) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 06 May 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 Adjudication which took place on 05 June 2015. The Adjudicator determined that:

1. The Notice of Termination served on the 16th day of April 2015 by the Respondent/Applicant Landlords on the Applicant/Respondent Tenants in respect of the tenancy of the dwelling at Camelot, 4 Woodlands, Frankfield, Douglas, Cork, is valid.

2. The Applicant/Respondent Tenants 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 the Determination Order.

3. The Applicant/Respondent Tenants shall pay any further rent outstanding f rom the 5th day of June 2015 at the rate of €1,100.00 per month or proportionate part thereof at the rate of €36.16 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof until such time as they vacate the above dwelling.

4. The Respondent/Applicant Landlords shall refund the entire of the security deposit of €1,100.00 to the Applicant/ Respondent Tenants, upon the Applicant/Respondent Tenants vacating and giving up possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received from the tenant on 9 July 2015. The grounds of the appeal were in relation to a Breach of fixed term lease and Unlawful termination of tenancy. This appeal was approved by the Board of the PRTB 24 July 2015

The PRTB constituted a Tenancy Tribunal and appointed Dairine Mac Fadden, Suzy Quirke and Aidan Brennan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Dairine Mac Fadden to be the chairperson of the Tribunal (“the Chairperson”).

On 20 Auguast 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 06 October 2015 the Tribunal convened a hearing at Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork.

**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 which would be followed; that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; that the persons who appealed (the Appellants) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondents; that the Respondents would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellants. The Chairperson said that members of the Tribunal might ask questions of both Parties from time to time.

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

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present and she 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 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 this could be appealed to the High Court on a point of law only.

The Chairperson asked the Parties if they had any queries about the procedure. There were none. The parties giving evidence were then sworn.

**5. Submissions of the Parties:**

Appellant Tenants:

Ms Regina Baylor, on behalf of the Appellant Tenants referred to the Letting Agreement dated 14 November 2014 which had been entered into between the Appellant Tenants and the Respondent Landlords and to the Notice of Termination served 16 April 2015 by the Respondent Landlords. She said that the Appellant Tenants had signed a fixed term lease for a term of one year and which had stated under the heading “Break Clause Option” that there was “None”. She said that the Appellant Tenants therefore had the perception that they had a fixed term lease. She submitted that the Respondent Landlords could not rely on clause 6.18 of the Letting Agreement as this referred to section 34 of the Residential Tenancies Act, 2004; that section only applied to Part 4 tenancies and at the date of service of the Notice of Termination her clients were not Part 4 tenants as they had not been in occupation for a period of 6 months; that their tenancy could only be terminated if they had been in breach of their conditions which they were not. She referred also to clause 3.2 of the Letting Agreement where the Appellant Tenants agreed to pay rent and to clause 4.1 where the Landlord covenanted with the Appellant Tenants to allow them quiet enjoyment of the Dwelling for the agreed term of 12 months without interruption provided they paid their rent, which she said they did. Reference was also made to clause 5.1 permitting termintion only under the provisions of the Act, clause 5.5 where the Landlord agreed to let and the Appellant Tenant agreed to take the Dwelling for the agreed term. In relation to Clause 6 (First Schedule) which stated that the Special Conditions should supersede clauses in other sections of the Lease where ambiguity or contradiction arose, she said that in contract law where an ambiguity or contradiction arises, the benefit should go to the Tenants under the contra proferentem rule. She made reference to clause 6.2 ( First Schedule) which provided that if the tenancy was terminated at the request of the Tenants before the date agreed that the Tenants’ deposit would be deducted and that they would be responsible for the rent until a new suitable tenant was secured. She said clause 6.2 and 6.18 were contradicatory and that at the Adjudication undue weight had been given to clause 6.18. She said further that this clause 6.18 which allowed only the Landlord to terminate was an unfair term within the meaning of the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 (SI 27/1995) as amended by SI 307/2000 and further amended by SI 160/2013. She said that any term which significantly weighed against the consumer or which put the consumer at an extreme disadvantage or gave undue balance to the person who wrote it, was unfair. She made reference to a previous case before a Tribunal on 23 June 2010 TR255/DR1477-2009 Rafel Gora (Tenant) but said that she was not aware if the Tribunal had made any findings in relation to the application of the Unfair Terms in Consumer Contracts Regulations to tenancies. She said that the Applicant Tenants had five young children and needed security for at least a year. The Tribunal asked her to consider section 58(3) of the Act which sets out the position in relation to the termination of a fixed term tenancy which it states can only be terminated, unless it provides otherwise, where there has been a failure by the party in relation to whom the notice is served to comply with any obligations of the tenancy. In response she said that the Letting Agreement under the clause “Break Clause Option” should not have said “None” but should have referred to clause 6.18.

Respondent Landlords:

Ms. Marie Murphy, one of the Landlords, submitted that clause 6.18 of the Letting Agreement was valid. She said that they checked it out with their letting agents, Rose Properties and were advised that they were within their legal rights to inlcude this clause. She also submitted that it was clear from clause 6 that where there was any ambiguity or contradiction between the general and special conditions, the special conditions should prevail. Mark Rose said that the Appellant Tenants had been given about 30 minutes to go through the Letting Agreement before it was signed and had initialled each page of the Agreement. He referred to clause 10.14 which provided that if the Tenant was unsure of his/her obligations under the Agreement, he/she was advised to take legal advice before signing. He said that a very serious financial situation had arisen for the owners of the Dwelling and the final decision to sell was not taken lightly. Their circumstances had now changed and they needed to sell the Dwelling which had originally belonged to their late Father. Ms. Marie Murphy confirmed that her sister Teresa Murphy was a joint owner of the Dwelling with her and that they were joint landlords.

**6. Matters Agreed Between the Parties**

1. Ms. Marie Murphy one of the Respondent Landlords and the Appellant Tenants entered into a Residential Tenancy Letting Agreement dated the 14th November 2014 with a tenancy commencement date of 11th December 2014;

2. The address of the dwelling is Camelot, 4 Woodlands, Frankfield, Douglas, Cork;

3. The rent is €1,100.00 per month;

4. A deposit of €1,100.00 was paid at the commencement of the tenancy which is retained by the Respondent Landlords;

5. The Appellant Tenants remain in occupation of the Dwelling.

**7. Findings and Reasons:**

Finding 1.

The Notice of Termination served on the 16th day of April 2015 by the Respondent Landlords’ letting agent on the Appellant Tenants, in respect of the tenancy of the dwelling at Camelot, 4 Woodlands, Frankfield, Douglas, Cork, is valid.

Reason:

The Notice of Termination complied with the provisions set out in section 62 of the Residential Tenancies Act, 2004 and the proper period of notice as prescribed by section 66 of the Act was given. The term of the tenancy was for a fixed term of one year. Section 58(3) of the Act provides that a fixed term tenancy can only be terminated, (unless the tenancy includes a term that provides otherwise), where there has been a failure by the party in relation to whom the notice is served to comply with any obligations of the tenancy. The Tribunal finds that clause 6.18 of the Residential Tenancy Agreement entered into between the parties contains such a provision allowing termination on the grounds set out therein where there has been no default and that the Respondent Landlords are entitled to rely on it to terminate this tenancy. The Tribunal further finds that this clause 6.18 which is set out as a special condition in the Letting Agreement supersedes any clauses in other sections of the Agreement as this is specifically stated and provided for in the Agreement itself which was entered into between the parties.

The Tribunal does not accept the submission put forward by the Appellant Tenants that because clause 6.18 refers to section 34 of the Act, the Respondent Landlords were attempting to terminate a Part 4 tenancy, which the Appellant Tenants did not have at the time of service of the Notice of Termination.

The Tribunal is satisfied that the inclusion of the reference to section 34 of the Act in the clause allowed termination on the grounds set out in the clause at any time during the term of the tenancy and particularly by reference to section 58 (3)c which refers to a tenancy not affected by part 4 of the Act.

The Tribunal has carefully considered the Appellant Tenants’ submission in relation to the application of the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 as amended. The Tribunal notes that the Regulations apply to sellers of goods or suppliers of services and define “supplier” as a person who, acting for purposes related to his business, supplies services. It further notes that the Regulations permit a consumer to rely on the provisions of the Regulations before a court of competent jurisdiction. The Tribunal has special and limited jurisdiction and derives its authority from the Residential Tenancies Act 2004. The Tribunal finds that none of the terms of the tenancy are contrary to the provisions of the Act.

Finding 2

The Appellant Tenants 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 the Determination Order.

Reason:

The Tribunal has found that the Notice of Termination served is valid and it follows from this that the Appellant Tenants are required to give up possession of the Dwelling in accordance with the terms of the Determination Order when issued.

Finding 3:

The Appellant Tenants shall pay any further rent outstanding from 6 October 2015 at the rate of €1,100.00 per month or proportionate part thereof at the rate of €36.16 per day, unless lawfully varied, and any other charges as set out in the terms of the Letting Agreement for each month or part thereof until such time as they vacate the above dwelling.

Reason:

The Appellant Tenants are obliged in accordance with the terms of the Act and the Letting Agreement to continue to pay the rent and any other charges lawfully arising until they vacate the Dwelling. The daily rate has been calculated by multiplying the monthly rate of €1,100 by 12 to yield an annual rate = €13,200 and dividing that amount by 365 days to yield a figure of €36.16 per day.

Finding 4:

The Respondent Landlords shall refund the entire of the security deposit of

€1,100.00 to the Appellant Tenants, upon the Appellant Tenants vacating and giving up possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Reason:

This follows from the terms of the Letting Agreement and section 12 (d) of the Act.

**8. Determination:**

**Tribunal Reference TR0715-001266**

**In the matter of Eoghan Connolly, Nina Connolly (Tenant) and Teresa Murphy (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on the 16th day of April 2015 by the Respondent Landlords on the Appellant Tenants in respect of the tenancy of the dwelling at Camelot, 4 Woodlands, Frankfield, Douglas, Cork, is valid.

2. The Appellant Tenants 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 the this Order.

3. The Appellant Tenants shall pay any further rent outstanding from 6 October 2015 at the rate of €1,100.00 per month or proportionate part thereof at the rate of €36.16 per day, unless lawfully varied, and any other charges as set out in the terms of the Letting Agreement for each month or part thereof until such time as they vacate the above dwelling.

4. The Respondent Landlords shall refund the entire of the security deposit of €1,100.00 to the Appellant Tenants, upon the Appellant Tenants vacating and giving up possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 15 October 2015.

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

**Dairine Mac Fadden Chairperson**

For and on behalf of the Tribunal.