**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001274 / Case Ref No: 0115-16338**

**Appellants:** Denis Slevin, Danny McMenamin

**Respondents:** David Brady, Sean Webb (Receivers)

**Address of Rented Dwelling:** 33A Marian Villas, Donegal Town , Donegal, F94X6E5

**Tribunal:** Helen-Claire O'Hanlon (Chairperson)

Healy Hynes, James Egan

**Venue:** Council Chamber, Sligo County Council, County Hall, Riverside, Sligo

**Date & time of Hearing:** 25 September 2015 at 2:30

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| **Attendees:** | Denis Slevin (Appellant)  Danny McMenamin (Appellant)  Mary McGarry Murphy, Wyse, Agents for Respondents (Witness)  Eoin Burke, Wyse, Agents for Respondents (Witness)  Gavin McGovern, Cabot Financial (Witness)  Rudi Neuman BL (Legal Representative on behalf of Respondents) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 22 January 2015 the Receivers 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 19 June 2015. The Adjudicator determined that:

1. The Notice of Termination served on 26th May 2014 by the Applicants on the Respondent Tenant in respect of the tenancy of the dwelling at 33a Marian Villas, Donegal Town, Co. Donegal is valid.

2. The Respondent Tenant and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 14 days of the date of issue of the Order.

3. The Respondent Tenant shall pay the total sum of €2,738.28 to the Applicants, within 56 days of the date of issue of the Order, being rent arrears in respect of the tenancy of the above dwelling.

4. The Respondent Tenant shall also pay any further rent outstanding from 19th June 2015 to the Applicants at the rate of €238.33 per month or proportionate part thereof at the rate of €7.84 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 he vacates the above dwelling.

Subsequently the following appeal was received from the Landlords on 14 July 2015. The grounds of the appeal was Unlawful termination of tenancy (Illegal eviction). This appeal was approved by the Board on 24 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed Helen-Claire O'Hanlon, Healy Hynes and James Egan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Helen-Claire O'Hanlon to be the chairperson of the Tribunal (“the Chairperson”).

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 25 September 2015 the Tribunal convened a hearing at Council Chamber, Sligo County Council, County Hall, Riverside, Sligo.

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

* 1. PRTB File

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

• Written Submission of the Appellants.

• Copy of the Mortgage Deed.

**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”. Both parties confirmed that they had done so and it was confirmed that the parties had read and understood them. The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be as informal as was possible. The Chairperson said that members of the Tribunal might ask questions of both parties from time to time. She also stated that the parties must follow any instructions given by the Chairperson and directed that neither party should interrupt the other when oral testimony is being given.

The Chairperson explained that as this appeal was lodged by Mr Slevin and Mr McMenamin they would be invited to present their case first and that there would be an opportunity for cross-examination by the Respondent Receivers. 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 explained that following this, both parties would be given an opportunity to make a final submission. A preliminary legal issue was identified, in that the Appellants in this case, Mr Slevin and Mr McMenamin, being the original named Landlords in respect of the tenancy, are appealing against the Respondents, who are the Receivers in respect of the dwelling in question. It was outlined to the parties that initial submissions would be heard on the question of the standing of both parties in respect of this appeal.

The Chairperson indicated that she would be willing to clarify any queries in relation to the procedures either then or at any stage during the course of the Tribunal hearing. It was also indicated that the Tribunal would be willing to consider an application made at any stage during the Hearing seeking a short adjournment for the purpose of allowing the parties to try to negotiate, on a without prejudice basis, a consent settlement of the dispute.

The Chairperson stated 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 and/or both. It was explained to the parties that as a result of this Hearing, 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 pursuant to Section 123(3) of the 2004 Act. All persons giving evidence to the Tribunal were then sworn in.

**5. Submissions of the Parties:**

Evidence of the Appellants:

The Appellants claimed that they are appealing on two issues and in a dual capacity. They disputed the validity of the Notice of Termination on the basis that it is incorrectly addressed to 33 Marian Villas Flat, rather than 33A Marian Villas. They claimed that the Tenant did not receive this notice. In addition to this they pointed to the incorrect spelling of the Tenant’s name on the notice. They claimed that the Tenant had asked them to appear at the Tribunal with him and although he was not present due to an injury, they were representing his interests at the Tribunal. They had told him they would bring him to the Tribunal hearing as he does not drive and he would rely on them for a lift. They do not wish for his tenancy to be terminated as he would be unable to find alternative accommodation.

They submitted a written submission which quoted from the Mortgage Deed between themselves and Ulster Bank dated 1st of August 2006. They contend that they are the rightful Landlords in respect of the dwelling in question. They claim that the Receivers were not validly appointed and are not entitled to recover the rent. They have raised this issue in correspondence with the Receivers. They claim that Ulster Bank did not follow the correct procedural steps in advance of the appointment of the Receivers and did not properly exercise their powers in accordance with the Mortgage Deed. They have raised these issues with the Financial Services Ombudsman Commission. The Appellants also queried the involvement of Cabot Financial in matters pertaining to the dwelling. They have received correspondence from Cabot Financial but the named Receivers on the Deed of Appointment are not Cabot Financial.

In response to questioning from the Tribunal the Appellants explained that the procedure for the delivery of post to no 33A was through a window of the dwelling, being the converted garage beside the main house. Post for the main house, no 33, is delivered separately in the front door of that house. There is an arrangement with the postman whereby the little window on 33A which is closest to the main house is left open for him to put letters through. The Appellants accepted in their evidence that the Tenant had been paying rent to the Receivers since January 2014.

The Respondents’ case:

Gavin McGovern, Asset Manager with Cabot Financial, was in attendance and he gave evidence that he is employed by Cabot Financial, which is the company of the Respondent Receivers, Sean Webb and David Brady. The Receivers had submitted a letter of authority in their joint names and on company letterhead, to confirm that he is their authorised representative at the Tribunal hearing. The Deed of Appointment dated the 16th of December 2013 and accepted on the 28th of December 2013 was exhibited.

Two Agents were present from Wyse Estate Agents, Mr Burke and Ms Murphy. They gave evidence that they are acting as Agents for the Receivers in respect of the dwelling. Arrangements had been made by Wyse for inspections to take place and for rent to be paid in cash by the tenant to a local agent in Donegal. This arrangement had taken place in early 2014. The Agents had also dealt with the Tenant who had been residing in the main dwelling at No 33 on behalf of the Receivers and had recovered the rent from him and ultimately terminated his tenancy without incident. The Respondents are standing over the validity of the Notice of Termination. They claim that there was an established method of delivery for post to the dwelling, that the Notice distinguishes the dwelling from the main house by describing it as “33 Marian Villas Flat”. It was submitted on the Respondents’ behalf that they are not unsympathetic to the plight of the Tenant but that the Notice of Termination was issued in May 2014 and that he has had ample opportunity to seek alternative accommodation since that time, given that it is over a year and three months since the termination date of 21st July 2014.

Submissions were also made by the Respondents’ legal representative. The Respondents claim that the Appellants have no locus standi where they are not the “Landlords” within the meaning of the legislation. It was submitted that they are not entitled to bring this appeal in circumstances where there is a valid Deed of Appointment and where Ulster Bank were empowered to appoint Receivers in respect of the property pursuant to the Mortgage Deed, and in particular paragraph 5 thereof. The Respondents claim that no steps have been taken by the Appellants in an appropriate forum to dispute the validity of the appointment or to seek any sort of declaratory or other relief in respect of the property. The Respondents claim that this is not a valid appeal and that the Respondents are entitled to vacant possession of the dwelling as a priority.

**6. Matters Agreed Between the Parties**

• The dwelling is a flat adjoined to the property known as 33 Marian Villas, Donegal Town, Donegal;

• The Landlords in respect of the tenancy were originally named as Denis Slevin and Danny McMenamin;

• The tenancy commenced on 6th of January 2012;

• The Tenant has been paying the rent to a local agent acting on behalf of the Receivers, Sean Webb and David Brady, since February 2014;

• The rent is €238.33 per month or €55 per week.

**7. Findings and Reasons:**

Finding No 1: The Tribunal finds that the Appellants do not have standing to bring the appeal and accordingly their application is not upheld.

Reason:

The Appellants lodged their appeal against the decision of the Adjudicator on the basis that they submitted the Receivers were not validly appointed and were therefore not entitled to bring the original application as the Landlords in respect of the dwelling. The Tribunal had regard to a Deed of Appointment dated the 16th of December 2013 and Acceptance dated the 28th of December 2013. That Deed of Appointment appears to be valid on its face. The Tribunal also had regard to a Deed of Mortgage dated the 1st of August 2006 which was exhibited in its entirety by the Respondents. The Appellants acknowledged that was the Mortgage Deed from which they had quoted in their submission. It is accepted by the Tribunal that Paragraph 5 of the Deed of Mortgage empowers Ulster Bank to appoint a receiver. There was uncontroverted evidence that the Receivers were appointed in December 2013 and made contact with the Tenant in early 2014. It was acknowledged by both parties that the rent was being paid by the Tenant to the Agents for the Respondents from early 2014. The Appellants have not instituted proceedings nor sought relief in any other forum in respect of the validity of that appointment or in respect of the title of the property, although it is understood that a complaint has lately been made to the Financial Services Ombudsman. The Tribunal do not accept that they are entitled to go behind what appears on its face to be a valid Deed of Appointment, in particular having regard to s.110 of the Act, as to do so would be to draw into question the title to the property.

The Tribunal are satisfied on the evidence presented that the Respondent Receivers are entitled to receive the rent for the dwelling and have been so receiving the rent since early 2014. The Tenant and the Appellants acquiesced in this practice. Section 5(1) of the Act provides that a Landlord shall be defined as the person entitled to receive the rent in respect of the dwelling. The Tribunal is not satisfied that the Appellants have established an entitlement to receive the rent in respect of the dwelling subsequent to the appointment of the Respondents. In those circumstances, the Tribunal is not satisfied that the Appellants have standing to bring this appeal in the role of Landlords in respect of the dwelling. With regard to the submission by the Appellants that they were alternatively representing the interests of the Tenant, there was insufficient evidence before the Tribunal to establish that the Appellants were acting upon the Tenant’s instructions and with his full authority. It is noted that the Tenant attended neither the Adjudication hearing or the Tribunal hearing and did not submit any correspondence or documentation to the PRTB in respect of his case. The Appellants’ sympathy and concern for the Tenant are commendable, however, in the absence of any form of authority from the Tenant to indicate that he authorised them to represent him, the Tribunal is unable to determine that the Appellants appealed or appeared on his behalf or with his authority.

Accordingly the Tribunal holds that the appeal is not upheld and that the determination of the Adjudicator stands.

**8. Determination:**

**Tribunal Reference TR0715-001274**

**In the matter of Denis Slevin and Danny McMenamin [Appellant Landlords], David Brady (in his capacity as Receiver over certain assets of Denis Slevin and Danny McMenamin), Sean Webb (in his capacity as Receiver over certain assets of Denis Slevin and Danny McMenamin) [Receivers], and Mohammed Yabal [Respondent Tenant] the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 26th May 2014 by the Receivers on the Respondent Tenant in respect of the tenancy of the dwelling at 33a Marian Villas, Donegal Town, Co. Donegal is valid.

2. The Respondent Tenant and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 14 days of the date of issue of the Order.

3. The Respondent Tenant shall pay the total sum of €2,738.28 to the Receivers, within 56 days of the date of issue of the Order, being rent arrears in respect of the tenancy of the above dwelling.

4. The Respondent Tenant shall also pay any further rent outstanding from 19th June 2015 to the Receivers at the rate of €238.33 per month or proportionate part thereof at the rate of €7.84 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 he vacates the above dwelling.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 18 October 2015.

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| **Signed:** |  |

**Helen-Claire O'Hanlon Chairperson**

For and on behalf of the Tribunal.