**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001275 / Case Ref No: 0415-17788**

**Appellant Tenant:** Mary Duniyva

**Respondent Landlord:** Patrick Gibson

**Address of Rented Dwelling:** 58 Grosvenor Square, Rathmines , Dublin 6,

**Tribunal:** Eoin Byrne (Chairperson)

Helen-Claire O'Hanlon, Dervla Quinn

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

**Date & time of Hearing:** 22 September 2015 at 2:30

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| **Attendees:** | For the Appellant:  Mary Duniyva (Tenant),  Harry Carpendale (Solicitor for the Appellant),  David Gleeson (Witness),  Patrick Conlon (Witness).  Gerard Bracken (Witness)  For the Respondent:  Patrick Vincent Gibson (Landlord),  Ronan Flaherty (Solicitor for the Respondent),  Nadine Meissonave (Landlord's Representative)  John Maguire (Landlord's Representative)  Vincent Edward Gibson (Witness),  Henrique Lopes Ferreira (Witness),  Clara White (Witness)  Victor Gibson (Witness) |
| **In Attendance:** | Gwen Malone Stenographers,  PRTB appointed Interpreter. |

**1. Background:**

On the 10th 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 the 8th June, 2015. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €200 to the Applicant Tenant, within 14 days of the date of issue of the Order, being damages for the Respondent Landlord’s failure to supply bank account details, in respect of the tenancy of the dwelling at Flat 4, 58 Grosvenor Square, Rathmines, Dublin 6.

The Applicant Tenant’s application, regarding the Respondent Landlords breach of his duty owed to the Applicant Tenant in respect of enforcing neighbouring tenants’ obligations under section 15 of the Act, in respect of the tenancy of the above dwelling is not upheld.

Subsequently a valid appeal was received from the Tenant by the PRTB on the 15th July, 2015. The grounds of the appeal was regarding a breach of landlord obligations.

The Board, at its meeting on the 24th July, 2015, approved the referral to a Tenancy Tribunal of the appeal. The PRTB constituted a Tenancy Tribunal and appointed Eoin Byrne, Helen-Claire O’Hanlon and Dervla Quinn as Tribunal members, pursuant to Section 102 and 103 of the Act and appointed Eoin Byrne to be the chairperson of the Tribunal (“the Chairperson”).

On the 4th August, 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 the 22nd September, 2015, the Tribunal convened a hearing at 14:30 at the offices of the PRTB, Floor 2, 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:**

Letter from Appellant Tenant’s doctor, submitted by the Appellant.

**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 person who appealed (the Appellant) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant. The Chairperson asked the parties if they wished to take one of the witnesses out of turn, Mr. Conlon, and the parties agreed to do so.

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 and be recorded by the official stenographer present and he reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of €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 could be appealed to the High Court on a point of law only.

**5. Submissions of the Parties:**

By agreement of the parties, the evidence of Patrick Conlon was taken first, so he could be excused after his evidence was heard.

Evidence of Patrick Conlon:

Mr. Conlon stated that he was a neighbour of the Appellant. He stated that he had no difficulty with noise coming from the dwelling and that he had not been subjected to any disturbance as a result of noise coming from the neighbouring dwelling. He did, however, accept that he spent most of his time at the rear of his dwelling and would not hear noise when he was there. He indicated that he would not know which tenants were resident in which flats and referred only to one incident of noise occurring on the street outside the dwelling, but that he did not know which flat they were from nor was noise that annoyed him a general problem. He denied ever saying anything about noise to anyone and denied ever asking when any of the neighbouring tenants would be leaving the dwelling.

Submissions on the preliminary issue concerning matters being res judicata (rule that a final judgement ruled by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent action involving the same claim).

At the conclusion of Mr. Conlon’s evidence, a preliminary issue was raised by the Respondent’s solicitor in respect of the matters under dispute. He contended that a number of issues allegedly under dispute had previously been determined following the Tribunal hearing on the 1st April, 2015, and were thus res judicata.

The Appellant’s solicitor indicated that there were five outstanding issues in dispute.

- The first concerned alleged harassment, intimidation and victimisation of the Appellant.

- The second concerned the alleged failure of the Respondent to provide the Appellant with his bank account details between 2011 and 2013.

- The third concerned the alleged failure of the Respondent to complete rent allowance forms for the Appellant.

- The fourth concerned legal costs and the costs of the Appellant’s applications to the PRTB.

- The fifth concerned alleged anti-social behaviour and the alleged failure of the Respondent to take adequate steps to enforce the obligations of neighbouring tenants, who reside in dwellings in the same building which the Respondent also owns.

The Appellant Tenant’s solicitor contended that none of those five issues had been determined by the previous Tribunal and referred to their findings, which detailed only that the notice of termination was valid and that the Appellant Tenant was overholding, and did not include any finding in respect of whether the Respondent Landlord was or was not in breach of obligations. In those circumstances, the Appellant Tenant contended that the issues were not res judicata and asked the Tribunal to hear evidence in respect of each and to consider the issues.

The Respondent’s solicitor referred to the report of the Tribunal of the 28th April, 2015, that issued after the hearing on the 1st April, 2015. He referred to the outline of the evidence given at that hearing concerning alleged penalisation and victimisation of the Appellant, as referred to in the Tribunal report. He also referred to the evidence in respect of alleged anti-social behaviour, stating that it was also heard by the Tribunal on the 1st August. He further referred to the issue of rent allowance forms, and stated that the summary of evidence referred to the Appellant’s “social welfare claims”. He also indicated, in any event, and it was accepted, that the documentation in respect of rent allowance was ultimately completed, the arrears paid, and that the rent was up to date, the forms being completed and the issue resolved prior to the previous hearing. He stated that each of those issues was dealt with on the last date and that evidence was given and subject to cross-examination, as outlined in that report. He referred to the findings and reasons section of the report where it was stated by the Tribunal “[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”. He thus contended that the findings of the Tribunal had to be read as including a finding that the Respondent Landlord was not in breach of obligations in respect of victimisation, anti-social behaviour and alleged failure to complete rent allowance forms, given that evidence in that respect was given on the last date. He asserted that if the Tribunal had considered the Respondent to be in breach of obligations, a finding would have been made in that respect, and that none was. He contended that the Tribunal’s finding that the notice was valid had to be read as a finding that the Appellant’s complaints in respect of victimisation and harassment had not been upheld and contended that had claims of conspiracy or penalisation been substantiated, the notice of termination would have been found to be invalid. He thus asserted that those issues were res judicata, at least insofar as they concerned issues pre-dating the 1st April, 2015. He accepted, however, that the issue of legal costs was not res judicata, nor was the issue concerning failure to provide bank account details, insofar as it concerned the failure to provide those details between September 2011 and May 2013. He accepted that a finding was made in September 2011 that those details had to be provided and that they were not provided until May 2013 and did not contest the adjudicator’s finding in this respect.

At that stage, the Tribunal rose briefly to consider the preliminary issues. The Tribunal conferred and reached findings in respect of each issue. The Tribunal returned to the hearing room and advised the parties of these findings. The Tribunal indicated that, in respect of the harassment and victimisation complaints, evidence was given at the hearing of the 1st April 2015, and considered by the Tribunal and that that matter, insofar as it concerned events before the 1st April 2015, was res judicata. In respect of the second matter, concerning the failure to provide bank account details, the Tribunal found that it had not been considered since the finding made in 2011, given the absence of any evidence in respect of the loss suffered after September 2011 in the Tribunal report of the 28th April 2015, and that it was properly before the Tribunal. In respect of the third issue, the Tribunal found that evidence had been given at the hearing of the 1st April 2015, given the reference in the report to “social security claims” and that the matter was thus res judicata in its entirety, given that the relevant forms were completed prior to that hearing. In respect of the fourth issue, it was accepted by both sides that the matter of legal costs and PRTB application costs had not been considered previously. In respect of the final issue, the Tribunal found that the allegations of anti-social behaviour and the alleged failure of the Respondent to take appropriate steps to enforce the obligations of the neighbouring tenants was res judicata, insofar as it concerned events prior to the 1st April 2015, given the fact evidence in this respect was given at the hearing on that date and the fact that Tribunal did not find any breach of obligations on the part of the Respondent.

Appellant Tenant’s Case, Appellant Tenant’s evidence:

As indicated above, the Appellant Tenant’s case concerned five matters. She asserted that she had lived in the dwelling for approximately four and a half years. She stated that a number of Brazilian students moved into the downstairs flats (below her flat) approximately one year ago and continued to make loud noise on a regular basis, day and night, as late as 3am. She contended that the Respondent did not take steps to deal with the issues as he simply wanted the Appellant to move out of the dwelling. She stated that there had been very little contact between herself and the Respondent between April and the date of hearing. She contended that when the Respondent visited the dwelling there was no noise but that in general there was noise carried from the neighbouring flats and that she could hear when they were talking loudly. She asserted that due to the layout of the dwelling, her flat was directly above the area where the tenants below socialised and that, while they could go elsewhere to sleep, she had to put up with noise from below. In respect of the recordings submitted prior to the hearing, she stated that they had been made when the door of her dwelling was closed and when the windows were closed. She stated that the behaviour of the tenants included screams and knocking at doors and that it could occur at any time. She asserted that the Respondent regularly visited the dwelling to tend to the garden and that she was bullied and victimised by him, in particular with regard to the service of the notices of termination.

In respect of the loss suffered by her as a result of the failure of the Respondent to provide her with bank account details, she asserted that she had difficulties paying rent until they were provided in May, 2013. She stated that she had to send the rent by postal order and that each time it cost her about €9. She asserted that she was inconvenienced as a result, including the time taken to get the postal order and post it to pay the rent.

She outlined one incident where she had locked her keys in the dwelling and the Respondent’s son attended the dwelling with a Garda when letting her back in. She accepted that she got back into the dwelling on the same day but contended that she was also told that she had no right to stay in the dwelling on the same day.

In cross-examination, she accepted that she had not made contact with the Respondent directly since June, so far as complaints of anti-social behaviour were involved. She did, however, outline that she had made complaints to the neighbouring tenants and had talked to them about noise. She denied making any derogatory remarks to any other parties. She clarified that the incident recorded occurred on the 14th June and had occurred despite her trying to avoid it. She stated that she saw the Respondent’s car arriving and then leaving such that she thought they had left and that it was only as she went to get into the dwelling that she met the Respondent and his wife, whereupon she was harassed, per the recording supplied.

David Gleeson’s evidence:

Mr. Gleeson stated in evidence that he resides in the same square as the Appellant, albeit not in the same building. He stated that he regularly visited the dwelling but accepted that he had not directly witnessed any anti-social behaviour since the previous Tribunal hearing in April. He asserted that, in his opinion, the Appellant’s state of mind had suffered as a result of the ongoing situation and the absence of a resolution. He stated that the fundamental issue from her perspective was the fact she was not being allowed peaceful occupation of the dwelling. In cross-examination, he accepted that he was not an expert but merely asserting that from his observation the Appellant’s state of mind had suffered.

Appellant’s final submissions:

The Appellant’s solicitor submitted that the prolonged noise she suffered from, as she lives alone, caused her upset, anxiety and stress. He contended that the actions of the Respondent in visiting the dwelling with Gardai were intimidating and part of a concerted effort to get rid of the Appellant. Her solicitor stated that the Appellant was deserving of sympathy and that her evidence had to be listened to, even though the Appellant occasionally found it difficult to express herself. He also sought her legal costs, as outlined in her written application, where there had been a number of disputes and issues with termination notices, and where the Appellant was not experienced with the procedures required to be followed.

Respondent Landlord’s Case:

The Respondent Landlord initially proposed calling a previous tenant of another dwelling in the same building, Clara White, and submitting a letter from her. However, given that she vacated the dwelling prior to the previous hearing on the 1st April, and given the finding of the Tribunal that those issues had been determined at the previous hearing, the Tribunal indicated that it did not see the relevance of the proposed evidence to the issues remaining in dispute. The Respondent’s solicitor indicated that it concerned the Appellant’s credibility, in circumstances where the Appellant had previously denied that the witness had ever resided in the building, but that, in light of the Tribunal’s finding on the preliminary matter, was not going to call her evidence.

Vincent Edward Gibson’s evidence:

Mr. Gibson, the Respondent’s son, indicated that on the 22nd June, 2015, he received a phone call from the Appellant and attended at the dwelling within two hours. He indicated that he was very anxious to protect himself and requested a Garda join him, also indicating that the Garda was there to witness him letting the Appellant back into the dwelling. He stated that duplicate keys were cut and were left at the Garda station for the Appellant to collect, albeit the Appellant subsequently contacted him to say she had found her keys. He indicated that a number of days later the Appellant again contacted him to advise him that she had lost her keys, whereupon he delivered the duplicate keys to her on the 26th June. He also indicated that the Appellant had asked him on the 22nd June to contact representatives to get her alternative accommodation and that he believed she had been offered such accommodation. In respect of noise complaints, he stated that there was no noise when he was at the dwelling on the 21st June, and that he had also been made aware of allegations of noise from the Appellant.

Under cross-examination, he stated that he did not know the Garda who accompanied him to the dwelling and that he had never met the Garda before. He re-iterated that the reason for her attendance was his protection and that he refuted any allegation of intimidation. He stated that he attended the dwelling regularly to tend to the garden and to protect the property, at day and night, and that he was not aware of any anti-social behaviour or noise. He asserted that he spoke to most tenants when noise complaints were made, throughout the summer, and that he talked to tenants on an ongoing basis. He indicated that he only inspected the external common areas and did not inspect the individual flats internally unless invited to do so.

Gerard Bracken’s evidence:

Mr. Bracken indicated that he was a current tenant on the 2nd floor of the building. He stated that he did not agree with the noise complaints. He asserted that he generally heard doors opening and closing and some light chatter but that in his five and a half years in the dwelling, he had not had any noise difficulties and that there was no noise that interfered with his study or sleep. He indicated that his dwelling was directly above one of the two dwellings let to Brazilian students. However, he stated that he did occasionally hear arguments between the Appellant and the Brazilian tenants, including raised voices, albeit he indicated that he had never made a complaint to the Respondent about noise. He also recalled one incident where the Appellant called other tenants “animals”. In cross-examination, he stated that he had only visited the Appellant’s dwelling three times over his five years in the dwelling but further claimed that he had never heard noise while visiting her flat.

Henrique Lopes Ferreira’s evidence:

Mr. Lopes Ferreira stated that he lived downstairs in the building, albeit in the flat closest to the front of the building, not the flat at the rear directly beneath the Appellant’s dwelling. He indicated that he had lived there for approximately seven months. He disagreed with the evidence given by the Appellant and stated that her complaints sometimes arose when all the tenants in the two lower flats were doing was talking. He stated that she did not complain directly but had kicked the door of the downstairs flat and resorted to shouting. He claimed that the Appellant had screamed “animals” and “terrorists” and had also said it was “not carnival”. He stated that it was not possible to hear people talking in neighbouring apartments in the building and that while there was occasionally music played in his apartment, it was background music and that the noise the Appellant complained of was usually only talking. He also stated that he had complained to the Respondent about the Appellant’s behaviour and had provided the Gardai with a video recording of her screaming and shouting, and following him to college. In cross-examination, he stated that he was unaware whether or not the Appellant had ever made complaints to the Gardai. He accepted that he had never received complaints from the Appellant about noise when he was in the apartment alone. He also accepted that he socialised regularly with the tenants in the other ground floor apartment.

Patrick Vincent Gibson’s evidence:

The Respondent accepted in evidence that the recording supplied by the Appellant was a recording of him and his wife. He stated that it was the first meeting that had ever occurred between the Appellant and his wife. In respect of the reference to the Gardai visiting the dwelling in the recording, he stated that that was a reference to the complaint that had been made by the neighbouring tenants to the Gardai about the Appellant. He claimed that the actions of the Appellant caused him distress and upset. He indicated that he had not received any complaints from any other tenants concerning noise. He stated that he had owned the building for about forty years and that while there were some stud walls in the building, even the solid walls allowed some noise through, given their construction, and that it was possible that you could hear neighbours chatting, albeit it would not be possible to make out the words of the conversation. He contended that the dispute process caused him stress, upset and tension which he was not able to tolerate, in particular where he is good friends with Mr. Conlon, the next door neighbour. In cross-examination, he stated that he had been a landlord for years and was used to dealing with tenants. He accepted that there had been three different termination notices served. He further refuted any allegation that he needed to bring Gardai with him to the building, as he visited each Sunday to put the dustbins out, albeit he accepted that he did not deal directly with tenants on such occasions.

Respondent’s final submissions:

The Respondent’s solicitor relied upon the written submissions furnished in advance and asserted that it was clear from all the evidence that the Appellant continually contended that others were lying when it was not possible to corroborate those assertions. He stated that she had subpoenaed her 89 year old neighbour but that his evidence did not corroborate her version of events and that he did not see how she could be entitled to damages, in particular where she had made disingenuous and misleading allegations of bullying in an attempt to fit a picture of harassment. In light of the spurious nature of the Appellant’s claim, the Respondent’s solicitor also sought his legal costs.

**6. Matters Agreed Between the Parties**

The parties agreed that the Appellant was still residing in the dwelling and that rent was currently paid up to date. The Respondent agreed that bank account details were not provided until May, 2013, despite the finding in 2011 that they had to be provided.

**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 thereof, are set out hereunder.

Finding 1: The Tribunal find that the issues of alleged harassment and victimisation, alleged anti-social behaviour, alleged breach of the Respondent’s duties in respect of failing to enforce tenant obligations and the alleged failure to complete rent allowance documentation are res judicata, insofar as they concern events prior to the 1st April, 2015, and were considered by the Tribunal hearing on that date. The Tribunal also find that complaints in respect of those issues, insofar as they concern events after that date, are not res judicata and fall to be considered by the Tribunal.

Reasons:

It is clear from the report of the Tribunal that issued on the 28th April 2015, that detailed evidence was given at the hearing on the 1st April 2015, in respect of alleged harassment, intimidation and victimisation of the Appellant by the Respondent. It is also clear that the Tribunal had a duty to hear and consider that evidence and, if necessary, make findings that such behaviour was in breach of obligations under the Act. The Tribunal report records no finding of breach of duty and, as such, where the evidence was heard, it is clear to this Tribunal that a determination was reached that the Respondent was not in breach of his obligations at that time. While it is not necessary for present purposes to determine whether such alleged behaviour, if made out, being discriminatory and penalising behaviour prohibited by s. 14 of the Act, would be such as to make an otherwise valid notice of termination invalid, and whether the Act in fact permits the Tribunal to make such a finding of invalidity, for present purposes, it is clear that the previous Tribunal heard all the evidence, including the evidence given on behalf of the Respondent, and determined that there had not been a breach of obligations by the Respondent. This Tribunal is particularly satisfied that the matters are res judicata where the previous report outlines that that Tribunal only reached its findings having considered all the documentation submitted and the evidence before it. There is no suggestion in the report that the Tribunal did not consider the evidence of alleged harassment, victimisation and intimidation, alleged anti-social behaviour, alleged breach of Respondent’s duties in that respect or the alleged breach of duties in respect of the rent allowance form. In those circumstances, the present Tribunal is satisfied that each of those issues is res judicata as a result of their previous determination. Further, in any event, while it is not necessary to resolve the current dispute, the Tribunal is not satisfied that there is any obligation under the Residential Tenancies Act for a landlord to complete rent allowance documentation or that a failure to do so would be a breach of any obligation under that Act, albeit detailed submissions were not made to the Tribunal in this respect.

Finding 2: We find that the Respondent Landlord was in breach of obligations, in respect of the obligation to allow the Appellant Tenant peaceful and exclusive occupation of the dwelling, in respect of one incident only, insofar as concerns all events since the 1st April 2015, to the date of hearing, such that the Appellant Tenant is entitled to damages in this respect in the amount of €200. However, the Tribunal also find that Respondent Landlord is not otherwise in breach of duties in this respect, nor in breach of the obligation not to penalise the Appellant.

Reasons:

The Tribunal is satisfied that the Appellant Tenant has not proved the existence of any concerted campaign by the Respondent Landlord to intimidate, harass or victimise her, or otherwise penalise her under s. 14 of the Act, in particular in light of the evidence given by the parties concerning the relatively low frequency of interactions between the parties, and the limited contact between them since the 1st April, as accepted by the Appellant Tenant. However, the Tribunal is satisfied that the incident that occurred when the Respondent and his wife visited the dwelling, and the altercation that followed, as recorded by the Appellant and submitted to the Tribunal, did constitute an unlawful interference with the Appellant’s peaceful and exclusive occupation of the dwelling. As such, the Tribunal is satisfied that, in this respect, the Appellant has proved that the Respondent was in breach of his obligations under section 12(1)(a) of the Act. The Tribunal also notes that the Respondent did not object to the submission of that recording and did not dispute the accuracy of the recording. The Tribunal is satisfied that this was a stressful incident and caused the Appellant unnecessary suffering and stress and that, accordingly, the Appellant is entitled to damages in this respect in the amount of €200, having regard to the level of stress the incident caused but also having regard to its limited nature. However, the Tribunal is also satisfied that the single incident is the only breach of obligation in this respect that the Appellant has proved, having regard to the lack of any independent evidence in respect of the other alleged breaches of obligation, the evidence given by the Respondent denying any other breaches of obligation in this respect and the limited contact between the parties since the 1st April 2015.

Finding 3: We find that the Respondent Landlord was in breach of duties in failing to provide the Appellant Tenant with his bank account details between September 2011 and May 2013, that the Appellant suffered inconvenience and loss as a result such that she is entitled to damages of €300 in this respect and that this sum, along with the sum of €200 outlined at finding 2 above, should be paid to the Appellant within 14 days of the issue of the Order of the Board.

Reasons:

The Tribunal is satisfied that there was a previous finding made in September 2011 that the Respondent had an obligation to furnish the Appellant Tenant with her bank account details and that the Respondent accepts this was not done until May 2013. The Tribunal is also satisfied that while the issue was raised by the Appellant during the previous hearing on the 1st April, the issue in respect of the continuing loss suffered by the Appellant as a result of the failure of the Respondent to provide her with those details after the determination of September 2011 was not considered by that Tribunal nor has it previously been determined. It is clear from the evidence of the Appellant that this failure caused her significant additional loss, as she had to pay her rent by postal order for a period of approximately 20 months. Having regard to her evidence in respect of the cost of this, at approximately €9 per postal order, in addition to the inconvenience suffered in having to visit the post office each month rather than paying by standing order or otherwise directly into the bank account of the Respondent, the Tribunal is satisfied that it is appropriate to award the sum of €300 in respect of the loss and inconvenience suffered. In respect of the total sum of €500 thus awarded, the Tribunal is satisfied that it is appropriate to allow 14 days to pay this sum, bearing in mind the size of the sum, the nature of the inconvenience suffered by the Appellant, her right to a prompt remedy and the absence of any detailed evidence concerning the means of the Respondent.

Finding 4: We find that the Appellant Tenant has not proved that the neighbouring tenants are in breach of their obligations under their tenancies in respect of anti-social behaviour, nor has the Appellant Tenant proved that the Respondent Landlord is in breach of his obligation to enforce the obligations of those tenants.

Reasons:

The Tribunal is satisfied that all the independent evidence given tends to show that there is no anti-social behaviour on the part of any of the tenants of the dwelling. In particular, the evidence given by Mr. Bracken, a fellow tenant of the dwelling, does not show any anti-social behaviour, nor does the evidence given by Mr. Conlon. While the recordings submitted by the Appellant Tenant do evidence voices, they do not, of themselves, give evidence of anti-social behaviour, in particular as they are limited evidence and do not show the required degree of persistence as required under s. 17 of the Act. Also, having regard to the evidence of Mr. Lopes Ferreira, the Tribunal is not satisfied that the behaviour complained of is anything more than normal living noise caused by the occupation of individual dwellings by multiple tenants. As such, the Tribunal is not satisfied that the behaviour of the neighbouring tenants is in breach of obligation. Further, in light of the obligation on a person under s. 77 to refer the issue to the Landlord in question, and in light of the evidence of the Appellant Tenant concerning the limited contact between herself and the Respondent Landlord since the 1st April, 2015, the Tribunal is not satisfied that the Appellant Tenant took all reasonable steps under s. 77 to resolve the issue prior to referring the matter to the Board. The Tribunal is further satisfied that the Appellant failed to take reasonable steps under s. 77 having regard to the fact the previous hearing was on the 1st April, 2015, and the fact that the Appellant Tenant’s subsequent application to the Board for dispute resolution was received by the Board on the 10th April, only 9 days later, and the absence of any evidence of any steps being taken during that time by the Appellant to contact the Respondent. Also, from the evidence given by the Respondent, it is clear and uncontroverted that the Respondent is in regular contact with his other tenants and the Appellant has not proved that the Respondent has failed to deal with the complaints that were made, or that he has ignored them or otherwise not taken appropriate steps to ensure that the other tenants comply with their obligations.

Finding 5: We find that neither the Appellant Tenant nor the Respondent Landlord have proved any entitlement to legal costs.

Reasons:

The Tribunal is satisfied that neither side has proved any entitlement to legal costs, in the absence of any exceptional circumstances as required by s. 5(4) of the Residential Tenancies Act 2004. While it is clear there were a number of matters in dispute that had previously been determined by the Tribunal on the 1st April, it is also clear that a number of other matters remained validly in dispute and required determination. It is also clear that the Respondent was in breach of obligations in at least two respects and that the Appellant’s application and appeal were not frivolous, trivial or vexatious, such that the Tribunal would have been entitled not to deal with the dispute under ss. 84 and 85 of the Act of 2004. Accordingly, where there were validly a number of issues before the Tribunal, where the Appellant proved a breach of obligations in respect of some of those issues, and where the Respondent proved compliance with his obligations in respect of other issues, the Tribunal is satisfied that there are no exceptional circumstances such as would justify an order for legal costs or expenses.

**8. Determination:**

**Tribunal Reference TR0715-001275**

**In the matter of Mary Duniyva (Tenant) and Patrick Gibson (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Respondent Landlord shall pay to the Applicant Tenant the sum of €500 within 14 days of the date of issue of the Order of the Board, being €300 damages in respect of the failure to provide the Applicant Tenant with the bank account details of the Respondent Landlord and €200 damages in respect of a breach of the obligation to allow the Applicant Tenant peaceful and exclusive occupation of the dwelling at 58 Grosvenor Square, Rathmines , Dublin 6.

2. The Applicant Tenant’s application is otherwise not upheld.

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

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 07 October 2015.

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| **Signed:** | H:\Common\Signatures\Adjudicators\Eoin Byrne.png |

**Eoin Byrne Chairperson**

For and on behalf of the Tribunal.