**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001277 / Case Ref No: 0415-18052**

**Appellant Landlord:** Desmond O'Donoghue

**Respondent Tenant:** Ann Rigney, Stephen Rigney

**Address of Rented Dwelling:** 50 Innisfallen Parade, North Cir Road , Dublin 7, D07N2NT

**Tribunal:** Kevin Baneham (Chairperson)

John Keane, Elizabeth Maguire

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

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

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| **Attendees:** | Desmond O’Donoghue (Appellant Landlord)  Louise O’Donoghue (Witness and Daughter of the Appellant Landlord)  Nadine O’Donoghue (Witness and Daughter of the Appellant Landlord)    Stephen Rigney (Respondent Tenant) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On the 24th April 2015, the Tenants referred a dispute to the Private Residential Tenancies Board in relation to deposit retention. As this Tenancy Tribunal hearing arises from the appeal of the Landlord, the Landlord is referred in this report as the “Appellant Landlord” and the Tenants as the “Respondent Tenants”.

In the adjudication report, the adjudicator determined as follows:

“I determine that the Respondent Landlord shall pay the total sum of €1240.00 to the Applicant Tenant, within 28 days of the date of issue of the Order, being the balance of the unjustifiably retained security deposit of €1100.00, having deducted €60.00 in damage to the dwelling in excess of ordinary wear and tear, together with damages of €200.00 for its unlawful retention, in respect of the tenancy of the dwelling at 50 Innisfallen Parade, North Circular Road, Dublin 7.”

On the 16th July 2015, the daughter and Representative of the Appellant Landlord lodged an appeal where she challenged the findings and determination on the grounds that the Respondent Tenant had breached Tenant obligations and caused damage to the dwelling.

The appeal was referred to a Tenancy Tribunal by the board of the Private Residential Tenancies Board. In accordance with sections 102 and 103 of the Residential Tenancies Act (‘the Act’), a Tenancy Tribunal was constituted with Kevin Baneham as Chairperson and Elizabeth Maguire and John Keane appointed as members.

The parties were served with notice of the date, time and venue of the Tenancy Tribunal and with copies of the Tribunal Procedures. The Tenancy Tribunal convened at 2.30pm on the 22nd October 2015 in the Tribunal room at the offices of the Private Residential Tenancies Board in Dublin.

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

* 1. PRTB File

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

None.

**4. Procedure:**

At the commencement of the hearing, the Chairperson asked the parties present to identify themselves and to say in what capacity they attended the Tenancy Tribunal. The Chairperson confirmed with the parties that they had received the relevant papers from the Private Residential Tenancies Board in relation to the case and that they had also received the Tribunal Procedures.

The Chairperson explained the procedure that would be followed; that the Tribunal was a formal procedure but that it would be held in an informal a manner as was possible; that the appellant landlord would be invited to present his case first; that there would be an opportunity for cross-examination by the respondent tenants; that the respondent tenants would then be invited to present their case, and that there would be an opportunity for cross-examination by the appellant landlord. Both parties would be given the opportunity to make final submissions.

The Chairperson stressed that all evidence would be taken on oath or affirmation and would 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 six 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 only be appealed to the High Court on a point of law.

**5. Submissions of the Parties:**

Evidence and submissions of the Appellant Landlord:

At the hearing, the Appellant Landlord outlined that he incurred costs beyond the value of the deposit of €1,100 in remedying issues at the end of the tenancy. The losses included outstanding rent and the cost of repairs and the disposing of waste. He submitted a receipt for €100 for pest control and an estimate of €771.80 for repairs. The Appellant Landlord outlined that he resumed occupation of the dwelling on the 6th January 2015. He said, however, that he could not live in the dwelling because of its condition. He said that it was on the 17th January 2015 that the Respondent Tenants removed the last of their furniture from the dwelling.

Commenting on the tenancy, the Appellant Landlord said that the Respondent Tenants had been their next door neighbours when he lived in the dwelling. They had encountered difficulties with their then Landlord and the Appellant Landlord said that he reached a gentleman's agreement with the Respondent Tenants to allow them occupation for a reduced rent, but that this arrangement was not intended to be a tenancy. He said that the Respondent Tenants took occupation of the dwelling on the 5th April 2014.

The Appellant Landlord said that he spoke with the Respondent Tenants in October 2014 to say that the lease would not be renewed. He said that he did not need to serve a notice of termination as the lease agreement of the 5th April 2014 would expire the 31st December 2014. At this visit, he was accompanied by his daughter and he raised with the possibility of selling the dwelling. He described the Respondent Tenant as reacting in an irate way and threatening legal action.

In respect of the central heating, the Appellant Landlord said that, in December 2014, he travelled from Kilkenny to the dwelling on receiving the telephone call from the Respondent Tenant. He attempted to rectify the problem and when this was not successful, he established that rats had eaten at the pipes. He supplied briquettes to the Respondent Tenants so that they had a source of heat until the central heating was repaired. He said that he observed that the Respondent Tenants had put down mice traps and that he should have been told of the infestation.

One daughter of the Appellant Landlord said that in late May or early June 2014, she had observed that the Respondent Tenants had drilled a hole to the front of the house and run a wire into the dwelling. She said that this looked dreadful. The Respondent Tenant had not obtained permission to do this and apologised for this. The Appellant Landlord said that the wire remained in place.

In respect of the bathroom window, the Appellant Landlord said that he discovered that the handle was broken on a visit to the dwelling and the Respondent Tenant informed him that it had broken in July 2014. He was later required to change the lock and install a new handle.

One daughter of the Appellant Landlord said that she was not happy that the Respondent Tenants had informed the local authority that she no longer lived in the dwelling. As a result, she was no longer listed on the Register of Electors for the dwelling.

In respect of the events of the 6th January 2015, the Appellant Landlord and his daughter described how they entered the dwelling and found one Respondent Tenant still cleaning. She asked for a few more days. They had no choice to leave some of their possessions in the dwelling. They also heard and saw rats in and around the dwelling and this was a great concern to them. There had never been rats before and they had to contact a rodent exterminator to attend to the problem. They said that they were not aware of the local authority service in respect of pest control and that they had previously kept cats in the dwelling. They agreed that the lease for this tenancy provided that the Respondent Tenants were not permitted cats. In respect of the condition of the dwelling, they said that there were biro marks on the walls and that they had spent €500 on painting the dwelling prior to this tenancy. There was also biro marks on the door and damage to the Italian dining room table. There was also damage to the microwave beyond normal wear and tear.

Addressing the photographs, the Appellant Landlord said that one showed the dirty fireplace and that, at the start of the tenancy, he had asked the Respondent Tenants not to use the fireplace. Other photographs shows bags in the yard and he said that he had spent €25 to dispose of them. The photographs also show weeds growing in the yard and that the lease provided that the yard should have been left in the same condition as of the start of the tenancy. He outlined that the Respondent Tenant had left work shirts behind in the dwelling and referred to a photograph of this. He said that the wall to the bathroom was damaged in order to access the pipes and referred to a photograph of this. He referred to photographs depicting the condition of the internal walls, including biro and scuff marks as well as ripped wallpaper. He referred to a photographs showing the box installed by the broadband provider and damage to the plaster caused by this. He also said that photographs depicted damage to the front door and a crack on an external wall that occurred during the tenancy and the drill hole and wire entering the dwelling. He said that the Respondent Tenants had left a double bed in the dwelling, meaning that he could not use this room until they removed it. He said the plugholes were dirty and unhygienic and that the kitchen sink had been discoloured. He said that there were green stains on the landing carpet. He said that one photograph captures rats having chewed through a bag kept underneath the sink.

The Appellant Landlord stated that he raised the condition of the dwelling with the Respondent Tenant when he called to the dwelling on the 16th January 2015 to collect the rest of his furniture. He described the Respondent Tenant as becoming irate and that this caused him to become stressed.

The Appellant Landlord outlined that the dwelling had been his family home for 35 years and that he had not vacated the dwelling until the 5th April 2014, at which time the tenancy commenced. He said that he had now advertised the dwelling as for sale and that it had not yet been sold.

Replying to the submissions of the respondent tenant, the Appellant Landlord said that his daughter had been available for him to raise the issues of the rodents and the window. His daughters had not been able to empty out the closet because when they called to do this, the hall was blocked by the Respondent Tenants’ possessions. He said that the garden was paved and small and should have been maintained better. He said that he did not believe that professional cleaners had attended the dwelling because it had been filthy.

Evidence and submissions of the Respondent Tenants:

Addressing the events around the commencement of the tenancy, the Respondent Tenant in attendance at the Tribunal outlined that it was clear that this was always a Landlord-Tenant relationship. They would not have let the dwelling had they known that the Appellant Landlord would seek to end their tenancy within the period of one year. They had lived in the neighbouring dwelling and knew the Appellant Landlord and his family during this time. He said that the Appellant Landlord had not followed through on an undertaking to clear a closet and shed of personal items.

In respect of the broadband and cable television connection, the Respondent Tenant outlined that he had raised this issue with the Appellant Landlord, saying that the existing connection would not carry broadband. He acknowledged that he should have obtained the consent of the Appellant Landlord prior to running a new wire through the front external wall of the dwelling.

In respect of rent, the Respondent Tenant said that he had originally paid rent by direct debit. In May or June 2015, the Appellant Landlord had contacted him to ask that rent be paid in cash. He stated that the Appellant Landlord said that it was a problem for him that the narrative of the direct debit referred to the monthly payments as being “rent”. The Respondent Tenant said that the rent was then paid in cash.

The Respondent Tenant said that on the 7th October 2014, he received a telephone call from the local authority in relation to the identity of residents of the dwelling. This was for the purposes of updating the Register of Electors. He informed the local authority the names of the adults who resided in the dwelling. The Respondent Tenant said that on the 8th October 2014, the Appellant Landlord visited the dwelling and raised his (the Appellant Landlord’s) tax liabilities and that this became a heated conversation. The Appellant Landlord also said that the tenancy would end in January 2015; the Respondent Tenant replied that he was unhappy with such a short tenancy. The Respondent Tenant said that no formal notice of termination had been served by the Appellant Landlord and the Appellant Landlord had not been agreeable to be flexible on dates.

In respect of the rodent issues, the Respondent Tenant said that he believed the problem related to mice and not to rats. He had not had similar problems when living in the house next door. He had initially heard scratching in the walls and saw a mouse in late November or early December 2014. He attempted to deal with the problem himself by laying down mousetraps. He said that nothing they did in the dwelling caused the rodent infestation.

In respect of the bathroom window, the Respondent Tenant said that the window and handle did not work properly and could not be opened or closed from a date in August or September 2014. He did not notify the Appellant Landlord of this issue as he knew he was ill. He described the issue of the window as not being a big deal. He said that he was grateful that the heating issue was addressed so promptly.

The Respondent Tenant outlined that he and his spouse vacated the dwelling on the 6th January 2015 and dropped in the keys on the following day. He had arranged for two cleaners to attend the dwelling on this date. He outlined that it was difficult to complete the move in the period after Christmas and they asked for more time to collect everything. A double bed was removed on the 15th or 16th January 2015 as this was when the Appellant Landlord was available to allow them entry. The Respondent Tenant said that the dwelling had been returned in the same condition as it had been at the start of the tenancy and that he had passed the dwelling on the way to the Tribunal and observed the broadband wire still in place.

Giving his response to the evidence of the Appellant Landlord arising from the photographs, the Respondent Tenant said that the fireplace was used when the central heating was broken. He said that the photographs of the bags in the yard show that they had been tagged and that the Respondent Tenants had left before the collection day. He had done his best to tend to the weeds. The other bags and items were for recycling. He said that the shirts had been left behind as they were under pressure to vacate the dwelling and believed that they had until the 7th January 2015 to vacate. He said that the hole in the bathroom skirting board had been made by the Appellant Landlord and that the gap in the skirting board in the kitchen was preexisting. He stated that the front door was in the same condition as it was at the start of the tenancy and that he had attempted to clean off the marks on the internal walls. They had been made by his children. He said that the wallpaper was always in the same ripped condition and that there had always been the carpet stains and the crack to the external wall. He acknowledged that the plughole in a basin could have been cleaner. He said that the photograph of the bathroom tiles depicted the grouting and not dirt. He said that he wanted high speed broadband and it was the engineer who drilled through the wall and installed the connection box. The Respondent Tenant said that some of the items left behind were to go to a charity shop and in the case of the double bed, they had wait until the shop was able to collect it. Other items were collected on the 13th January 2015 and this was when the Respondent Tenant enquired first after the deposit. This led to a heated discussion, where the Appellant Landlord raised the issue of the hole being drilled through the front wall and he would not permit the respondent tenant to take photographs of the inside of the dwelling.

**6. Matters Agreed Between the Parties**

The parties were in agreement that the Respondent Tenants paid a deposit of €1,100 that was not returned to them and that the tenancy commenced on the 5th April 2014.

**7. Findings and Reasons:**

Finding: The Respondent Tenants occupied the dwelling under a tenancy.

Reasoning: It was submitted by the Appellant Landlord that his initial agreement with the Respondent Tenants was that their occupation of the dwelling would not be subject to a tenancy. Having viewed the documentation and the circumstances of the tenancy, the Tribunal concludes that the respondents held a tenancy of the dwelling.

Finding: The Appellant Landlord did not serve a valid notice of termination.

Reasoning: It was submitted by the Appellant Landlord that, as a matter of law, he was not required to serve a notice of termination to terminate the tenancy. It was submitted that this was because the tenancy was subject to a fixed term tenancy that expired on the 31st December 2014. The Tribunal does not agree with this submission. The Respondent Tenants acquired Part 4 security of tenure after six months’ occupation of the dwelling and in these circumstances, a Landlord must rely on a Tenant breach or one of the grounds provided in section 34 of the Residential Tenancies Act to terminate the tenancy. While the Appellant Landlord referred to the possibility of selling the dwelling in the October 2014 conversation, this does not meet the level of intention required by the third ground of the Table attached to section 34. Furthermore, Part 5 of the Act requires that a tenancy be terminated by a process or procedure provided in the Part, i.e. the service of a written notice of termination. There was no written notice of termination in this case.

Finding: The tenancy came to an end on the 6th January 2015.

Reasoning: The Tribunal considers that the 6th January 2015 is the final day of the tenancy as this was the day the Respondent Tenants surrendered possession of the dwelling to the Appellant Landlord. From that day on, the Respondent Tenants required the permission of the Appellant Landlord to enter the dwelling.

Finding: There was no breach of Tenant obligation on the part of the Respondent Tenants in informing the local authority of who resided in the dwelling.

Reasoning: The daughter of the Appellant Landlord criticised the Respondent Tenants for informing the local authority of who resided in the dwelling. The local authority had sought this information in updating the Register of Electors. Given that the Respondent Tenants were fielding a query from the local authority in its capacity as the registration authority, pursuant to the Electoral Acts, there is no basis to criticise their accurate account of who resided in the dwelling.

Finding: The Respondent Tenants breached their obligations in relation to the damage caused to the interior of the dwelling by the installation of the broadband connection and the pen marks to the wall. The Respondent Tenants are not liable for any of the other costs claimed by the Appellant Landlord.

Reasoning: Having considered the documentary, oral and photographic evidence submitted by the parties, the Tribunal finds that the Respondent Tenants breached Tenant obligations under section 16(f) of the Residential Tenancies Act with regard to the damage caused to the installation of the broadband connection box and the pen marks to the wall. The Tribunal assigns a cost of €100 to the damage caused by the installation of the broadband connection box and €200 for paintworks to address pen marks to internal walls. The Tribunal finds that the Appellant Landlord is not entitled to claim damages for other issues, including the cost of pest control and exploring the source of the infestation, the bathroom window, the cleaning of the dwelling, the microwave or the landing carpets. The Tribunal finds that the Respondent Tenants were not responsible for the rodent infestation. In doing so, it notes that there had been no such issue in the time that the parties were next door neighbours. It finds that if the infestation had been caused by the use of the dwelling by the Respondent Tenants, the Appellant Landlord would have been aware of such an issue in the time that they were neighbours. The Tribunal also notes that the dwelling is situated in an urban area, close to a canal. The Tribunal considers that the microwave, the dining room table, the scuff marks on the wall, the front door, the crack on the external wall, the sink, the basin and the bathroom window to be normal wear and tear. The landing carpet and wallpaper were pre-existing issues and there was no breach of Tenant obligations in these matters. The Respondent Tenants were not in breach of an obligation with regard to the yard and the tagged rubbish bags and recycling left in the yard.

Finding: The Respondent Tenants are entitled to damages of €100 for the retained portion of the deposit.

Reasoning: The Tribunal considers that it is appropriate to award the Respondent Tenants €100 in damages for the retained portion of their deposit. Given its findings that the majority of the deposit should be returned to the Respondent Tenants and the period of time since this Tenancy ended, the Tribunal assesses that an award of €100 is appropriate. The deposit paid by the Respondent Tenants was €1,100 and having deducted the €300 for deterioration caused to the dwelling beyond normal wear and tear and added the €100 due to the Respondent Tenants in damages, the amount to be paid by the Appellant Landlord to the Respondent Tenants is €900. Given the period of time since the Tenancy came to an end, the Tribunal considers that the payment of €900 shall be paid by the Appellant Landlord to the Respondent Tenants within 14 days of the Determination Order.

**8. Determination:**

**Tribunal Reference TR0715-001277**

**In the matter of Desmond O'Donoghue (Landlord) and Ann Rigney, Stephen Rigney (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Landlord shall pay the total sum of €900 to the Tenants within 14 days of the date of issue of the Order, this amount being €800, the remainder of the deposit of €1,100, and €100 in damages for the unlawful retention of this portion of the deposit, having deducted €300 for deterioration caused to the dwelling beyond normal wear and tear, in respect of the tenancy of the dwelling at 50 Innisfallen Parade, North Circular Road, Dublin 7.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 12 November 2015.

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| **Signed:** |  |

**Kevin Baneham Chairperson**

For and on behalf of the Tribunal.