**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001294 / Case Ref No: 0215-16751**

**Appellant Tenant:** Mary Mc Mahon

**Respondent Landlord:** Paul Murphy

**Address of Rented Dwelling:** 33 Knocklyon Gate, Knocklyon , Dublin 16, D16YH97

**Tribunal:** Vincent P. Martin (Chairperson)

Gene Feighery, John Tiernan

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

**Date & time of Hearing:** 10 September 2015 at 2:30

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| **Attendees:** | Mary Mc Mahon (Appellant Tenant)  Paul Murphy (Respondent Landlord) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 16 February 2015 the Applicant Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act. The matter was referred to a mediation which took place on 22 June 2015. The statement of mediation reported that no agreement was reached between the Applicant Tenant and the Respondent Landlord, in respect of the tenancy of the dwelling known as 33 Knocklyon Gate, Knocklyon, Dublin 16.

Subsequently a request to refer the matter to the Tribunal was received from the Applicant Tenant on 24 July 2015. The grounds of the request related to alleged breach of landlord obligations and deposit retention, and said application was approved by the Board on 07 August 2015. The PRTB constituted a Tenancy Tribunal and appointed Vincent P. Martin, Gene Feighery and John Tiernan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Vincent P. Martin 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 10 September 2015 the Tribunal convened a hearing at Board Room, PRTB, 2nd Floor, O'Connell Bridge House, D' Olier Street, Dublin 2.

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

* 1. PRTB File

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

The Respondent Landlord submitted the following documents:

1. An expert report compiled by Omega Surveying Services.

2. A copy of an email from the Estate Manager of the Property Management Company dated 21 October 2014.

3. A number of photographs.

4. Copies of further readings/review of the dampness level in the dwelling carried out in January 2015.

5. Copy of instruction manual (‘operating and installation instructions) for the washer dryer machine in the dwelling.

6. Letter from Joanna Troughton, Environmental Health Officer, South Dublin County Council dated 24/10/ 2014.

The Applicant Tenant did not oppose the Respondent Landlord’s application seeking to have these documents submitting at the hearing stating that she already had sight of most of these documents.

**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 conducted in a manner as informal as possible. The Chairperson said that members of the Tribunal might ask questions of both parties from time to time. He 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. He stated that the party who applied to the PRTB for dispute resolution (the Applicant Tenant) would be invited to present her case first and that there would be an opportunity for cross-examination by the Respondent Landlord. The Respondent Landlord would then be invited to present his case, and that there would be an opportunity for cross-examination by the Applicant Tenant. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission. The Chairperson said that he 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. He also stated 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 he 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 this Hearing, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court only on a point of law. All persons giving evidence to the Tribunal were then sworn in.

**5. Submissions of the Parties:**

The Applicant Tenant’s Case:

Evidence of Mary McMahon (the Applicant Tenant)

She stated that herself and her long term co-tenant Aisling O’ Connell moved into the dwelling in March 2014 after first learning about the dwelling being available for rent from reading an advertisement on the internet. She stated that they signed a written tenancy agreement together. She stated that her said co-tenant has given her authority to act for both of them and stated that she understood that they have a joint and several responsibility for the dwelling.

She stated that on Sunday 12th October 2014 she stated that having removed the mattress cover from her bed, she became alarmed when she spotted staining on the mattress which she submitted was caused by a mould problem. She stated that on Thursday night the 16th October 2014 she observed mould on one of her favourite belts which was hanging on a clothes stand located in her bedroom. She said that on Saturday the 18th October 2014 she met the Respondent Landlord in the dwelling to discuss the mould problem and stated that the meeting was amicable and not aggressive adding that heretofore she had a very good relationship with the Respondent Landlord and his wife both of whom she submitted were always very facilitating.

She stated that as soon as she became aware of the problem in her dwelling, some of her friends and work colleagues advised her to vacate the dwelling as soon as possible due to serious on-going health concerns/risks associated with residing in a dwelling that has a mould problem.

She stated that the Respondent Landlord, upon viewing the dwelling for himself and seeing at first hand the damage which she alleged the mould had caused to some of her belongings, agreed to pay for her to stay in a B&B, allowed her to break her fixed term tenancy agreement and agreed to refund her the full deposit. She stated that because she was also concerned about incurring loss and expense resulting from further damage being caused to her clothes, she removed some of her more expensive clothing to a B&B in advance of her staying overnight there. She said that the last day on which she stayed overnight in the dwelling was Tuesday the 21st October when at that stage she had chosen to sleep in the living room and not the bedroom which she felt was the room with the most serious mould problem.

She stated that she paid €125.00 to clean her clothes in a local launderette and that she arranged to courier the rest of her belongings to her native County of Kerry which cost her the sum of €147.60 and she vouched for this cost incurred. The Applicant Tenant claimed a total amount of €1766.00 in respect of damage to her personal belongings and referred to an itemised list in support of this claim. She stated that upon leaving the dwelling, she had to stay 10 days in a B&B which cost her the total sum of €350.00 (10 days x €35.00) and also submitted receipts in support of this claim. She stated that she was very fortunate to have managed to secure long-term alternative rental accommodation about a week later. Despite leaving the dwelling she stated that she retained a keen interest in it and was also conscious that her co-tenant was going to stay on for a little while longer than her and therefore sent a text to the Landlord on the following Monday inquiring when his engineer would be calling to inspect the dwelling. She said that the Respondent Landlord had also failed to honour the deposit of the said other resident in the dwelling (Aisling O’ Connell) who vacated the dwelling on 07 December 2014. She stated that she was a very organised person who takes great care of her personal property and that the tenants were seeking the return of their security deposit less the sum of €25.00 which she accepted responsibility for, namely, the replacement cost of a car parking permit.

The Applicant Tenant referred to clauses in the lease agreement, namely, clause 4.2 and clause 4.4, which she submitted were landlord covenants which placed a responsibility on the landlord to, inter alia, permit the tenants to have quiet enjoyment of the dwelling and to agree to maintain the structure of the building and carry out repairs.

The Respondent Landlord’s case

Evidence of Paul Murphy (the Respondent Landlord)

He stated that his spouse, Vivienne Murphy was at all material times the joint landlord. He described the dwelling as a 2 bedroomed ground floor apartment constructed in the late 1990s or early 2000’s.

He stated that the washing machine was a dual-purpose machine as it also dried clothes to a reasonably good degree. In response to a claim by the Applicant Tenant that the tenants did not know and were never informed that the machine also had this dual facility to dry clothes, he conceded that he may not have expressly explained this to the tenants at the commencement of the tenancy but referred to a book of instructions (manual) which was stored in one of the drawers in the kitchen which explained how to operate and fully utilise such machines. He stated that he has since replaced this machine as a result from him having personally broken the said machine’s door. He estimated that this machine had been around 10 years old.

He stated that when he arrived at the dwelling on Saturday the 18th October 2014 to meet the tenants and to inspect for himself the alleged damage to the dwelling and to their personal property (that the tenants claimed was caused by mould) he stated that he observed a very untidy dwelling with clothes strewn everywhere. He said it was, ‘devastation’.

He stated that there was never any issue or dispute regarding rent arrears apart from his claim for loss of 3 weeks rent alleged to have been incurred for one tenant resulting from the Applicant Tenant breaking the fixed term tenancy agreement giving only a couple of days notice. He stated that there was no dispute about rent arrears apart from his specific claim for the said loss of 3 weeks rent.

He accepted that at this meeting on the 18th October 2014 (which lasted for around an hour) he did initially agree to refund her portion of the deposit and agreed to permit her to break the fixed term tenancy agreement by moving out immediately but stated that,

‘I later went back on my word.’

He stated that he subsequently arranged for an expert engineer to inspect the dwelling and compile a report. He referred to the report that he submitted which concluded that there were no serious or fundamental structural defects or design faults in the dwelling responsible for the mould and that it was most likely as a result of occupier use.

He stated that it was August 2014 when Applicant Tenant first noticed the mould problem and not suddenly in the month of October as alleged. In reply the Applicant Tenant accepted that she might have mentioned to the Landlord that she detected a bad smell in the bathroom in August 2014 wrongly believing at that time that same had been rectified in the meantime.

The Respondent Landlord referred to an email written by Andrew Power on behalf of the property management company which manages the development in which the dwelling is situated and in which the said email opined that the damp and mould problem was caused by drying clothes indoors. Under cross- examination he accepted that he did not know whether or not the author of this email had any appropriate expertise.

He accepted that there was a dehumidifier in the dwelling since the commencement of the said tenancy agreement explaining to the Tribunal that in around March/April 2013, the previous tenant who resided in the tenancy had experienced a problem caused by a crack in an outer wall of the dwelling that needed to be re-plastered and the dehumidifier had been provided to assist in drying that work. He said that this problem had been completely resolved and had no connection whatsoever with the subject matter of this dispute.

When asked by the Tribunal to justify retaining the entire security deposit in the sum of €1,150.00, he stated that the Applicant Tenant caused permanent damage to the dwelling in her endeavours to treat what he submitted she wrongly believed was mould including spreading lots of caustic soda in a drawer and on the furniture.

He submitted that this caused him to incur costs of €219.00 in order to replace a chest of drawers and also incurred €59.00 to hire a professional cleaning service. He also submitted that it was necessary to replace 2 bedside lockers at a total cost of €100. He accepted that he had no documentary evidence with him to support this claim.

In relation to the claim made by the Applicant Tenant for the sum of €147.60 for courier costs incurred to transport some of her belonging to her native County, he submitted that this was unnecessary and that in any event he had offered to transport same as he had to travel to County Kerry in his motor car around that time.

In relation to a letter written by Joanna Troughton, Environmental Health Officer, South Dublin County Council dated 24 October 2014 which, inter alia, stated that ‘there was a problem with condensation and mould growth in the master bedroom’, he stated that he disagreed with this said opinion. When questioned by the Tribunal on this he referred to photographic evidence that showed the existence of air-vents in the Applicant Tenant’s bedroom.

He submitted that the Applicant Tenant in hastily leaving the dwelling left some of her clothes and personal belonging behind her, wrongly believing that same were beyond restoration. He adduced in evidence a number of items belonging to the Applicant Tenant which he had arranged to clean at his home submitting that same were in as good a condition as they were immediately prior to the incident occurring which is the subject matter of this dispute. In cross-examination he was asked by the Applicant Tenant whether or not any of the furniture which he replaced was salvageable in similar fashion to the way he managed to restore her garments. In reply he accepted that perhaps some of the damaged furniture could have been restored but huge labour costs would be involved in doing so. He submitted that any damage caused was solely as a result of the actions of the tenants and not due to any structural or ventilation defect in the building.

He also accepted that he agreed to permit the other tenant (Aisling O Connell) to remain on residing in the dwelling for some further weeks at half the normal rent which he described in hindsight was, ‘not a good idea’.

The Chairperson thanked both parties for attending and advised them that following the hearing the Tribunal will prepare a report and make its Determination in relation to the dispute and will notify the PRTB of that Determination.

**6. Matters Agreed Between the Parties**

1. The monthly rent was €1,150.00.

2. Both tenants who resided in the dwelling at the material time when the dispute arose have since vacated the dwelling.

3. It was agreed that the dwelling was in pristine condition at the commencement of the tenancy.

4. The Respondent Landlord received from the tenants a security deposit in the total sum of €1,150.00 which said sum he retains.

5. The tenancy commenced on foot of a written tenancy agreement on 08 March 2014 and the Applicant Tenant fully vacated the dwelling on 25 October 2014.

6. The other resident in the dwelling Aisling O’ Connell was at all material times a co-tenant and she vacated the dwelling on 07 December 2014.

7. Vivienne Murphy was at all material times the joint landlord of the dwelling.

8. It was agreed that the Applicant Tenant accepted responsibility for the replacement of a car parking permit in the sum of €25.00.

**7. Findings and Reasons:**

Having considered all of the documentation before it, and having considered the evidence presented to it by the parties, on the balance of probabilities, the Tribunal’s findings and reasons therefor are set out hereunder.

Finding No. 1: The Tribunal finds that structural defects in the design and/or construction and/or the materials used to construct the building including its location (northerly facing) did not, on the balance of probabilities, cause the mould problem which is the subject matter of this dispute.

Reason:

The Tribunal notes that both parties accepted that the mould problem did exist in the dwelling but that there was a conflict of evidence concerning the cause of the said problem. The Applicant Tenant alleged that the mould resulted from structurally related defect in the dwelling whilst the Respondent Landlord submitted that the mould was caused by the actions and/or omission of the occupiers of the dwelling. The Tribunal finds that there was insufficient evidence including expert evidence presented by the Applicant Tenant to be persuaded, on the balance of probabilities, that structural related defects or omissions as alleged were the primary cause and/or cause of the mould problem which arose. The Tribunal has had regard to the evidence of both parties relating to the presence of air-vents in the Applicant Tenant’s bedroom and prefers the evidence that these were in place and functional.

Finding No. 2: The Tribunal finds that the Respondent Landlords shall pay the total sum of €395.00 to the Applicant Tenant comprising:

-The sum of €220.00 in launderette related costs incurred by the Applicant Tenant.

-The Tribunal allows the Applicant Tenant the sum of €175.00 for 5 days bed and breakfast expenses incurred

Reason:

Both parties agreed that the said inspection meeting (which was arranged by appointment) was at all times very amicable. The Tribunal also accepts that this said meeting was not a rushed affair and lasted for up to one hour. The Respondent Landlord accepted in his oral testimony to the Tribunal that he gave an undertaking at this meeting to cover the Applicant Tenant’s dry cleaning costs, B&B costs and also to return her security deposit in circumstances where he expressly consented to allow her to break the fixed term tenancy agreement. The Respondent Landlord chose to attend this inspection meeting without bringing along the assistance of an expert engineer. The Tribunal finds that the said undertakings which he gave were unequivocal and therefore the Respondent Landlord should not be allowed repudiate same some days later, even in circumstances where both parties at that material time may have acted largely on a mutual mistake and/or possible misapprehension. The Applicant Tenant relied upon and acted specifically on foot of the clear undertakings given by the Respondent Landlord at this said inspection meeting. The said undertakings given by the Respondent Landlord had characteristics of estoppel. The legal principle of promissory estoppel prevents a person who made a promise from reneging on his/her promise when someone else has reasonably relied on the promise and will suffer a loss if the promise is broken.

It was accepted by both parties that during the course of a meeting and inspection of the dwelling which took place on Saturday the 18th October 2014, the Respondent Landlord promised and gave an undertaking to the Tenants to pay for dry cleaning and launderette costs incurred. The Tribunal awards the Applicant Tenant the sum of €125.00 towards dry cleaning costs incurred and the Tribunal finds that the Applicant Tenant properly vouched the said claim in the sum €125.00. In addition the Tribunal considers the sum of €100.00 reasonable compensation for other laundry expenses incurred by the Applicant Tenant but the Tribunal declines to award the Applicant Tenant the further sum claimed in the amount of €147.60 alleged to be incurred for couriering some of her private belongings to County Kerry on grounds that it is a disproportionate, unreasonable and an excessive claim and not one that the Respondent Landlord expressly agreed and/or promised to pay. The Tribunal allows the Applicant Tenant the sum of €175.00 for 5 days (€35.00 x 5) bed and breakfast expenses incurred which in given circumstances, the Tribunal considers to be reasonable, appropriate and proportionate.

Finding No. 3: The Tribunal finds that the Respondent Landlord has unjustifiably retained €1,125.00 of the entire security deposit in the total sum of €1,150.00 and deems that same should be returned to the tenants.

Reason:

The Tribunal has reached this finding having taken into consideration the given circumstances of this case, Finding No.2 above and the reason thereof, together with the Tribunal noting that Applicant Tenant accepted that she was liable for the sum of €25.00 in connection with the replacement of a parking permit. The Tribunal notes that the Respondent Landlord did not put forward any other ground or reason (not related and/or connected to the mould problem) for justifying the retention of the security deposit.

The Tribunal found both witnesses to give credible oral testimony.

**8. Determination:**

**Tribunal Reference TR0715-001294**

**In the matter of Mary Mc Mahon (Tenant) and Paul Murphy (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Respondent Landlords shall pay to the Applicant Tenants the total sum of €1,525.00 within 21 days of the date of issue of the Determination Order by the Board which said sum represents the partial return in the sum of €1,125.00 of the entire security deposit of €1,150.00 together with the sum of €400.00 which comprises launderette related expenses incurred in the sum of €225.00 and overnight accommodation costs in the sum of €175.00 in respect of the tenancy of the dwelling at 33 Knocklyon Gate, Knocklyon, Dublin 16.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 06 October 2015.

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| **Signed:** | \\v-1-hq-fs-01\HOME\Common\Signatures\TribunalMembers\Vincent P. Martin.png |

**Vincent P. Martin Chairperson**

For and on behalf of the Tribunal.