**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001295 / Case Ref No: 0515-18581**

**Appellant Landlord:** Mohamed El-Jack

**Respondent Tenant:** Vijaya Baskar Anbukkarasan

**Address of Rented Dwelling:** 14 Rochfort House, Brennanstown Avenue, Cabinteely , Dublin 18, D18VY68

**Tribunal:** Kevin Baneham (Chairperson)

Suzy Quirke, Roderick Maguire

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

**Date & time of Hearing:** 24 September 2015 at 10:30

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| **Attendees:** | Stephen Fagan, MTS Property Management (Representative of the Appellant Landlord)    Vijaya Baskar Anbukkarasan (Respondent Tenant)  Govindaraj Gopal (Representative of the Respondent Tenant and Witness) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On the 21st May 2015, the tenant referred a dispute to the Private Residential Tenancies Board where he challenges the Landlord’s decision to withhold his deposit for deterioration to the dwelling beyond normal wear and tear. 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 Tenant as the “Respondent Tenant”.

In the Adjudication Report, the Adjudicator determined as follows:

The Respondent Landlord shall pay the total sum of €2,400.00 to the Applicant Tenants within 21 days of the date of issue of the Order, being the entire of the unjustifiably retained security deposit of €1,200.00 together with damages of €1,200.00 for the consequences of retaining the said deposit, in respect of the tenancy of the dwelling at 14 Rochfort House, Brennanstown Avenue, Cabinteely, Dublin 18.

On the 24th July 2015, the Appellant Landlord lodged an appeal whereby he challenged the findings and determination on the grounds that the respondent tenant had breached his obligations under the lease agreement.

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 Roderick Maguire and Suzy Quirke 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 10.30am on the 24th September 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:**

At the outset of the hearing, the representative of the Appellant Landlord said that he had photographs he wished to submit to the Tenancy Tribunal. The photographs were shown to the respondent tenant and as he had no objection to their submission, the photographs were submitted to the Tribunal.

**4. Procedure:**

At the commencement of the hearing, the Chairperson asked the parties present to identify themselves and to identify in what capacity they were attending 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 their case first; that there would be an opportunity for cross-examination by the respondent tenant; that the respondent tenant 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 asked the parties whether they had any questions regarding the procedures to be followed in the Tenancy Tribunal and they both said that they did not.

The Chairperson stressed 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 €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:

In submissions to the hearing, the Representative of the Appellant Landlord outlined that at the end of the tenancy, there was damage to the dwelling beyond normal wear and tear. He said that out of the deposit of €1,200, the Respondent Tenant had been offered a refund of €500. The Representative said that this was fair and that the deductions made to the deposit were justified. He outlined that a new bed, mattress, sofa and showerhead were required after the end of the tenancy. He stated that paint had been supplied to the tenants who moved into the dwelling after this tenancy and clarified that he was not claiming for the cost of the deep clean.

The Representative submitted eight photographs to the Tribunal. One photograph depicts paint peeling adjacent to a window and also features a curtain. There is also a photograph of a curtain, mainly discoloured at the top, and the Representative confirmed that this was the same curtain as in the previous photograph. There are also photographs of the sofa, the headboard, a wall and the carpets. These photographs are date stamped the 17th April 2015, while there is also a photograph of the 27th May 2015 showing the delivery of a new bed and mattress.

The Representative outlined that he commenced working for the agency about one month before the tenancy's end. He did not have photographs to depict the condition of the dwelling at the start of the tenancy and did not have any information on file about whether there had been inspections of the dwelling or whether complaints had been made regarding its condition. He said that he believed that the same agency had managed the tenancy since its commencement on the 6th September 2012. He confirmed that the original rent was €1,200 and that this was increased in 2014 to €1,400 and in 2015 to €1,500. The representative explained that he was unable to furnish receipts for the replacement items acquired at the end of this tenancy as they were not made available to him. He said that the figure of €700 was a conservative estimate of what these items would have cost. He said that the agency sought three quotes for items to be replaced and said that the bed was about five years old.

The Representative outlined that the respondent tenant was in breach of lease conditions with regard to not causing damage to the dwelling beyond wear and tear and in failing to bring issues to the appellant landlord's attention. In respect of the void after this tenancy's end, he said that this was due to the poor condition of the dwelling. He also said that the Appellant Landlord resides overseas and there were delays in obtaining instructions.

In closing submissions, the Agent for the Appellant Landlord outlined that the retention of €700 of the Respondent Tenant’s deposit was fair given the amount of damage to the dwelling. While he did not have exact figures regarding the repair expenses, he outlined that the Respondent Tenant had not provided enough evidence that he was not responsible for the damage; in these circumstances, it was reasonable to withhold €700 from the deposit.

Evidence and submissions of the Respondent Tenant:

At the hearing, the Respondent Tenant confirmed that the tenancy commenced on the 6th September 2012 and came to an end on the 31st March 2015. He said that the tenancy had been managed by a different letting agency and that the letting agency engaged at the tenancy's end first became involved in February 2015. His first contact with the new letting agency was when a named Agent called to the dwelling to discuss increasing the rent to €1,500 per month. The Respondent Tenant said that in 2014, the previous Agent had sought to increase the rent to €1,450 and after negotiation, they agreed a new, increased monthly rent of €1,400. The Respondent Tenant said that he signed two copies of the same lease and returned them to the letting Agent; he was never supplied with his copy. Addressing rent payments, the Respondent Tenant said that he had met all payments of rent, including paying €1,500 for the months of February 2015 and March 2015.

The Respondent Tenant outlined that during the course of the tenancy, the previous letting Agent carried out twice yearly inspections. On these occasions, the Respondent Tenant said that he raised issues regarding the dwelling, for example the carpet, sofa and the kitchen. The Agent promised to address these issues but nothing was done. In relation to the bed, the Respondent Tenant said that the bed was supplied in 2012 but that this was not then a new item. He had fitted a mattress protector to the mattress and any issues arising regarding these items were fair wear and tear. In relation to the sofa, the Respondent said that this was not a new piece of furniture at the time it was supplied to him and that it deteriorated over time, due to natural use. In respect of the showerhead, the Respondent Tenant said that this shower never worked so the tenants used the other bathroom in the dwelling; they had reported this problem to the previous letting Agents, but no remedial action had been taken. In relation to the window and curtain, the respondent said that an issue arose over the winter of 2013/2014 when water came through the window frame, causing the growth of mould, paint to peel and damage to the curtain. He treated the mould and fungus, and also reported these issues to the first letting Agent.

In respect of the end of the tenancy, the Respondent Tenant said that when the new letting Agency sought to increase the rent to €1,500, he told the Agent that he wished to terminate the Tenancy. He said that he would vacate the dwelling at the end of March 2015 and no issue was raised regarding the validity of his notice. The Respondent Tenant said that he had raised the maintenance issues with the new letting Agent at the time of these negotiations and was told that the issues would be addressed should he sign the new lease.

The Respondent Tenant outlined that he had suffered loss and inconvenience as a result of the Appellant Landlord withholding his deposit. He said that he had to borrow from friends and that he had since been able to repay them. He had made many telephone calls and sent many emails to the letting Agency and that he was not happy with their proposal that he be refunded €500 of the €1,200 deposit. He said that he had suffered financially as a result of the retention of the deposit and asked the Tribunal to note the overall delay from the time he sought the return of his deposit.

Under cross-examination, the Respondent Tenant was asked whether he had complained of issues at the start of the tenancy; he replied that everything was in good condition but old at the start of tenancy. He confirmed that the dwelling was occupied by two adults during the course of the tenancy. He said that he had initially raised the issues of marks on a wall, the carpet and the kitchen but that other items had deteriorated due to wear and tear and the age of the items. The Respondent Tenant was asked why he had allowed the loss of one bathroom in the dwelling for so long; he replied that this issue had been brought to the attention of the first Letting Agent and that they had said that this issue was a tenant obligation.

In closing submissions, the Respondent Tenant outlined that while he was happy to continue the tenancy at a monthly rent of €1,400, he was unwilling to pay the additional increase to €1,500. He said that he incurred loss in having to seek the full return of the deposit and that any delay in renting the dwelling was due to the initial, excessive rent sought by the agent in re-renting the dwelling. He outlined that he had required the deposit to secure his next accommodation.

**6. Matters Agreed Between the Parties**

* The tenancy came to an end on the 31st March 2015;
* The Respondent Tenant had paid a deposit of €1,200;
* The Appellant Landlord had offered to repay €500 of the deposit and that this proposal was rejected by the Respondent Tenant.;
* No monies had been returned to the Respondent Tenant.

**7. Findings and Reasons:**

Finding: The Respondent Tenant reported issues regarding the standard and maintenance of the dwelling to the both sets of letting agents responsible for managing this tenancy.

Reasoning:

While the Tribunal has sympathy for the agent who attended the Tribunal, it is clear that he is incorrect in his assertion that his employer managed this letting during the entirety of the tenancy. The first lease agreed by the Appellant Landlord and the Respondent Tenant was drawn up by a different Letting Agent. The Tribunal accepts the Respondent Tenant’s evidence that he dealt with the first Letting Agent until he was contacted by the second letting agent in February 2015. Furthermore, the Tribunal accepts the Respondent Tenant’s evidence that he raised issues regarding the condition of the dwelling during regular inspections.

Finding: There has been no breach of tenancy obligation in relation to section 16(d) and (f) of the Residential Tenancies Act; the deposit of €1,200 shall be refunded to the respondent tenant.

Reasoning:

Having considered the oral, photographic and written evidence of the parties, the Tribunal concludes that there has been no failure on the part of the Respondent Tenant to notify the Appellant Landlord, via his Agents, of defects in the dwelling. Equally, the acts of damage claimed by the Appellant Landlord do not amount to deterioration beyond normal wear and tear. In coming to these conclusions, the Tribunal is persuaded by the evidence presented by the Respondent Tenant of his efforts to raise issues with Agents for the Appellant Landlord regarding the condition of the dwelling. In respect of the alleged items of damage beyond normal wear and tear, the Tribunal is satisfied that the condition of the sofa, the bed headboard and the mattress were in line with normal wear and tear. The Tribunal is persuaded that the damage to the showerhead was a longstanding issue that had been raised with the first Letting Agent acting for the Appellant Landlord. In respect of the paint peeling by the window and the damaged curtain, the Tribunal concludes that these items of damage were caused by water ingress through the window frame, causing paint to peel and damage to the curtain; it is notable that the top parts of the curtain was the most damaged while the lower parts of the curtain were in better condition. Given that the Appellant Landlord’s case for the retention of the deposit relies on the above claims of damage, it follows from these findings that there is no basis for the Appellant Landlord to withhold any amount of the deposit.

Finding: An award of damages of €700 is merited in this case.

Reasoning:

Section 12(1)(d) of the Residential Tenancies Act imposes an obligation on a landlord to return or repay promptly a deposit paid by a tenant; this same section allows for deductions for rent arrears and deterioration beyond normal wear and tear.

Having awarded the return of the deposit, the Tribunal considers it appropriate to make an award of damages. An award of damages is appropriate because of the absence on the part of the Appellant Landlord of any sound evidential basis to withhold any part of the deposit. The Appellant Landlord was unable to provide evidence regarding the condition of the dwelling, its furniture and fittings at the commencement of the tenancy or to supply evidence regarding the costs incurred in replacing the items. The Appellant Landlord was unable to rebut the respondent tenant’s evidence that there had been regular inspections during this tenancy, albeit by Letting Agents no longer retained by him.

Having decided that an award of damages is warranted in this case, the Tribunal takes account of the following factors in determining the amount of damages to be awarded. It has regard to the loss and inconvenience by the Respondent Tenant and that he had to borrow from friends to pay for his deposit in his next rented accommodation. It accepts his evidence that he was placed in a difficult position in having to pursue the return of his deposit. On the other hand, the Tribunal also recognises that the appellant landlord had offered to repay €500 of the deposit of €1,200. Taking these factors into account, the Tribunal awards damages of €700 as well as awarding the return of the full deposit of €1,200 to the respondent tenant.

The final issue for determination is the length of period in which the deposit of €1,200 and damages of €700 shall be paid by the appellant landlord to the respondent tenant. Given the lapse in time since the end of the tenancy, the Tribunal concludes that this period shall be 14 days and commences from the date of issue of the Determination Order.

**8. Determination:**

**Tribunal Reference TR0715-001295**

**In the matter of Mohamed El-Jack (Landlord) and Vijaya Baskar Anbukkarasan (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 €1,900 to the Tenant within 14 days of the date of issue of the Order, being the entire amount of the unjustifiably retained security deposit of €1,200 together with damages of €700 for the consequences of retaining the said deposit, in respect of the tenancy of the dwelling at 14 Rochfort House, Brennanstown Avenue, Cabinteely, Dublin 18.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 11 October 2015.

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| **Signed:** |  |

**Kevin Baneham Chairperson**

For and on behalf of the Tribunal.