**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001297 / Case Ref No: 0712-01710**

**Appellant Landlord:** John Lyons

**Respondent Tenant:** Paul Cosgrove

**Address of Rented Dwelling:** Castleview Lodge, Knights Hill, Balrothery , Dublin, K32FV34

**Tribunal:** Roderick Maguire (Chairperson)

Suzy Quirke, Kevin Baneham

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

**Date & time of Hearing:** 24 September 2015 at 2:30

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| **Attendees:** | Paul Cosgrove ( Respondent Tenant)  Deborah Cosgrove (Wife of the Respondent Tenant)  John Lyons (Appellant Landlord)  Marian Donoghue, M.V. Estates Limited (Agent for Appellant Landlord) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 3 July 2012 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 a Paper Based Adjudication which took place on 9 January 2013. The Adjudicator determined that:

The Respondent Landlord shall pay the sum of €500 to the Applicant Tenant, within 21 days of the date of issue of the Order by the Board, being the balance of the unjustifiably retained security deposit of €1,000, in respect of the tenancy of the dwelling at Castleview Lodge, Knights Hill, Balrothery, Dublin.

Subsequently the following appeal was received from the Landlord on 24 July 2015. The grounds of the appeal was Deposit retention. This appeal was approved by the Board on 7 August 2015.

The PRTB constituted a Tenancy Tribunal and appointed Suzy Quirke, Roderick Maguire, Kevin Baneham as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Roderick Maguire to be the chairperson of the Tribunal (“the Chairperson”).

On 13 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 24 September 2015 the Tribunal convened a hearing at Tribunal 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:**

None.

**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 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 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 their case, and that there would be an opportunity for cross-examination by the appellant. 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 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 or 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 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 €1,000, the Respondent Tenant had been sent a refund of €500. He said that he didn’t have employees to repair his property and clean it and he did all the work himself so he remembered it well. He stated that he was meticulous, which was confirmed by his agent, who stated that she had only acted in the capacity of letting the property and did not subsequently manage it. He stated that even a scuff on the wall would be redecorated. In total he stated that he had to work for five days to put the house into good order and ready for letting again, while he estimated that he should have only had to spend a day and a half. He stated that he remembered spending half an hour cleaning a soap dish attached to the shower. He stated that he spent a day clearing out the dwelling, including taking everything out of the tenants bins that were left on the property, and going through the refuse, putting it in bags and bringing it elsewhere to dispose of it, and then bringing the bins themselves to his house so that he could clean them thoroughly with hot water. He did not use the facilities in the house itself to clean the bins as he didn’t want to dirty that house. He spent a day repairing eight holes in the side wall of the house, each approximately four inches, which had been left as a result of the erection of the 'compound' built to contain the Tenant's dog. He stated that there had been no consent to keeping a dog.

In addition, he submitted that he had spent a long time on the back garden. He had not taken photos of the property either before or after the tenancy as he did not expect problems. He had gone to the property on 1 December, the day after the tenant had left by agreement. There had been an inspection in the presence of the Tenant carried out by Victoria of the Agent’s office who no longer worked with the Agent's company so there were no notes in relation to that inspection. The Agent, Ms. Donoghue, remembered that there had been discussion of the garden being in poor condition, damage to the side of the building, damage to the wooden floors throughout the house, and the soap dish requiring a lot of cleaning.

The Landlord stated that the tenants had been good tenants and were reasonable people and he wanted to be fair to everyone which was why he withheld half of the deposit.

Evidence and submissions of the Respondent Tenant:

The Respondent Tenant submitted that it was a four-bed house and he and his wife and their child occupied two out of the four bedrooms, the other two bedrooms being used to store the furniture of the Landlord. He submitted that they had been good tenants and replaced the cooker halfway through the term, sourcing the cooker himself. The house was not in a great state when they arrived, in that for instance the shower was not working, so the soap dish attached to that was dirty from the previous tenant. When there was an issue with the heating, he had sourced a plumber.

On leaving the house, the Respondent Tenant had forgotten to take his bins, and he called back on the 5th or 6th to collect them but they had been emptied at that stage. One of the first questions that he had asked of Victoria when renting the house was that he had two dogs and would that be acceptable to the Landlord. She had stated that she couldn’t see a problem with that. The Landlord had seen the enclosure and it was accepted that the dogs were there and it was never an issue. They had permission to create a 'compound' to contain the dogs and had been asked to leave the enclosure (this was denied by the Landlord). They had not used the back garden at all. It was as clean as when they had got it upon leaving. They had cut the grass every week.

In relation to the floor, there had been damage to that, but it had been there on arrival and was not caused by the tenant. On leaving, there had been an inspection by Victoria, formerly employee of the Letting Agent's office and she had said everything was fine, although she had not gone upstairs. No photos were taken. The first that he had learnt that he was not going to get the whole of the deposit was when he went to collect the bins.

**6. Matters Agreed Between the Parties**

* The tenancy started on 1 July 2010 and came to an end on the 30 November 2011;
* The Respondent Tenant had paid a deposit of €1,000;
* The Appellant Landlord had repaid €500 of the deposit.

**7. Findings and Reasons:**

Finding: The Tribunal finds that the Appellant Landlord has unreasonably withheld €500 being part of the total security deposit of €1,000.

Reasoning:

The Tribunal is not satisfied that there was any damage to the dwelling beyond normal wear and tear. The uncontroverted evidence of the Respondent Tenant was that the inspection on vacating the premises indicated that there was nothing wrong with the property. In addition, the Landlord unreasonably took it upon himself to clean out the bins of the Tenant, knowing that they were the Tenant’s bins, that had been left on the property rather than contacting him to remove them. It was clear that the Landlord was aware that dogs were being kept on the property and was aware of the erection of the compound and had never raised this as an issue during the course of the tenancy.

**8. Determination:**

**Tribunal Reference TR0715-001297**

**In the matter of John Lyons (Landlord) and Paul Cosgrove (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlord shall pay the total sum of €500 to the Respondent Tenant within 14 days of the date of issue of the Order, being the unjustifiably retained balance of the security deposit of €1,000 in respect of the tenancy of the dwelling at Castleview Lodge, Knights Hill, Balrothery, Dublin, Ireland.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 09 October 2015.

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| **Signed:** |  |

**Roderick Maguire Chairperson**

For and on behalf of the Tribunal.