

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0814-000765 / Case Ref No: 0514-12041

Appellant Landlord:	Lisa Conroy
Respondent Tenant:	Frances Moran
Address of Rented Dwelling:	32 Deerpark Place, Kiltipper Way , Dublin 24
Tribunal:	Tim Ryan (Chairperson) Gareth Robinson, Gene Feighery
Venue:	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin
Date & time of Hearing:	08 October 2014 at 2:30
Attendees:	Bridget-Anne Doran - Representative of the Appellant Landlord Frank Doran - Representative of the Appellant Landlord
In Attendance:	Gwen Malone Stenographers

1. Background:

On 08/05/2014 the Landlord 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 20/06/2014. The Adjudicator determined that:

- The Landlord's application for over-holding in respect of the tenancy of the dwelling at 32 Deerpark Place, Kiltipper Way, Dublin 24 is not upheld.
- The Respondent Tenant shall pay the total sum of €3,891.50 to the Applicant Landlord within 56 days of the date of issue of the Order, being rent arrears of €3,891.50 for the period the 1st of February 2014 to the 20th of June 2014, in respect of the tenancy of the dwelling at, 32 Deerpark Place, Kiltipper Way, Dublin 24.

Subsequently an appeal was received from the landlord on 28/07/2014. The grounds of the appeal were damage in excess of normal wear and tear, rent arrears and an invalid Notice of Termination. The appeal was approved by the Board on 15/08/2014.

The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Gareth Robinson and Gene Feighery as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Tim Ryan 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 08/10/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

N/A

4. Procedure:

As there was no appearance by, or communication from, the Respondent Tenant the Tribunal waited for 15 minutes before proceeding.

The Chairperson asked the Party present to identify themselves and to identify in what capacity they were attending the Tribunal. He confirmed with the Party 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 as informal as possible; that the person who appealed (in this case the Representatives of the Appellant Landlord) would be invited to present their case and that the members of the Tribunal might ask questions from time to time. The Chairperson explained that, following this, the Party would be given an opportunity to make a final submission.

He 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 and/or up to 6 months imprisonment or both.

The Chairperson also reminded the parties that, as a result of the Hearing that the Board, would make a Determination Order which would be issued to the parties and posted on the PRTB website. The Determination Order could be appealed to the High Court on a point of law only under Section 123(23) of the Residential Tenancies Act, hereafter referred to as the Act of 2004.

The single Party giving evidence was then sworn in and the hearing commenced.

5. Submissions of the Parties:

Appellant Landlord's case:

Evidence of Bridget-Anne Doran

The first-named Representative of the Appellant Landlord told the Respondent Tenant she had acted as the letting agent in regard to the dwelling. She said the Respondent Tenant had been in occupation of the dwelling since 23 December 2012. The rent was initially €900 per month and increased to €930 in March 2014 when a new lease was signed which was due to expire on 31 January 2015. A deposit of €875.00 was paid and is retained by the landlord. She said the Respondent Tenant, who is in receipt of rent supplement payments, had paid her rent for the first two years but had fallen into serious arrears in recent months. She said the Respondent Tenant had lived in the dwelling

initially with her partner and two children. However, her partner no longer resides in the dwelling.

The first-named Representative of the Appellant Landlord said the total rent arrears which included the cost of replacing the front door to the dwelling, at 28 July 2014 amounted to €1,900.60. She said that during the period of the tenancy accumulated rent arrears had risen to in excess of €5,000 at one point but a Social Welfare cheque had reduced the sum to the current figure. A spreadsheet outlining the relevant payments was submitted in the case file.

She said a Notice of Termination was served on 20 February 2014 but this was found to be invalid by the Adjudicator. She said a second Notice of Termination was served on 20 June 2014 with a termination date of 21 July 2014.

The first-named Representative of the Respondent Tenant said that when she discovered that the Respondent Tenant was in receipt of rent supplement payments from the Department of Social Protection but had not passed them on the Appellant Landlord, she contacted the Department of Social Protection office and reported the matter to them. She was subsequently contacted by the Department to say that a further signed form, appearing to bear her signature, had been lodged with the Department. She said that she had not signed any form seeking to reinstate rent supplement payments for the tenant and that the gardai were called in to investigate the matter.

The first-named Representative of the Appellant Landlord said that following service of the second Notice of Termination it had been reported to the Appellant Landlord that household appliances, including the washing machine, fridge freezer and dishwasher were removed from the building. The Appellant Landlord personally visited the dwelling to check out the report and found the items to be missing. She said that when the Appellant Landlord rang the gardai to report the stolen appliances, they advised her to secure the property.

After some investigation, the first-named Representative of the Appellant Landlord said she had located a missing washing machine for sale on the Respondent Tenant's Facebook page and on a local buy and sell website. She said she recognised it as the machine missing from the dwelling. It had the same brand name, age and she had a receipt for the item which was less than six months old. She said a dishwasher and fridge-freezer had also gone missing from the dwelling but she could not confirm if these items had also been advertised for sale.

The first-named Representative of the Respondent Tenant said that the front door of the dwelling had been smashed in during an incident in April 2014 and did not close properly. She said she organised a carpenter to come and replace the damaged door with a new door in order to secure the dwelling.

She said that the Respondent Tenant appeared to come and go from the dwelling but was living in alternative accommodation. She said they had tried to contact her before fitting the new door but without success. She said she had even called to home of the Respondent Tenant's mother but at the time she had gone on a holiday swap with a lady from Australia. She said there had been no further contact with the Respondent Tenant.

The first-named Representative of the Appellant Landlord said the Appellant Landlord had found the dwelling to be in the most appalling condition and numerous supporting photographs were submitted in the case file before the Tribunal. An invoice for repairs

and renovations totalling €2,030.00 was submitted in the case file along with an invoice for supplying and fitting a new washing machine totalling €285.00.

6. Matters Agreed Between the Parties

N/A

7. Findings and Reasons:

1. The Notice of Termination served on the Respondent Tenant on 20 June 2014 is valid.

Reasons:

The first Notice of Termination served on 20 February 2014 did not comply with Section 67(2)(b)(ii) of the Act of 2004 which requires that 14 days must have elapsed from the date of the receipt of a warning notice by the tenant and therefore, did not validly terminate the lease. However, the second Notice of Termination, served on the tenant on 20 June 2014, is valid as it fully complies with the Act of 2004.

Finding:

The Respondent Tenant is in breach of her obligation to pay rent.

Reasons:

Section 16(a) of the Act of 2004 requires that a tenant shall pay rent on the day it falls due for payment. The first-named Representative of the Appellant Landlord provided a detailed spreadsheet of outstanding arrears of €1,900.61 at the date the dwelling was secured on the advice of the gardai. The Respondent Tenant did not attend the Tribunal or contest this figure in any way. The Tribunal, accordingly, awards these arrears in their entirety to the Appellant Landlord.

Finding:

The Respondent Tenant is in breach of her obligations not to cause a deterioration in the condition of the dwelling during her tenancy.

Reasons:

Section 16(f) of the act of 2004 requires a tenant not to do anything that would cause deterioration in the condition the dwelling was in at the commencement of the tenancy other than that due to normal wear and tear. The photographic evidence presented to the Tribunal by the Representatives of the Appellant Landlord showed the dwelling to be in a very poor condition which required major cleaning and refurbishment. Invoices for repairs and replacement of items were provided to the Tribunal totalling €2,315.00. The Tribunal, accordingly, awards this sum in its entirety to the Appellant Landlord.

8. Determination:

Tribunal Reference TR0814-000765

In the matter of Lisa Conroy (Landlord) and Francis Moran (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served by the Appellant Landlord on the Respondent Tenant on 20 June 2014 in respect of the tenancy of the dwelling at 32 Deerpark Place, Kiltipper Way, Dublin 24 is valid. The Respondent Tenant and all parties residing at 32 Deerpark Place, Kiltipper Way, Dublin 24 shall vacate and give up vacant possession of the above dwelling within 28 days of the date of issue of the Order.
2. The Respondent Tenant shall pay the total sum of €3,340.61 to the Appellant Landlord in 16 monthly instalments of €200.00 followed by a final instalment of €140.61 commencing on the 28th day of the month after the issue of this Order by the Board in respect of the tenancy of the above dwelling. This sum represents arrears of rent of €1,900.61 plus the sum of €2,315.00 for damage caused by breach of the tenant's obligation in failing to properly maintain the dwelling, less the whole of the justifiably retained deposit of €875.00 in the respect of the above tenancy.
3. The enforcement of the Order for such payment will be deferred and the total sum will be reduced by the number of monthly instalments made to the Appellant Landlord on each due date until the sum of €3,340.61 has been paid in full.
4. For the avoidance of doubt any default in payment of the monthly instalment shall act to cancel any further referral and the balance due at the date of default shall immediately become due and owing to the Appellant Landlord in full.

Signed:



Tim Ryan Chairperson

For and on behalf of the Tribunal.