

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0814-000767 / Case Ref No: 0214-10670

Appellant Landlord: Shoreview Properties LTD (In receivership), Paul McCann of Grant Thornton

Respondent Tenant: John Haggins

Address of Rented Dwelling: Apt 144, Dargan Building, Heuston South Quarter, St. Johns Road West , Dublin 8

Tribunal: Patricia Sheehy Skeffington (Chairperson)
Aidan Brennan, Finian Matthews

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

Date & time of Hearing: 17 September 2014 at 2:30

Attendees: For the Appellant:
Noel Fahy, HSQ Estate Management with responsibility for car parks ("the Car Park Manager").
Sandra McManus, Savills, the Appellant Landlord's Agent
Lyndsey Boland, Property Manager HSQ ("the Property Manager")

For the Respondent:
John Haggins (Respondent Tenant)

In Attendance: Gwen Malone Stenographers

1. Background:

On 27 February 2014 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 an Adjudication which took place on 20 June 2014. The Adjudicator upheld the Tenant's claim of breach of the landlord's obligations in respect of the use of a parking space and awarded the tenant damages in the sum of €1,150.

Subsequently the Landlord applied to appeal the Adjudicator's determination on the grounds that it was not clear whether the parking space in question could be reassigned or not. The application for the appeal was received on 8 August 2014 and was approved by the Board on 15 August 2014.

The PRTB constituted a Tenancy Tribunal and appointed Patricia Sheehy Skeffington, Aidan Brennan and Finian Matthews as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Patricia Sheehy Skeffington 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 17 September 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:

None

4. Procedure:

The Chairperson asked the Parties to identify themselves and to identify in what capacity they were attending the Tribunal. The HSQ and Savills representatives confirmed that they were representing the Appellant Landlord, albeit they had different roles in relation to the management of the tenancy.

The Chairperson asked the Parties to confirm 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 held in as informal a manner as was possible; that the person who appealed (the Appellant Landlord in this case) would be invited to present its 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 his case, and that there would be an opportunity for cross-examination by the Appellant Landlord. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission. She clarified that albeit the Tribunal could have regard to the Adjudicator's report, it was not bound by it and that the Tribunal was a re-hearing of the matter.

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present and she 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 the Hearing that day, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only (pursuant to section 123(3) of the Residential Tenancies Act, 2004, hereafter referred to as the Act).

The Chairperson also informed the parties that if it seemed that they might be able to resolve their dispute by agreement, the Tribunal would facilitate any such negotiations.

The Parties were then sworn in.

5. Submissions of the Parties:

The parties agreed that the main issues in dispute were:

- (a) Whether the Appellant Landlord is in breach of its obligations under the tenancy agreement by seeking to alter the parking bay allocated to the Respondent Tenant under the tenancy;
- (b) Whether a threat to clamp a tenant's vehicle in the original parking bay constitutes unlawful interference with the Respondent Tenant's peaceful occupation of the dwelling;

WHETHER THE APPELLANT LANDLORD WAS IN BREACH OF ITS OBLIGATIONS IN ATTEMPTING TO REALLOCATE THE RESPONDENT TENANT'S PARKING SPACE

The Appellant Landlord's position was that the attempt to re-allocate the parking space was not in breach of the tenancy agreement because the agreement had expressly provided for the potential that car spaces might be reallocated during the course of a tenancy. The Appellant Landlords' representatives stated that a buyer had been found for 16 of the apartments in the complex and as this was a significant sale, this purchaser had been given precedence to select the car-parking spaces it required. The Car Parks Manager said that this was a commercial decision to keep their client happy.

They related that one of the parking spaces selected by the purchasing client was space 422 which had initially been allocated to the Respondent Tenant's tenancy. The Appellant Landlord's representatives stated that as a consequence the Respondent Tenant had been allocated a different parking space. They admitted that this 'interim' space was located further away from the Respondent Tenant's dwelling than space 422, which was approximately 50 yards away from it. They said that upon receiving the complaint from the Respondent Tenant a third space had been offered to the Respondent Tenant, which the Car Parks Manager said was 25 steps away from the entrance to the dwelling. However he conceded that the Respondent Tenant had rejected this after he had requested a guarantee that he would be able to avail of this parking space for the remainder of his tenancy, which guarantee was not forthcoming.

The Car Parks Manager gave evidence that there were 600 parking spaces in the complex and some of these could be difficult to find the first time they were used.

The Property Manager said that, at the time the letting agreement was signed, she had expressly drawn the Respondent Tenant's attention to a clause in the lease stating that the allocated parking space was 422 but featuring an asterisked comment "Please note that space numbers are subject to change at the discretion of HSQ management". She indicated that she always drew tenants' attention to this provision, stating that it was rare that the Appellant Landlord had to avail of it but that it arose occasionally. Asked to comment on the potential reading of this, that the number demarking the space might change but the space remained the same, the Car Parks Manager stated that the wording was clumsy, but referred to another section of the lease entitled "Parking Bay General Letting Provisions". This section provided that "the option to rent one parking bay is guaranteed for each HSQ apartment with the possibility of more depending on operational and commercial requirements. The right to re-allocate other parking bays is reserved by HSQ management". The Tribunal queried whether the re-allocation of 'other' parking bays could be interpreted as meaning that the allocation of further parking bays,

rather than the original one, were in the discretion of the Management. The Car Park Manager stated that this could have been phrased more clearly but the Property Manager said that the meaning of the clauses had been explained at the outset of the tenancy. Under cross examination, the Respondent Tenant highlighted to the Appellant Landlord's representatives that the Letting Provisions for the Parking Bay also allows "the Lessee peaceful and exclusive occupation of the parking bay". The Tribunal asked the Appellant Landlord's Agent whether the definition of dwelling under the Act included a parking space, being land 'appurtenant' to it. She said that the ability to re-allocate the parking space had been reserved by the Appellant Landlord in the lease.

The Respondent Tenant said that he had signed the lease, and he had written on its signature page, 'under duress' as clauses which he felt were unreasonable in it were not open to negotiation. He cited a clause which allowed the Appellant Landlord to charge an administrative fee of €30 per rent arrears letter, without limiting the amount of letters which may have been sent in a small period of time. He said that for this reason, he also inserted the words 'Tenant reserves all rights' onto the lease. He said that because of this unsatisfactory dealing with the Respondent Landlord's Agent, he said that when he had been re-allocated a space 250 metres away from his dwelling he refused, invoking all of this rights. He said that he was entitled to the peaceful and exclusive occupation of the original parking space, numbered 422.

Asked about any conversations in respect of the parking space at the commencement of the lease, the Respondent Tenant said that he could not recall such conversations. He did not deny that it may have been stated that the parking space could be re-allocated but he said that this was not his understanding.

WHETHER THE RE-ALLOCATION CONSTITUTED UNLAWFUL INTERFERENCE WITH THE RESPONDENT TENANT'S PEACEFUL AND EXCLUSIVE OCCUPATION OF THE DWELLING

The Appellant Landlord's representatives stated that they were acting in pursuance of the Appellant Landlord's rights. They explained that the Appellant Landlord's agent and the Property and Car Parks Management were not the same entities, so that whereas one may be able to agree to a course of action with no difficulty, another may be constrained from so doing. The Car Parks Manager said that the email which the Respondent Tenant received re-allocating him a parking space would have been sent in similar terms to a number of other tenants. The Appellant Landlords' representatives conceded that this was not a request to move space but a direction to do so, though they stated that after the problem of the parking space distance from the dwelling had been identified they had attempted to provide a solution to the issues arising. In respect of an incident whereby an agent of the Appellant Landlord's Agent had at first refused to receive an extension of tenancy notice given by the Respondent Tenant in accordance with section 195(2) of the Act, they stated that a full apology had been given to the Respondent Tenant in this regard. They stated that the car space which he had always used had never been blocked from him nor had his car been clamped, albeit the right to occupy the car space had been sold to a third party.

The Respondent Tenant said that when he received the email reallocating his space in January 2014 he was shocked because the new space was further away and he said it came with a maze of instructions to identify it. He said that after some communications about a different space, which did not come to fruition because the Respondent Landlord could not guarantee that he could remain using it for the duration of the tenancy, he

received a letter threatening to clamp his car if he continued using space 422. He said that he found this very stressful and he felt he could not plan to go away or on holiday because his car space might be blocked or his car clamped. He said that the car was not clamped; he noted he had written to the Appellant Landlord's management company stating that he would charge them €100 per day if his car was clamped. He agreed however that his space was not ever blocked nor was his car clamped, but that the anxiety was for the potential for these events to happen. He said that this anxiety was compounded when he attempted to serve a Notice under section 195 of the Act to inform the Appellant Landlord of his intention to remain after the expiry of a fixed term tenancy, but that he had been able to serve the Notice within time to the Appellant Landlord's Agent's head office.

6. Matters Agreed Between the Parties

1. The Tenancy commenced on 23 July 2013 and is ongoing;
2. The rent was initially set at €1,150 per month and now rests at €1,250, which sum includes the parking space;
3. A deposit of €1,100 was paid by the Respondent Tenant to the Appellant Landlord at the commencement of the tenancy.

7. Findings and Reasons:

Finding One:

The dwelling subject of this tenancy includes the parking space currently numbered 422, the location of which may not be altered without the express consent of the Respondent Tenant.

Reasons:

1. 'Dwelling' is defined in section 4 of the Act as including "any building or part of a building used as a dwelling and any out office, yard, garden or other land appurtenant to it or usually enjoyed with it". In this case the parking space currently numbered 422 is appurtenant to the dwelling and usually enjoyed with it and as such is part of the dwelling as a whole.
2. Taking part of a dwelling away and replacing it with another space of land is contrary to the tenant enjoying 'exclusive' occupation of the dwelling. Granting tenants peaceful and exclusive occupation of the dwelling is an obligation of landlords under section 12(1)(a) of the Act.
3. While the Tribunal accepts that the most logical reading of the lease agreement is that the car parking spaces allocated to tenancies could be re-allocated by the Appellant Landlord, such clauses fall foul of section 18 of the Act which prohibits any lease or agreement from modifying, varying or restricting the protections for tenants set out in section 12 of the Act. Thus the peaceful and exclusive occupation of the dwelling, including its parking space, cannot be interfered with by way of a contractual provision and such provisions in a lease agreement are unenforceable.

Finding Two:

The Appellant Landlord breached its obligation to afford the Respondent Tenant peaceful and exclusive occupation of the dwelling, for which the Respondent Tenant is awarded €600 damages.

Reasons:

1. The Tribunal has already held that re-allocating a parking space integral to a dwelling interferes with the peaceful and exclusive occupation of the dwelling. In this case, the threat of the parking space's re-allocation and the threat of clamping the Appellant Tenant's car while on the parking space appurtenant to the dwelling interfered with his peaceful occupation of the dwelling, in that it caused him anxiety and distress. The Tribunal awards the Appellant Tenant €600 in damages to compensate for the consequences of the unlawful interference with his peaceful and exclusive occupation of the dwelling.

8. Determination:

Tribunal Reference TR0814-000767

In the matter of Shoreview Properties LTD (In receivership), Paul McCann of Grant Thornton (Landlord) and John Haggins (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. Parking bay 422 is part of the dwelling and for the peaceful and exclusive use of the tenancy at Apartment 144, Dargan Building, Heuston South Quarter, St Johns Road West, Dublin 8 and shall remain so for the duration of the tenancy, unless there is express agreement between the Appellant Landlord and Respondent Tenant to alter this position.
2. The Appellant Landlord shall pay the Respondent Tenant €600 within 14 days of the issue of this Order for the consequences of its breach of its obligation to afford the Respondent Tenant peaceful and exclusive occupation of the dwelling.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 25/09/2014.

Signed:



Patricia Sheehy Skeffington Chairperson

For and on behalf of the Tribunal.