

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0814-000772 / Case Ref No: 1213-09426

Appellant Landlord:	Margaret Doyle
Respondent Tenant:	Keith O'Halloran
Address of Rented Dwelling:	17 Moyglass, Crusheen, Co.Clare
Tribunal:	Vincent P. Martin (Chairperson) John Tiernan, Thomas Reilly
Venue:	Exhibition Area, Limerick City Council, City Hall, Merchants Quay, Limerick
Date & time of Hearing:	1 October 2014 at 2:30
Attendees:	Margaret Doyle, Appellant Landlord James Doyle, Witness, Landlord Keith O' Halloran, Respondent Tenant Angela O' Halloran, Witness, Tenant
In Attendance:	Representative of Gwen Malone Stenographers.

1. Background:

On 28/11/2013 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 13/06/2014. The Adjudicator determined that:

1. The Respondent Landlord shall pay the total sum of €650 to the Applicant Tenant, within 7 days of the date of issue of this Order, being the entire of the unjustifiably retained security deposit of €600 plus damages of €50 for the consequences of retaining the said security deposit in respect of the tenancy of a dwelling at 17 Moyglass, Crusheen, Co. Clare.

Subsequently an appeal was received by the Landlord herein on 11/08/2014. The grounds of the appeal: Unlawful termination of tenancy (Illegal eviction) which said application for an appeal was approved by the Board on 15/08/2014. The PRTB constituted a Tenancy Tribunal and appointed Vincent P. Martin, John Tiernan, Thomas Reilly 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 01/10/2014 the Tribunal convened a hearing at Exhibition Area, Limerick City Council, City Hall, Merchants Quay, Limerick, County Limerick.

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

- (a) The Appellant Landlord submitted an invoice for cleaning the dwelling,
- (b) The Appellant Landlord submitted a document which she compiled outlining the rental payments made
- (c) The Appellant Landlord submitted bank statements covering the period of the said tenancy which said statements were submitted after the Tribunal facilitated her request for a short adjournment of the hearing.

4. Procedure:

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Landlord against a determination made following an adjudication held on 13 June 2014 in the case of a dispute between the then Applicant Tenant and the then Respondent Landlord in respect of a tenancy at 17 Moyglass, Crusheen, County Clare. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. He confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received and understood the PRTB document entitled "Tribunal Procedures". Both Parties confirmed that they had done so. The Chairman said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson then explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the stenographer present, and that based on that recording a transcript could be made available to the Tribunal if necessary, to assist it in preparing its report on the dispute. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in their control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the PRTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Landlord would be invited first to present her case, including the evidence of any Witness; this would be followed by an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present his case, followed by an opportunity for cross-examination by the Appellant Landlord. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

He also said that at the end of the hearing, both the Appellant Landlord and the Respondent Tenant would be given the opportunity to make a final submission should they so wish. The Chairperson reminded the Parties that the Determination Order of the PRTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

All persons giving evidence to the Tribunal were then sworn.

5. Submissions of the Parties:

The Appellant Landlord's Case:

Evidence of Margaret Doyle (the Appellant Landlord)

The Appellant Landlord began her evidence by apologising for being unavoidably absent for the adjudication hearing. She stated that the Respondent Tenant moved into the dwelling on 26 March 2009 which was a few days prior to the commencement date of the written tenancy agreement which was 2 April 2009. She stated that in May 2010, the Respondent Tenant requested a reduction in monthly rental payments reducing the rent from €600 to €500 per month. She stated that she agreed to this request with the rent being reduced from the start of the month of June 2010. She stated that in this same month (June 2010), the Respondent Tenant requested to make weekly and not monthly payments and by the beginning of January 2011, the Respondent Tenant had ceased paying rent one month in advance. She stated that during the first year of the tenancy, the Respondent Tenant was late with his payments on some occasions. She stated that the Respondent Tenant failed to pay rent for four weeks in 2010, namely, 2 weeks in July (€100.00 each), one rental payment in September 2010 (€100.00) and one rental payment of €100.00 in December 2010.

She stated that by January 2011, the Respondent Tenant had requested a further reduction in rent wherein they both agreed to reduce the annual rental payments made by a further €800.00. She stated that throughout 2011 the Respondent Tenant was often late paying his rent. In January 2012, the Respondent Tenant requested a further reduction in rent but she stated that unfortunately she was not in a financial position to accede to this request for a further reduction and suggested to him that he should seek alternative rental accommodation,

In or around March 2012, she stated that she received a text message from the Respondent Tenant requesting that rental payments revert to being paid on a monthly basis. She stated that during the year of 2012, the Respondent Tenant was late paying his rent on 3 occasions and missed paying one week's rent (€100). She stated that this missed payment caused her to send a number of text messages over the Christmas period 2012 and also to speak to him by way of phone conversation.

She stated that the end of the month of January 2013, she contacted her solicitor. She stated that she sent the Respondent Tenant a 14 day warning notice (dated 31 January 2013) by way of pre-paid ordinary post seeking payment of an amount of €530.00 which she stated was due and owing to her. She stated that on 20 February 2013, she served a Notice of Termination. She stated that she then received text messages from the Respondent Tenant alleging that a sum of €1200.00 was due and owing to him comprising €600.00 return of his deposit and a further €600.00 in advance rent paid. She denied that any monies were due and owing to the Respondent Tenant and she stated

that she gave him a schedule of rental payments which she submitted showed how and when alleged rental arrears occurred.

She stated that by the last week in March 2013, the Respondent Tenant had still not secured alternative accommodation and they both agreed that he could stay on in the dwelling for an additional two weeks. She stated that the last rental payment was made on 26 March 2013. In the final weeks of the tenancy, the Appellant Landlord allowed 2 weeks rent free to the Respondent Tenant but because the Respondent Tenant stayed 6 days longer than she allowed and/or agreed to, she stated that she was claiming for the rent due in respect of those final 6 days.

She stated that she had received a text message from the Respondent Tenant indicating to her that he was refusing to leave the dwelling and submitted to the Tribunal that a number of communications received from the Respondent Tenant caused her worry, fear and significant anxiety.

She stated on Thursday 18 April 2014, she called to the dwelling in order to give him a cheque in the sum of €600 (the security deposit). Soon after the Respondent Tenant vacated the dwelling and upon carrying out a further inspection, she discovered that there was some latent damage caused to the dwelling in excess of normal wear and tear. She stated that this discovery caused her to take prompt action to cancel her cheque.

She later discovered that Airtricity was claiming that she was jointly liable for a bill of €205.20 which she submitted was incurred solely by the Respondent Tenant as she had never consented or agreed to go as guarantor in this matter.

She claimed compensation from the Tribunal under four other separate categories:

1. €25.00 to fix the freezer drawer in the fridge which she discovered was broken and had to be replaced
2. Her brother, James Doyle gave evidence that he had to spend 2 full days repairing a table in the dwelling which the Appellant Landlord submitted was damaged by the Respondent Tenant. She stated that she paid €400.00 for the table with 6 chairs and was claiming €200.00 in labour costs necessitated to repair same.
3. She stated that the arm of a leather seat was ripped (six inch rip) stating that she had purchased this seat as part of a three piece suite for a total sum of €1,500.00.
4. She claimed for essential cleaning costs incurred and in respect of this claim referred to an invoice for cleaning the dwelling in the sum of €550.00 plus 13.5% vat. She stated that she had made it clear to the Respondent Tenant that no dogs were allowed inside the dwelling and submitted that the cleaning was necessary due to a lingering smell in the dwelling caused by dogs. She also stated that dogs damaged some of the skirting board in the dwelling.

In support of these claims, the Appellant Landlord referred the Tribunal to photographic evidence that she had taken on her personal phone camera

The Respondent Tenant's case

Evidence of Keith O' Halloran (the Respondent Tenant)

He denied that he owed the Appellant Landlord any rent arrears at all and invited the Tribunal to go through bank statements submitted by the Appellant Landlord in support of her claim for rent which he stated he was confident would show that he had always paid

his rent. He also denied that the Appellant Landlord agreed to allow him stay on in the dwelling for the final two rental weeks of the tenancy free of charge.

He stated that he denied ever receiving a 14 day warning letter and a Notice of Termination as alleged by the Appellant Landlord but accepted, in any event, that it was agreed on mutual consent of the Parties to terminate the tenancy on 18 April 2013 (the date on which he vacated the dwelling). He stated that whilst he was not sure it was possible that he had been responsible for damage caused to the drawer of the fridge freezer. He denied all the other claims made by the Appellant Landlord in relation to alleging that he caused deterioration to the dwelling. He also denied he allowed his dog inside the dwelling unless only momentarily when preparing its food. He accepted that for a period there were two dogs kept at the address.

He stated that he had already paid Airtricity the outstanding amount sought in the sum of €205.20. He stated that he was upset by the way the Appellant Landlord purported to give him his deposit back in the sum of a cheque for €600.00 only for her then to proceed to cancel it on him. He stated that despite the cheque being crossed, he managed to cash it in with his local shopkeeper who personally knew and respected him and his family. He stated that he suffered embarrassment and reputational damage in his local community when it later transpired that the said local shopkeeper realised that the cheque was cancelled. He submitted that €600.00 was a significant sum and that the Appellant Landlord was not justified in retaining same.

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 the dispute and will notify the PRTB of that Determination.

6. Matters Agreed Between the Parties

Before inviting the parties to make their submissions the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

- (a) The security deposit in the sum of €600 has been retained by the Appellant Landlord.
- (b) The written tenancy agreement commenced on 2 April 2009 when the Parties entered into a 12-month fixed term tenancy.
- (c) The Respondent Tenant vacated the dwelling on 18 April 2013 as the termination date of 29 March 2013 which was on the Notice of Termination dated 20 February 2013 was extended by mutual agreement to the said 18 April 2013.

Both parties accepted that they were in agreement in relation to the foregoing matters.

7. Findings and Reasons:

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

Finding 1: The Tribunal finds that the Respondent Tenant breached his obligations under section 16(a)(i) of the Act. Under the said sub-section (a)(i) of section 16 of the Act, a tenant must pay to the landlord the rent provided for under the tenancy concerned on the date it falls due for payment. In failing to pay the Appellant Landlord the rent due and owing in the sum of €487.26 the Respondent Tenant breached his statutory obligation.

Reason: The Tribunal notes there was a conflict of evidence concerning the issue of whether or not rental arrears are due and owing to the Appellant Landlord. During the course of the hearing, the Appellant Landlord submitted to the Tribunal a sheaf (67 pages) of Bank Statements. Both Parties invited the Tribunal to take into consideration the content of same before arriving at a decision re: whether or not rent arrears had occurred and the quantum of same if any. The said statements covered the entire span of the tenancy which lasted from 2 April 2009 to 18 April 2013 i.e., just over 4 years. The monthly rent due which was originally set at €600.00 was amended twice during the course of the tenancy by agreement between the parties - from 1st June 2010 to €500.00 per month and from 1st January 2011 to €100.00 per week.

a) In the final weeks the Appellant Landlord allowed 2 weeks rent-free to the Respondent Tenant but because he stayed some 6 days longer in her estimation, she included the rent due in respect of those final 6 days in her calculation of any rent arrears.

b) The Tribunal finds that the total rent due during the period of the tenancy is €23,657.16 - this corresponds largely with the assessment of the Appellant Landlord with the one exception that the Tribunal finds that there were 4 days (and not 6 days as she claimed) due at the end of the tenancy in April 2013.

c) The Tribunal finds that albeit some payments were late by a margin of days the Respondent Tenant was a consistent regular payer of rent due. The Tribunal finds that the Respondent Tenant did miss 2 weekly payments during the course of the tenancy out of a total number of 164 payment due days. During the course of the tenancy the Respondent Tenant paid a total sum of €23,170 in rent. He also paid €600.00 deposit which the Appellant Landlord has retained.

d) In rent arrears alone at the end of the tenancy, the Tribunal finds that the Respondent Tenant was in arrears (inclusive of the 4 days at the end from 15 April to 18 April 2013) of €487.16. Applying the €600.00 deposit to the rent arrears element alone the tenant would be in credit to the amount of €112.84.

e) However the Appellant Landlord has claimed certain amounts in respect of damage above the level of normal wear and tear which the Tribunal deals with in Finding 2 below.

Finding 2: Under Section 16 (f) of the Act the Respondent Tenant is liable for any deterioration in the condition of the dwelling in excess of normal wear and tear. In respect of most of the claims made by the Appellant Landlord, on the balance of probabilities, the Tribunal finds the evidence of the Appellant Landlord including the photographic evidence adduced by the Appellant Landlord to be more persuasive than the oral testimony of the Respondent Tenant. The Tribunal awards damages of €500.00 to the Appellant Landlord resulting from the consequences of the Respondent Tenant's breach of his said statutory obligation under the Act in causing deterioration in the condition of the dwelling in excess of normal wear and tear. The said award of €500.00 comprises the sum of €400.00 towards cleaning costs incurred, €25.00 compensation for having to repair the drawer of the fridge freezer and a further €75.00 in respect of the cost of labour for repairing the table in the dwelling which the Respondent Tenant damaged. The Tribunal considers this

said award in the sum of €500.00 to be reasonable and proportionate in the given circumstances in the case. The Tribunal was not persuaded to make an award in relation to the claim that a seat was damaged beyond the level of wear and tear.

Finding 3: The Tribunal notes that there was a conflict of evidence concerning whether or not a 14 day warning notice, as alleged dated 31 January 2013 was served on the Respondent Tenant and also whether or not a Notice of Termination, as alleged by the Appellant Landlord, a Notice of Termination dated 20 February 2013 was served. The Tribunal finds it unnecessary to decide the validity of same (including the service thereof) in circumstances where both Parties agreed that the tenancy came to an end on the agreed date of 18 April 2013 on which said date the Respondent Tenant vacated the dwelling.

Finding 4: The Tribunal finds that the Appellant Landlord has justifiably retained the entire security deposit in the sum of €600.00 in accordance with the provisions of Section 12(4) of the Act.

Finding 5: The Tribunal notes the unilateral manner in which the Appellant Landlord cancelled the cheque, without giving the Respondent Tenant any prior notice of same. This was avoidable, unethical and unbecoming the actions of responsible landlord business behaviour. The cancellation of this cheque may have caused the Respondent Tenant to suffer some inconvenience as well as a degree of embarrassment in his local community. However in the given circumstances of this case and considering the totality and context of the evidence adduced, the Tribunal does not propose to make an award for damages against the Appellant Landlord.

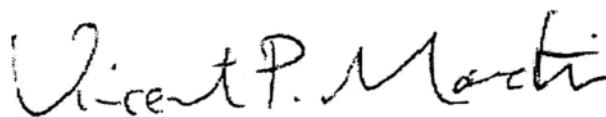
8. Determination:

Tribunal Reference TR0814-000772

In the matter of Margaret Doyle (Appellant Landlord) and Keith O'Halloran (Respondent Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Tenant shall pay to the Appellant Landlord the sum of €387.16 within 14 days of the issue of the Determination Order by the Board which comprises damages in the sum €500.00 awarded in favour of the Appellant Landlord resulting from the Respondent Tenant breaching his statutory obligations in causing deterioration in the condition of the dwelling in excess of normal wear and tear together with the sum of €487.16 due and owing to the Appellant Landlord in respect of rent arrears having deducted the entire of the justifiably retained security deposit in the sum of €600.00 in respect of the tenancy of the dwelling at 17 Moyglass, Crusheen, County Clare.

Signed:



Vincent P. Martin Chairperson

For and on behalf of the Tribunal.

