

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0814-000774 / Case Ref No: 0214-10532

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| Appellant Landlord: | Nicusor Balica |
| Respondent Tenant: | Olive Bartelink |
| Address of Rented Dwelling: | 1 Broadford Crescent, Ballinteer , Dublin 16, |
| Tribunal: | Thomas Reilly (Chairperson) Finian Matthews, John Tiernan |
| Venue: | Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2 |
| Date & time of Hearing: | 15 October 2014 at 10:30 |
| Attendees: | Nicusor Balica, Appellant, Landlord Olive Bartelink, Respondent, Tenant Reuben Bartelink, Witness, Tenant Joseph Keating, Agent, Landlord |
| In Attendance: | Gwen Malone Stenographers |

1. Background:

On 19/02/2014 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 24/04/2014. The Adjudicator determined that;

The Respondent Landlord shall pay the total sum of €2,717.00 to the Applicant Tenants within fourteen days of the date of issue of the Order, being the unjustifiably retained portion of the security deposit of €3,500.00, having deducted the sum of €400.00 for damage in excess of normal wear and tear, having deducted the agreed sum of €583.00 for five days rent and having awarded damages in the sum of €200.00 to the Applicant Tenants for the Respondent Landlord's retention of the total deposit, in respect of the tenancy of the dwelling at 1 Broadford Crescent, Ballinteer, Dublin 16.

Subsequently the following appeal was received:

Landlord : received on 08/08/2014. The grounds of the appeal: Deposit retention; Approved by the Board on 15/08/2014.

The PRTB constituted a Tenancy Tribunal and appointed Thomas Reilly, Finian Matthews, John Tiernan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Thomas Reilly 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 18/09/2014 and 15/10/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2, Dublin.

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

None on day 1.

Entered on day 2, Receipt from East Coast Upholstery and a copy receipt from Chadwicks.

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 the 24 April, 2014 in the case of a dispute between the Appellant Landlord and the Respondent Tenant in respect of a tenancy at 1 Broadford Crescent, Ballinteer, Dublin 16. 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". The 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 Chairperson, 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 his 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 his case, including the evidence of any Witness; this would be followed by an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her 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 giving their direct evidence.

He also said that at the end of the hearing, both the Appellant Landlord and the Respondent Tenant would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that 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 in.

On Day 2 of the hearing the Chairperson reminded the parties that all persons intending to give evidence were still under oath or affirmation.

5. Submissions of the Parties:

Appellant Landlord's Case:

Evidence of Nicusor Balica,

The Appellant Landlord stated that he and his family resided in the dwelling until June 2013 after which they proceeded to prepare the dwelling for renting which they successfully concluded in September 2013. The dwelling was originally a three bedroom property when the Appellant Landlord purchased it and it had a garage to the side of it. Planning permission was sought resulting in a conversion of the garage and two more rooms were constructed within it, now giving the dwelling a total of five bedrooms and having a single entrance via a communal porch. This new area had previously been resided in by the Appellant Landlord's daughter and a friend. He said that at the time of letting the dwelling was in pristine condition throughout and the entire house was rented as a single unit. He said that the dwelling was situated on well maintained grounds with flowers and shrubs growing in the back garden and the front area was comprised of a drive with planting designed to make the place look attractive. He gave evidence that improvements were carried out in 2011 and took the form of triple glazing of the windows plus external insulation of the dwelling.

The Appellant Landlord stated that on taking up residence the Respondent Tenants removed some of the beds. Those items were returned at the end of the tenancy. Three dining room chairs were placed aside to make room for high chairs for children. At the end of the tenancy some chairs were damaged and marked by colouring pens. He said that Permission had been requested for the removal of those items from the dwelling.

The dwelling contained an American fridge which was operating satisfactorily when the Appellant Landlord was in residence, however when the Respondent Tenants came to the dwelling the Fridge began to trip the ELCB Board. Attempts were made by the Appellant Landlord to carry out repairs but to no avail. As the extension (referred to as the Apartment in this report) to the original dwelling had a fridge in it the Respondent Tenants were requested to use this for their needs. The Appellant Landlord confirmed to the Tribunal when questioned that he was not making a claim for the fridge as it was old and the repair person from Samsung stated that the motor had worn out. Following on from the fridge the next issue that arose was the washing machine which stopped working and the second washing machine in the apartment also stopping working. He said that all of this occurred in a period of one month. Asked to indicate the age of the machines the Appellant Landlord stated eight years and four or five years respectively. He stated that a

claim for €199 was being made against the Respondent Tenants for the replacement of one washing machine.

The Appellant Landlord became aware of the presence of an Au Pair in the dwelling in November 2013 and submitted that in his opinion this was a breach of the contract he had with the Respondent Tenants as he was never asked for permission to have an extra person in residence. At no time was he advised that an Au Pair would be coming to live in the dwelling. The Appellant Landlord claimed that point 3.12 in the letting agreement clarifies this contention. The Appellant Landlord said that he did not have an objection to the family having a child minder however it was the matter of her living in the dwelling that was an issue for him.

He said that the Respondent Tenants complained of the heating not working properly. The Appellant Landlord submitted that the heating was fully functional as determined by an electrician who checked it out. It was stated that the downstairs areas were serviced by underfloor heating while the upper floors were heated by conventional radiators. On being questioned by the Tribunal the Appellant Landlord stated that the electrician checked out the heat pump and the relevant valve was closed as the room temperature was at 20 degrees centigrade.

An issue surrounding a gas fire was raised in that the Appellant Landlord opined that the Respondent Tenants caused damage to it. The Appellant Landlord stated that he never used the in-set gas fire and availed of the opportunity to prevent the chimney from allowing drafts into the room by blocking the chimney with a suitable blocking agent. He said that the new Tenants decided they wished to light the gas fire in order to warm the room and on doing so discovered that a sticky substance was leaking from the chimney and on to the artificial coal pieces in the fireplace. The fire was quenched immediately. The Appellant Landlord confirmed that he had not advised the Respondent Tenants that the chimney was blocked nor had he told them not to use the fire.

The Appellant Landlord stated that the dwelling was built in the 1940s and was very cold due to its construction. He said that as a result he had changed all the windows and put in triple glazing and in conjunction with this he had carried out external insulation of the dwelling. He gave evidence that the subject letting was for a period of four months while the family dwelling of the Respondent Tenants was being refurbished. He said that in January 2014 the Respondent Tenants indicated that they planned to vacate on 7 February 2014. The Appellant Landlord said that he was not satisfied with this date as he would be out of the country and would be unable to inspect the dwelling and repay the deposit. The Appellant Landlord stated that he was delayed in his return home by one day, arriving on 16 February 2014. He immediately collected a key to his now vacant dwelling from his neighbour, carried out an inspection of the dwelling and noticed a few items he was unhappy with. He said that this inspection was on the 17 February 2014 and was not detailed. On a more detailed review the Appellant Landlord stated that the garden, both back and front were unkept, had moss growing and the shrubs were not tended to. He said that he left the PRTB a memory stick with 120 photographs showing the condition of the dwelling post the departure of the Tenants featuring both the inside and outside of the dwelling

The Appellant Landlord proceeded to list the internal areas of the dwelling where he felt damage was caused above normal wear and tear. These were 1) staining of fabric on chairs 2) marks on the wooden floor 3) wallpaper marks allegedly from furniture removal scuffing when the beds were being removed and returned and the use of baby chairs and

4) a leak in a vanity closet in the bathroom. The said leak was described by the Appellant Landlord as one where no evidence was apparent until the press was opened. On being questioned the Appellant Landlord did not accept that the Respondent Tenant did not cause this problem and was claiming €289.00 for replacement. He gave evidence that on opening the cooker there were cooker trays missing and it was not cleaned properly. Furthermore he said that a door stop was removed as a result of the door banging against it and a knob was missing from a bedside locker.

An invoice in the sum of €1679.80 was presented by the Appellant Landlord who stated that it was the cost associated with carrying out necessary repairs post the departure of the Respondent Tenants. As the Invoice was not itemised the Appellant landlord submitted that it covered all the smaller tasks that required attention. The final item allegedly damaged was a leather sofa and this he opined resulted from children sliding on the arm of the sofa. The cost of repairing the damaged areas was €200.00.

At the request of the Tribunal the Appellant Landlord outlined his claim for costs as follows,

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| Invoice for repairs | € 1679.80 |
| Vanity unit | € 289.00 |
| Sofa repair/delivery and collection | € 250.00 |
| Five days extra rent | € 583.33 |
| Washing machine | € 199.00 |
| Total | €3001.13 |

It was confirmed by both parties that the sum of €495 was issued to the Respondent Tenants by the Appellant Landlord post the Adjudication.

Cross examination by the Respondent Tenants :

The Appellant Landlord was asked if he had been to the dwelling during the period of occupancy and he said that he had. Clarification was sought on when the new replacement washing machine had been purchased and he replied that it was on 9th November 2013. The Appellant Landlord contends that overloading was the cause of the damaged washing machines. Asked if the Appellant Landlord's attention was drawn to a leak from the washing machine in the apartment the Appellant Landlord agreed this to be the case and accepted that the Respondent Tenants had expressed concern that if not repaired the floor could be damaged. Asked if the matter of an Au Pair was mentioned when discussing the contract the Appellant Landlord denied this. With regard to the heating the Appellant Landlord was asked if the Respondent Tenants mentioned that the heating did not work properly at night time. He said that they had not. The Respondent Tenant put it to the Appellant Landlord that there was no heat downstairs and that the repair man found a malfunctioning valve which did not open when the temperature dropped therefore preventing heating in the lower part of the dwelling. This assertion was challenged by the Appellant Landlord as being incorrect.

Issues relating to the cooker, grill and the vanity unit were aired without agreement on either side with the exception of agreement that the cooker was dirty and had not been cleaned. The Appellant Landlord agreed that the Respondent Tenants had referred to the unsuitability of the fridge in the Apartment for a family of their size and the inconvenience of having to go from one part of the dwelling to another to access it. It was put to the

Appellant Landlord that during the course of the tenancy neither he or his agent ever made a complaint to the Respondent Tenant or requested that more care should be taken of the dwelling. The Appellant Landlord agreed with this statement and added that he knew that prior to leaving the dwelling the Respondent Tenant would clean the place up.

Evidence of Mr J Keating Agent of the Appellant Landlord:

Mr Keating stated that the Respondent Tenant made an initial inquiry seeking a suitable dwelling for a short term letting of three to four months. He advised this prospective client that they only did long term lettings, however he was contacted sometime later by an Insurance company to procure a dwelling for a short term let. It was agreed to offer a four month letting with the proviso that the dwelling must be returned in its original condition as a decision needed to be made as to whether the dwelling was to be sold or placed on the rental market again. The Agent said that contracts were drawn up and read out to the parties and the obligations that applied to both sides were confirmed. He said that the dwelling had been newly decorated and in his opinion was in pristine condition. He gave evidence that on completion of the rental term with the Respondent Tenants the Appellant Landlord invited him to come back and review the dwelling prior to taking the next step in renting or selling. He opined that marks on the wall in the hall could have resulted from the movement of beds into and out of the dwelling and other marks he could attribute to normal wear and tear. The Agent referred to the damage to the couch and stated that at the beginning of the letting he did witness one of the Respondent Tenants' children slide on the arm of the couch and went further to confirm that he also saw the child being reprimanded for doing so. Asked about his impression of the dwelling post the letting the Agent said that there were hand prints on the windows and on some doors but the main area of damage was to the wall to the side of the stairs and the porch. He stated that some of those defects could be remedied by a good washing. The Agent was challenged on his version of events by the Respondent Tenant relating to the behaviour he said that he witnessed when one of his children was allegedly sliding on the arms of the couch.

The matter of reviewing the 120 photographs was aired at this point resulting in the Respondent Tenant expressing disquiet at the relevance of them and the fact that they should have been submitted in advance giving all side the chance to review. Raised also was the time taken to deal with issues such as the leak in the the washing machine and other matters all of which he felt were petty.

The Respondent Tenant expressed his concern at an adjournment being called and referred specifically to the four days he and his wife collectively need to take off work to address the matters on hand.

Respondent Tenants case :

Evidence of Reuben Bartelink,

The first-named Respondent Tenant opened his contribution by making reference to the photographs provided. The dates the photographs were taken were noted, especially the fact that a large number were taken 62 days prior to the occupation of the dwelling. It was acknowledged by the Respondent Tenant that he had no issues with the photos and there was no suggestion that any of them were altered in any way.

He outlined that the history of the letting involving a period of four months resulting from moving from their own dwelling due to flooding and the need to carryout repairs in it. They wished to procure a dwelling adjacent to schools their children were already attending

and also have adequate accommodation to facilitate two adults and three children plus an Au Pair. At the time of renting the second-named Respondent Tenant was on maternity leave and was due to return to work on 20 November 2013 and therefore it was imperative that they could accommodate the Au Pair who would be minding the children while they as parents were at work. The Respondent Tenants stated that they were having their rent paid by an Insurance company and because of the short term of the letting they were paying a premium of an extra €550 per month to the Appellant Landlord. Queried on how the matter of the Au Pair was addressed with the Appellant Landlord the Respondents submitted that they said the apartment would be suitable for her. They also pointed out that in order to justify a five bedroom house to the Insurance company they needed a justifiable reason, that being the presence of an Au Pair to look after the children. The Respondents had two viewings of the dwelling prior to agreeing to rent. The dwelling was shown by the Appellant Landlord who addressed the heating system which the Respondents said was similar to their own. Particular attention was drawn to the outside wall of the dwelling which was insulated, was fragile and could be easily damaged eg by placing bicycles against it.

It was confirmed that all of the Respondents furniture was put in storage for the duration of the work at their family home with the exception of a few beds. Those beds and other personal belongings were transported by the removal company who handled all of this for the Insurance company. The rented dwelling provided the remainder of the household requisites for the family. The garden comprised concrete flags and only a limited amount of grass. As it was winter no work other than removal of leaves was required. No unsupervised activities were conducted in the outside of the dwelling by the children. In the dwelling itself three of the kitchen chairs were placed in another room to allow the childrens three high chairs be accommodated in the kitchen. Two of the beds were removed by the removal company to storage in order to facilitate the family using single beds for their two boys. The Respondent Tenant confirmed that the letting agreement was signed on 3 September 2013 and they moved in on 11 September 2013. During the period before the tenants moved in the second named Respondent called to the dwelling many times and noticed that the post was being collected through entry to the dwelling by someone unknown. Following taking up residence the post began to mount up and the Respondents concluded that even though they had the keys others also had keys and entered without permission prior to them taking up residence on 11 September. On returning from the collection of one of the children the Respondent found that the electricity was off and sought to find the fuse board only to eventually find that there were two such boards. One such board was in what was termed the main dwelling and the second in the apartment. All the sockets were without power and after repeated efforts to get the electrics on it was found, with the assistance of the Landlord that it was the American Fridge which was causing the problem. The Respondents were advised to use the small fridge in the apartment which necessitated going through the hall and into the other part of the dwelling. This was a daily feature of their lives while in the dwelling and was a source of major inconvenience especially with three small children. Following the initial problem with the fridge it was soon apparent that the fridge was not cooling properly and there followed attempts to have repairs carried out by the agents, however without a satisfactory outcome. At this point it was late November or early December, work had begun on their own dwelling and the Respondents said that they could see light at the end of the tunnel and would focus on the imminent return to their own home.

The next issue was the temperature of the dwelling which the Respondents found unsatisfactory, notably in the downstairs area where there was underfloor heating. The Respondents had taken the morning temperature of the ground floor area and found it to be 15 degrees and duly raised the matter with the Appellant Landlord who sought assistance in remedying the matter. About mid November a resolution was found to the problem.

Prior to the heating being fixed the Respondents said that on one occasion when the second named Respondent returned from visiting her family she found the dwelling very cold and decided to turn on the gas fire to warm the place up while she prepared the children for bed. Within a short time she became aware of a strong smell and on investigation found that it came from the gas fire which by now featured a sticky glue like material dropping from the chimney on to the artificial coals below. The fire was quenched and after some time attempts were made to remove the material which had soiled the coal. The gas fire had not been used before and no instructions had been given to the Respondents by the Appellant Landlord. The Respondent Tenants stated that when paying €3500 per month in rent it was their expectation that everything would be in working order, that the gas fire would be fully serviced, that they would be advised of the blocking of the chimney and that instructions would be forthcoming on safety concerns. The Respondent Tenants state that they were placed at significant risk due to the blocking of the chimney and the apparent lack of carbon monoxide and smoke detector alarms. They further stated that not being made aware of the blocking of the chimney was a major issue with them and that it is unreasonable that a tenant has to look up the chimney prior to lighting the gas fire as was suggested by the Appellant Landlord.

The washing machine in the main dwelling ceased to function shortly after the Respondents moved in and they were requested to use the machine in the apartment. When a wash was put on in this machine the Respondent noticed that water was leaking from it and was wetting the laminate floor on which it stood. The Appellant Landlord was notified and within a few days he replaced the washing machine with a new one which he now claims the cost of.

On 7 January 2014 the Respondents were contacted by the loss adjuster and advised that their family dwelling would be ready in a month and to give notice to their Landlord of their imminent move from the dwelling. This notice was given immediately to the Landlord by text and followed up with written notification. The Appellant Landlord stated that he would be away on the planned date of departure and would not be available to carry out a pre departure inspection until he arrived back on 15 February 2014. The Respondents arranged to vacate the dwelling and did so on 6 February and on 8 February left the keys of the dwelling with a neighbour for collection by the Appellant Landlord. Final readings from the utilities were taken and passed to the relevant provider and the letting agent was advised of the vacation of the dwelling. Due to flight delays the Landlord did not arrive home until 16 February and the first inspection took place on 19 February 2014. The return date of the keys was queried and the Appellant Landlord advised that further rent was due for the extra time. The Respondents were both aggrieved at such a suggestion and felt that the Landlord was trying to get as much money from them as he could. In this instance the lady who took charge of the keys pending collection by the Appellant was able to confirm the date of delivery to her and hence the acceptance of a total of an extra five days rent being due. An email was issued to the Respondent Tenants post the inspection visit which revisited the areas of claim made by the Appellant Landlord.

The Respondents confirmed that they had facilitated viewings of the dwelling on behalf of the Landlords agent during the period of notice and did so as a matter of goodwill. The dwelling was returned in a clean and tidy state with the windows cleaned and all internal areas hoovered and dusted. The only area where there was an omission was the cooker which the Respondents stated was overlooked and was not cleaned to the standard they would wish. The only part of the dwelling they conceded need some painting was the entrance hall where the childrens buggies and bicycles were kept and they expressed the view that normal wear and tear applied given three young childrens buggies were stored there. The family did not wear shoes in the house and refuted the allegation that marks on the floor were resulted from their behaviour. Neither did they accept blame for the alleged damage to the couch suggesting that it was normal wear and tear of a fabric which was not leather as claimed. With regard to alleged marks on walls the Respondent stated that all movement of furniture ie primarily beds was carried out by professional removers who were supervised by the second named Respondent and who claims no marks or damage were made by the removers. The Respondents suggested that on viewing the photographs submitted by the Appellant Landlord that the first photos which were taken 62 days prior to the Respondents taking occupation that furniture had been moved in the intervening period and an example was the removal of a blue coloured couch from a room upstairs and the removal of a large mirror downstairs.

The leak in the closet in the bathroom was not noticed until 19 February, at the joint inspection and no evidence of its presence was noticeable prior to that and it is the contention of the Respondents that such leak was not of their making and of minor consequence. While the Respondents were caring for the dwelling they were renting they said that as it was a short term let they never regarded it as their home but cared for it as if it were. They further stated that the retention of their deposit was having an effect on their cash flow position and a source of financial pressure for them. The claims for the washing machine and fridge are unsustainable and not appropriate claims to lay at the feet of the Respondents. The Respondent Tenants believe that they should get their deposit back in full, with the exception of the agreed deductions, as nothing above normal wear and tear had taken place during their occupancy of the dwelling.

Cross examination of the Respondent Tenants by the Appellant Landlord.

Q Did you trim the plants and clean the yard ?

A It was winter the plants were not growing at the time .the yard had leaves and rubbish taken from it.

Q Did you clean the windows ?

A Yes - once or twice.

Q Was the washing machine in the main house broken before or after you went into occupation?

A It broke after about one month and the one in the apartment leaked the first time it was used.

Q When you signed the contract you agreed that the dwelling would be left back in the same condition?

A Yes, it was returned in the same save normal wear and tear and you received a premium rent of €550 per month going from €2950 to €3500.

Q The presence of an Au Pair ?

A This matter was discussed at the initial discussions on renting and it was featured as an essential element of the rental due to their being two children at the time plus a baby and both Respondents were holding down jobs.

Q The heating claimed not to be working.

A The Respondent Tenants stated that the heat worked satisfactorily upstairs, however due to a defect downstairs the system did not heat the ground floor area until a service man checked it out and resolved the problem.

The Chairperson thanked both parties for attending and advised them that following the hearing the Tribunal would prepare a report and make its Determination in relation to the dispute to be forwarded to the PRTB.

6. Matters Agreed Between the Parties

1. There was a 4 months fixed term letting agreement in place.
2. A deposit of €3,500 was paid.
3. Monthly rent was €3,500 and was to be paid in advance.
4. Tenancy commenced on the 3 September 2013.
5. Tenancy ceased on the 8 April 2014.
6. A sum of €583 in rent due is agreed to be deducted from the deposit.
7. A sum of €400 is agreed to be deducted from the deposit to cover damage over normal wear and tear.

7. Findings and Reasons:

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

Finding:

The Tribunal finds that the Respondent Tenants of the dwelling were in breach of their obligations under section 16 (f) of the Act.

Reasons:

It was accepted by the Tenants that the cooker was inadequately cleaned and that the hallway featured marks on the wall and floor resulting from parking the childrens' buggies which were parked there to facilitate daily use. The Tribunal awards €200 to the Appellant Landlord for this breach of obligations.

Finding:

The Tribunal finds that the Appellant Landlord was in breach of his obligations in failing to inform the Respondent Tenants that he had blocked the chimney in the sitting room in order to exclude draughts.

Reasons: By his lack of communication with the Respondent Tenants in regard to the blocking of the chimney the Appellant Landlord seriously compromised the Health and

Safety of the Respondent Tenants and their children and put them at serious risk as a result of the potential effects on them, and on all of those residing in the dwelling due to inadequate venting of potentially lethal gases such as carbon monoxide from the gas fire. In this regard the Appellant Landlord breached his obligations.. Clause 7(1)(b) of S.I. 534 of 2008 - Housing (Standards for Rented Houses) Regulations. The Tribunal awards €500 to the Respondent Tenants for the consequences on them of this hazard.

Finding: The Tribunal finds that the Respondent Tenants were compliant in meeting their other obligations under the Act and rejects the claim of the Appellant Landlord in respect of the cost of replacing the washing machine at a cost of €199.

Reasons:

The Tribunal noted the claim for a new washing machine, however having regard to the stated age of the two washing machines in the dwelling and the failure of the first one to function within the first month of occupancy and the accepted evidence that the second one leaked on the first wash that was put into it the Tribunal is of the view that such replacement is a matter for the Appellant Landlord.

Finding:

The Tribunal finds that to facilitate an orderly departure to the Respondents Tenants to their refurbished dwelling an extra five days residence in the tenancy of the subject dwelling was agreed between the parties post the original scheduled departure date and rent is due to the Appellant Landlord for this extra time.

Reasons:

The Tribunal is satisfied that five extra days beyond the original vacation date was availed of in the dwelling by the Respondent Tenants and accordingly accept the Appellant Landlord's entitlement to rent in the sum of €583 for the extra days.

Finding:

The Tribunal finds that an American fridge ceased to function at the beginning of the tenancy and issues arose from the malfunction of the underfloor heating downstairs.

Reason:

The Tribunal accepts the evidence of the Respondent Tenants that following the breakdown of the fridge the Respondent Tenants were advised to use a small fridge located in the apartment. This was a source of significant inconvenience as it necessitated walking from one part of the dwelling to another to access food for the three young children.

The Tribunal accepts the evidence of the Respondent Tenants that the underfloor heating did not work satisfactorily for a number of weeks post arrival in the dwelling and that an undue delay occurred in making the necessary repairs. The Tribunal awards €100 to the Respondent Tenants for the consequences of the above two breaches of obligations on the part of the Appellant Landlord.

Finding:

The Tribunal finds that the following i.e.garden maintenance, window cleaning, the couch, vanity unit, stain on carpet, marks to floor in dining room, adjustment of wardrobe doors, and shower stain, were deemed to be associated with normal wear and tear.

Reason:

Having carefully considered the evidence of both parties and having reviewed the photographic evidence submitted the Tribunal is satisfied that any damage in respect of the foregoing items feature normal wear and tear having regard to the period of occupancy and the number of occupants in the dwelling.

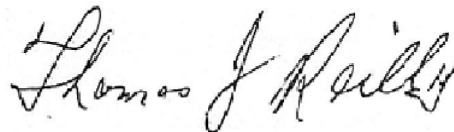
8. Determination:

Tribunal Reference TR0814-000774

In the matter of Nicusor Balica (Landlord) and Olive Bartelink (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 €2,822.00 to the Respondent Tenants within 28 days of the date of issue of the order, being the unjustifiably retained portion of the security deposit of €3,500.00 having deducted the sum of €200.00 for damage in excess of normal wear and tear and having deducted the agreed sum of €583.00 for five days rent and having further deducted €495 being that portion of the deposit already refunded and having awarded damages to the Respondent Tenants in the sum of €600.00 for the consequences of breaches of the Appellant Landlords obligations in respect of the tenancy of the dwelling at 1 Broadford, Crescent, Ballinteer, Dublin 16.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 03/12/2014.



Signed:

Thomas Reilly Chairperson

For and on behalf of the Tribunal.