

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0814-000776 / Case Ref No: 0414-11529

Appellant Tenant:	Vincent Ward, Margaret Burke
Respondent Landlord:	Monica Battlebury
Address of Rented Dwelling:	292 South Circular Road, Dublin 8
Tribunal:	John Tiernan (Chairperson) Gene Feighery, Vincent P. Martin
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	26 September 2014 at 10:30
Attendees:	Monica Battlebury - Tribunal Respondent Landlord Caroline Battlebury - Tribunal Witness for Respondent Landlord Elizabeth Laird - Tribunal Witness for Respondent Landlord Cian O Cathain - Solicitor for Respondent Landlord Frank Crean barrister at law - Instructed by Vincent & Beatty Solrs for Respondent Landlord Deirdre Ward - Tribunal Representative & witness Vincent Ward - Appellant Third Party Gerard Ward - Witness for Appellant Third Party Blathnaid Ward - Witness for Appellant Third Party
In Attendance:	Gwen Malone Stenographers

1. Background:

On 14/04/2014 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 19/05/2014. The Adjudicator determined that

1. The Respondent Tenant shall pay the total sum of EUR11,000 to the Applicant Landlord, within 28 days of the date of the issue of the Order, being EUR10,500 in rent arrears and EUR500 for damages for the Respondent Tenant's breach of her obligations under s. 16(a) of the Act, in respect of the tenancy of the Dwelling at 292 South Circular Road, Dublin 8.

2. The Applicant Landlord's application regarding overholding in respect of the Dwelling at 292 South Circular Road, Dublin 8 is not upheld.

Subsequently, an appeal was received from the tenant on 12/08/2014. The appeal was approved by the Board.

The PRTB constituted a Tenancy Tribunal and appointed John Tiernan, Gene Feighery, Vincent P. Martin, Gene Feighery as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Tiernan to be the chairperson of the Tribunal ("the Chairperson").

On 25/08/2014 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 26/09/2014 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:

PRTB File

3. Documents Submitted at the Hearing Included:

The following documents were admitted in to evidence with the consent of both parties.

- 1) Letter dated 27th August 2014 from Legal Aid Board to the Applicant Third Party submitted on behalf of the Applicant Third Party
- 2) Copy of District Court Order dated 6th July 1983 Fixing the Terms of the Tenancy submitted on behalf of the Respondent Landlord.
- 3) Unsigned copy of letter dated 26th August 2003 from Vincent & Beatty Solrs, on behalf of the Respondent Landlord to the Appellant Tenant submitted on behalf of the Respondent Landlord

4. Procedure:

The Chairperson asked the Parties present and their witnesses to identify themselves and to identify in what capacity they were attending the Tribunal. 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 the PRTB document entitled "Tribunal Procedures". He explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be conducted in a manner that would be as informal as was possible. He said that members of the Tribunal might ask questions of both Parties from time to time.

The Chairperson explained to the Parties that in the event that agreement is reached between them the terms of any such agreement can be incorporated in to a determination of the Tribunal and thus become enforceable through the Courts.

He stressed that all evidence would be taken on oath or affirmation 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 up to €4,000 or up to 6 months imprisonment or both.

He 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 enforced by either of the Parties or in some cases by the Board of the PRTB at its discretion. He also advised the parties that the Tribunal process was the final step in the dispute

resolution process unless appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

He asked the Parties if they had any queries about the procedure. There were none.

The parties intending to give evidence were sworn in.

5. Submissions of the Parties:

Submissions and Oral Testimony of the Applicant Third Party's Representative

The Representative of the Applicant Third Party, who is his niece, said that the Applicant Third Party wished to apply to become a tenant under the provisions of Section 50 of the Act of 2004. She said that he had received advices to the effect that he would be entitled to rent allowance. She gave evidence that he was a licensee of the Appellant Tenant being her brother who had always resided in the Dwelling with her and before that with his parents. She said that the Appellant Tenant, Mrs Margaret Burke, (and who was named as the Respondent/Applicant Tenant at the adjudication hearing) had died on 6th June 2014 which post-dated the adjudication hearing on 19th May 2014. She said that she and the other witnesses on behalf of the Applicant Third Party were attending the Tribunal to represent the interests of the Applicant Third Party and not the interests of the Appellant Tenant.

The Representative of the Applicant Third Party described how the Applicant Third Party's parents had been the original tenants in the Dwelling and that when his mother passed away in 1988 the tenancy passed on to his sister, Margaret Burke (nee Ward).

The Representative of the Applicant Third Party made a passionate plea seeking that he be allowed to remain in the Dwelling to live out his life in the community he has lived within for 54 years of his life with the support of friends and neighbours as well as local services. She said that he is now 77 years of age.

The Representative of the Applicant Third Party said that the Appellant Tenant went in to hospital in late 2012 and was moved to a nursing home in February 2013. She agreed that the cost of the nursing home care had impacted upon the ability to keep up rental payments and that accordingly rent arrears had accumulated.

Oral Testimony of Applicant Third Party

The Applicant Third Party said that he had lived in the Dwelling for 54 years having moved in with his parents at the commencement of the original tenancy in c. 1960. He said that he had never lived anywhere else since that time. He related that as time elapsed his sister took over the tenancy and that she assumed sole responsibility for payment of rent and that he was happy to leave this matter to her. He said that he paid housekeeping money to his sister and that she had looked after all matters relating to the rent. He said that he had never met the Respondent Landlord. In response to a query from the Tribunal he said he had not thought to bring any old letters addressed to him at the Dwelling that might provide independent evidence of his having lived at the Dwelling down through the years.

He said that when his sister, the Appellant Tenant, went in to a nursing home in February 2013 he had not given much thought to matters relating to the rent. He said that he was putting it off. He agreed that when the Respondent Landlord's daughter rang him in late 2013 in regard to the arrears of rent he had told her that it was not his problem.

Oral Testimony of Second Witness on behalf of the Applicant Third Party

The second witness on behalf of the Applicant Third Party, who is his nephew, gave evidence to support the fact that the Applicant Third Party had resided at the Dwelling for as long as he could remember, it having been the family home.

The Respondent Landlord's Case:

Oral Testimony of Respondent Landlord:

The Respondent Landlord stated that she is the owner of the Dwelling at 292 South Circular Road, Dublin 8, having inherited same in 1988 from her Aunt. She said that she had been familiar with the Dwelling prior to that and gave evidence that as a teenager she had accompanied her father, the then owner of the Dwelling, when he called there to collect the rent. She said that she was aware of the circumstances whereby the Appellant Tenant, Mrs Margaret Burke, (now deceased) and her two children moved in to Dwelling and that she had subsequently lawfully become the tenant. She said that up until February 2013 the Appellant Tenant was a very good tenant and had always paid the rent on time except for one occasion. She said that in 1983 following an application by Mrs. Mary Ward who was the mother of the Appellant Tenant the rent had been set by the District Court under the provisions of the Housing (Private Rented Dwellings) Act of 1982 at €135 per month and that subsequent to 2003 the rent had been increased to its present level of €700 per month. She said that the current rent level had been agreed in circa 2006 and had not been increased since then.

The Respondent Landlord said that she had never met or known of the Applicant Third Party. She said that the first time she became aware of his existence at the Dwelling was in October 2012 when the Appellant Tenant was in hospital and when agents on her behalf were carrying out repairs at the Dwelling. She said that the agents had reported to her that there was a gentleman apparently residing in the Dwelling.

The Respondent Landlord said that she is 83 years of age and that she does not have a state pension. She said that she depended upon the rental payments in respect of the Dwelling to help her to defray her ongoing bills and has had to rely on financial assistance from her family at times due to the shortfall that has accrued since that income came to an end in early 2013.

Oral Testimony of first Witness on behalf of Respondent Landlord:

The first Witness on behalf of the Respondent Landlord, who is her daughter, gave evidence that she had made contact with the daughter of the Appellant Tenant in regard to the rent arrears in early 2013 and that she was told that the Appellant Tenant was then in a nursing home and could not afford to continue to pay rent. She gave evidence that there was an understanding that arrangements would be made to vacate the Dwelling. She said that when she first contacted the Applicant Third Party he said that he would go and visit the Appellant Tenant and discuss the issue of rental payments with her. She said that subsequently when she spoke by telephone with him he told her that the rental payments were not his problem.

Submissions of Counsel on behalf of Respondent Landlord

Counsel on behalf of the Respondent Landlord put forward the case that the Dwelling is in the ownership of the Respondent Landlord having been inherited from her Aunt on her passing in 1988. He adduced in evidence a District Court Order dated 6th July 1983 under the provisions of the Housing (Private Rented Dwellings) Act 1982 setting out the

terms of the tenancy in favour of the Appellant Tenant's mother from whom the Appellant Tenant succeeded in the tenancy and who was now deceased having passed away on 6th June 2014 which fell within the interim period post the adjudication hearing date and prior to the date of the instant Tribunal hearing. He also adduced in evidence a letter from Solicitors on behalf of the Respondent Landlord dated 26th August 2003 to the late Appellant Tenant relating to the fixing of rental terms.

Counsel on behalf of the Respondent Landlord said that to some extent the process had been overtaken by events and argued that in accordance with the provisions of Section 39 of the Act of 2004 the tenancy terminated on the demise of the Appellant Tenant. In response to a query from the Tribunal he pointed out that the position of the Applicant Third Party who himself submitted that he was a licensee and not a tenant and who was the brother of the late Appellant Tenant, did not fall in to one of the categories of persons who would be entitled under that said Section to elect to become tenant of the Dwelling. He asserted that the Applicant Third Party was a licensee of the now deceased Appellant Tenant and that he had not made an application under the provisions afforded such licensees under Section 50 of the Act of 2004 to become a tenant. He pointed out that the Applicant Third Party had accepted that he was a licensee. He said that any intention of the licensee to apply to the Respondent Landlord to become a tenant in his own right needed to have been made during the subsistence of the tenancy.

Counsel on behalf of the Respondent Landlord said that the provisions of the Housing (Private Rented Dwellings) Act 1982 enshrined that the tenancy could continue for a period of 20 years post the enactment of that particular legislation which brought the tenancy which was by that time then in the name of the late Appellant Tenant to c. 2003. He argued that the provisions of the Residential Tenancies Act of 2004 now applies to the tenancy and that the letter of 26th August 2003 that was adduced in evidence was proof of the arrangement between the parties and that the late Appellant Tenant was then the tenant up until her recent demise. He said that the facts are that the Respondent Landlord had no application before her during the currency of the tenancy from the licensee to endeavour to consolidate his right to become a tenant. He opined that if the rent had been paid as it had fallen due perhaps the matter would not have reached the current position. He pointed out that there were arrears of rent built up since February 2013 which now amounted to €14,000 and that that the licensee had chosen to allow significant rent arrears to accumulate. When it was put to Counsel by the Tribunal that it could be argued that the late Appellant Tenant and not the licensee was responsible for the rent, Counsel agreed that that could be argued. He emphasised that the Respondent Landlord was seeking vacant possession of the Dwelling at this stage.

6. Matters Agreed Between the Parties

- 1) The monthly rent at the relevant time was €700

7. Findings and Reasons:

Based upon the evidence provided and based on the balance of probabilities the Tribunal has made the following findings:

Finding No. 1

The Tribunal finds that tenancy of the Dwelling at 292 South Circular Road, Dublin 8, which was a Part IV tenancy that had been held by the Tenant, Margaret Burke (nee Ward deceased on 6th June 2014) has terminated.

Reason 1:

In accordance with the provisions of Section 39 subsection (1) of the Act of 2004 a Part IV tenancy shall terminate on the death of the tenant. Section 39(2) of the Act of 2004 provides that subsection (1) above does not apply in the event that certain nominated categories of persons as set out in subsections 39(3)(a) & (b) may continue in the tenancy for the period it would otherwise have continued in being if they have been residing in the Dwelling at the time of the tenant's death and such a nominated person elects in writing to become a tenant of the Dwelling. The Tribunal notes that there has been no evidence that any person other than the licensee, Vincent Ward, was residing at the Dwelling at the time of death of the Appellant Tenant and that there has been no evidence of election by any such category of person to become a tenant. The Tribunal also notes that the stated categories of persons who may elect cited in the said subsection does not include a person who is a brother of a tenant.

Reason 2:

The Tribunal notes that the licensee of the Tenant had not during the currency of the tenancy made a request to become a tenant in his own right under the provisions of Section 50(7) & Section 50(8) of the Act of 2004 whereby a person who is a licensee of the tenant during the subsistence of a Part IV tenancy may request the landlord of the dwelling to allow him or her to become a tenant of the dwelling and which request may not be unreasonably refused. The Tribunal notes that the Representative of the licensee stated at the Tribunal Hearing that it was the intention to make such an application. However the Tribunal considers that in the absence of such request being made during the currency of the tenancy the Part IV tenancy has terminated on the demise of the Tenant.

Reason 3:

Arising from Reasons 1 & 2 above the Tribunal has concluded that any of the provisions that might have extended the tenancy to the licensee were not availed of and that no provision exists whereby such facility could be established at this stage given that under the provisions of Section 39(1) of the Act of 2004 the tenancy of the Appellant Tenant has terminated.

Finding No 2

The Tribunal finds that Vincent Ward also known Lawrence Vincent Ward was a licensee in the tenancy held by the former tenant Margaret Burke now deceased.

Reason:

The Tribunal accepts the evidence of the Applicant Third Party and of his Representative in regard to the arrangement he had with the tenant in the Dwelling Margaret Burke. The Tribunal considers that such arrangement constituted that of licensee and not of a tenant during the course of Margaret Burke's tenancy. The Tribunal also notes the statements of both the Applicant Third Party and of his Representative that he was at no time a tenant in the tenancy. The Tribunal further notes the position put forward by Counsel on behalf of the Respondent Landlord that he was considered to have been a licensee in the tenancy.

The Tribunal finds that the licensee, Vincent Ward also known as Lawrence Vincent Ward residing at the Dwelling at 292 South Circular Road, Dublin 8 shall vacate and give up possession of the Dwelling within 90 days of the date of issue of the Order by the Board in order to facilitate transfer of possession of the Dwelling to the Respondent Landlord.

The Tribunal considers that Vincent Ward also known as Lawrence Vincent Ward was a licensee of the tenant of the Dwelling and that on the demise of the tenant the tenancy has ceased to subsist and he as her licensee has no further right to continue residing at the Dwelling. In such circumstance the Tribunal considers that the Respondent Landlord is entitled to recover possession of the Dwelling. The Tribunal considers that in the interests of fair procedure the licensee should be facilitated with a reasonable period of time of 90 days in which to arrange for his vacation of the Dwelling.

Reason:

The Tribunal accepts the evidence of the parties to the dispute that no rent was paid by the Tenant to the Respondent Landlord from the month of February 2013 to the date of the demise of the Tenant on 6th June 2014. The Tribunal notes that the evidence of the licensee and of the Respondent Landlord that the licensee did not pay rent to the Respondent Landlord during that period or in the period subsequent to the Tenant's demise up until the date of the Tribunal hearing. The Tribunal considers that during that latter period the licensee did not have a contractual relationship with the Respondent Landlord to pay rent.

The quantum of the rent arrears above has been determined as follows;

- 1) Monthly rent = €700
- 2) There is no evidence or claim to the existence of a security deposit.
- 3) Rent arrears commenced to accumulate in March 2013 and no rent was paid to the date of demise of the Tenant on 6th June 2014 at which day the tenancy terminated.
- 4) The above matters lead to the conclusion that rent arrears in respect of 15 months @ €700 = €10,500 plus rent in respect of 6 further days in June 2014 are due.
- 5) The rent arrears for the 6 days is calculated by multiplying the monthly rent by 12 to yield an annual rent = €700 X 12 = €8,400 and then dividing that sum by 365 to yield a daily rate of €8,400 ÷ 365 = €23.01 . This sum is then multiplied by 6 to yield the rent due for the final 6 days = €23.01 X 6 = €138.06.
- 6) The total rent due and owing therefore =

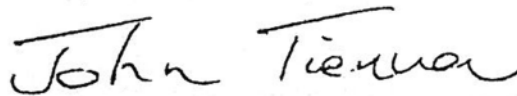
is a) Rent in respect of 15 months as at 4) above	= €10,500
plus b) Rent in respect of 6 days as at 5) above	= €138.06
Total	= €10,638.06

8. Determination:

In the matter of Margaret Burke (deceased), Tenant & Vincent Ward (also known as Lawrence Vincent Ward), Licensee, Applicant Third Party and Monica Battlebury, Respondent Landlord the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act determines that:

1. The tenancy of the Dwelling at 292 South Circular Road, Dublin 8 that had been held by the Tenant Margaret Burke (nee Ward, deceased) has terminated.
2. The licensee Vincent Ward also known as Lawrence Vincent Ward, and all persons residing at the Dwelling at 292 South Circular Road, Dublin 8 shall vacate and give up possession of the Dwelling within 90 days of the date of issue of the Order by the Board.

Signed:



John Tiernan Chairperson

For and on behalf of the Tribunal.