

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0814-000777 / Case Ref No: 0214-10451

Appellant Tenant:	Sean Griffin, Ann Griffin
Respondent Landlord:	Fergal O'Shea
Address of Rented Dwelling:	5 Milford, Malahide , Dublin
Tribunal:	Tim Ryan (Chairperson) Patricia Sheehy Skeffington
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	22 September 2014 at 2:30
Attendees:	Sean Griffin, Appellant Tenant Fergal O'Shea, Respondent Landlord
In Attendance:	Gwen Malone Stenographers

1. Background:

On 16/02/2014 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 10/06/2014. The Adjudicator determined that:

The Respondent Tenant shall pay the total sum of €4,400 to the Applicant Landlord within 28 days of the issue of the Order. This sum represent rent arrears of €6,000, having deducted the entire of the justifiably retained security deposit of €1,600, in respect of the tenancy of the dwelling at 5, Milford, Malahide, Co Dublin.

Subsequently an appeal was received from the Tenant. The grounds of the appeal were rent arrears. The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Patricia Sheehy Skeffington and Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Tim Ryan to be the chairperson of the Tribunal ("the Chairperson").

The Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing. On 22/09/2014 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:

N/A

4. Procedure:

The Chairperson asked the parties 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".

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be as informal as possible; that the person who appealed (in this case the Appellant Tenant) would be invited to present his case first, that there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present his case and that there would be an opportunity for cross-examination by the Appellant Tenant.

He also said that members of the Tribunal might ask questions of both parties from time to time. The Chairperson explained that, following this, both parties would be given an opportunity to make a final submission.

He stressed that all evidence would be taken on oath and be recorded by the official stenographer present and he reminded the parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of €4,000 and/or up to 6 months imprisonment.

The Chairperson noted that should the parties indicate that they would be able to resolve the dispute through negotiation, the Tribunal would facilitate any such settlement. The terms of any such agreement can be incorporated into a Determination Order of the Tribunal and thus become enforceable through the Courts.

The Chairperson also reminded the parties that, as a result of the Hearing that they, the Board, would make a Determination Order which would be issued to the parties and posted on the PRTB website. It could be appealed to the High Court on a point of law only in accordance with Section 123(3) of the Residential Tenancies Act 2004, hereafter referred to as the Act of 2004.

The Parties giving evidence were then sworn in and the hearing commenced.

5. Submissions of the Parties:

Preamble: At the outset the Appellant Tenant agreed that following a review of the most recent written submission by the Respondent Landlord, there was now agreement as to the amount of rent arrears owed which amounted to €6,000.00 (five months at €1,200.00 per month) less the deposit of €1,600.00 retained by the Respondent Landlord. The only issue before the Tribunal was whether the Appellant Tenant was entitled to a "Finder's fee" in the sum of €4,305.00 (€3,500.00 plus VAT @ 23%) for introducing replacement tenants to the Respondent Landlord.

Appellant Tenant's case:

Evidence of Seán Griffin:

The Appellant Tenant said he had only received the most recent submission from the Respondent Landlord by post four days previously, thereby not giving him sufficient time to form a detailed response.

The Appellant Tenant said that he had rented the dwelling for seven years since 2006 but for much of the time, he had always dealt with the letting agent until the Respondent Landlord took back responsibility for managing the dwelling himself. He had met the Respondent Landlord on 14 March 2013 as he and his wife had purchased a home and wished to give notice to vacate at the end of April 2013. At this meeting he had brought along details of all rent paid. He said they agreed that they would meet again in mid May and settle their affairs.

The Appellant Tenant said that at the meeting he mentioned to the Respondent Landlord that he knew a family who might be interested in becoming tenants of the dwelling and the Respondent Landlord agreed that he could pursue this as he indicated he was going to continue to rent the dwelling. He said it was also agreed that if the prospective tenants were interested he had permission to pass on the Respondent Landlord's telephone number to them. He said he contacted the tenants who were the family of good friends of theirs and there were three visits by them over the next few weeks. He said the dwelling suited the prospective tenants as it was close to the family of one of them and they decided to rent it. He said at no stage did the Respondent Landlord accompany the prospective tenants and he had facilitated each visit. He said he vacated the dwelling on 30 April 2013 and the new tenants moved in on the following day, 1 May 2013.

The Appellant Tenant said there had been no discussion of monetary reward for finding and/or helping find new tenants for the Respondent Landlord at the meeting on 14 March 2013 and he had planned this would be part of a discussion of their affairs at the next meeting in mid-May. He confirmed to the Tribunal that he was neither an auctioneer nor a letting agent. On 9 May 2013 he said he was surprised to receive an email from the Respondent Landlord asking when he would settle the outstanding rent arrears which amounted to €6,000. A full record of payments was included with the email. However, he said that on 16 May 2013 he was taken ill and spent 10 days in hospital. He said he was out of work and recuperating until 22 September 2013.

The Appellant Tenant said he was surprised at the emails from the Respondent Landlord and sent a reply by email stating he would have expected some financial recognition and/or reward for sourcing the new tenants. He subsequently sent an invoice in the sum of €3,500.00 plus VAT @ 23% which he said was a "Finder's fee" for sourcing the new tenants. Asked by the Tribunal to explain how he arrived at this figure, he replied that he calculated it following a discussion with two professional letting agents and believed it to be fair, given the new tenancy was longterm. He agreed that his actions did also favour family friends but he said he had spent 9 - 10 hours facilitating the prospective tenants over the course of three visits.

Respondent Landlord's case:

Evidence of Fergal O'Shea

The Respondent Landlord told the Tribunal that the dwelling had not been returned to him in a spotless condition as claimed by the Appellant Tenant but he was not claiming for any cleaning work. He said the Appellant Tenant was frequently late with rental payments over the years and he regularly had to follow this up with him over the course of the tenancy.

He said that at the meeting of 14 March 2013 the Appellant Tenant had agreed to settle the rent arrears before he vacated at the end of April. When this did not happen, he had sent him an email on 9 May 2013 reminding him of the amount.

He said it was part of the rental agreement that the Appellant Tenant was required to permit the property to be viewed by prospective tenants. He said at no point was the notion of a finder's fee ever raised or suggested by the Appellant Tenant until several months later when he pressed him for the rent arrears.

The Respondent Landlord said it was difficult to find a 4-bedroom house to rent in Malahide even in April 2013 and his view was that the Appellant Tenant had helped his friends to secure accommodation, something with which he had no problem. It was a "win win" for everybody concerned, he said. He said that as it transpired, his wife knew the mother of one of the prospective tenants and he did not need a credit check or reference because of this.

He further stated that in his experience of previous tenancies, letting agents normally charged the equivalent of one month's rent, for which they undertook credit checks, references and compiling an inventory of the dwelling before the tenancy commenced. He said that the Appellant Tenant did no such work and he was flabbergasted at having been charged at all when there had been no such agreement arrived at.

6. Matters Agreed Between the Parties

1. A six month fixed tenancy commenced on 16 April 2006.
2. A deposit of €1600 was paid and is retained by the landlord.
3. The rent payable was €1200 per month in advance when the tenancy ended.
4. The tenant vacated the dwelling on 30 April 2013.

7. Findings and Reasons:

Finding:

The Appellant Tenant was in breach of his obligation to pay rent when it fell due.

Reasons:

Section 16(a)(i) obliges a tenant to pay rent on the date it falls due for payment. A review of the rental payments submitted by the Respondent Landlord - and not contested by the Appellant Tenant - shows that the Appellant Tenant was frequently late with rental payments. When he vacated the dwelling on 30 April 2013, he owed a total of five months' rent arrears, totalling €6,000.

Finding

There is no evidence of any agreement between the Appellant Tenant and the Respondent Landlord for payment of a "Finder's fee" of €4,305.00. The Tribunal finds that no such sum became due or owing to the Appellant Tenant.

Reasons:

Both the Appellant Tenant and Respondent Landlord confirmed that there was no discussion on any finder's fee at their only meeting on 14 March 2013. Both concur that

what was agreed was that the Appellant Tenant had permission to show the dwelling to the son of family friends who was looking to rent a house in the area at the time.

Commercial arrangements between a landlord and agent are outside the remit of this Tribunal but attention is drawn to the requirements of the Property Services (Regulation) Act 2011 of the necessity to hold a licence before offering to provide a property service on a commercial basis. The Appellant Tenant freely admitted he did not hold any such licence.

8. Determination:

Tribunal Reference TR0814-000777

In the matter of Sean Griffin, Ann Griffin (Tenant) and Fergal O'Shea (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Tenant shall pay the Respondent Landlord the sum of €4,400.00 within 14 days of the date of issue of this Determination Order by the Board, being five months rent arrears in the sum of €6,000.00 less the whole of the sum of the justifiably retained deposit of €1,600.00 in respect of the tenancy of the dwelling at 5, Milford, Malahide, Co. Dublin.

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

Signed:



Tim Ryan Chairperson

For and on behalf of the Tribunal.