

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0814-000784 / Case Ref No: 0414-11853

Appellant Tenant:	Maureen Daly
Respondent Landlord:	Barry Horgan
Address of Rented Dwelling:	"Coillros", Sundrive Road, Rush , Co. Dublin
Tribunal:	Finian Matthews (Chairperson) Gene Feighery, Orla Coyne
Venue:	Tribunal Room, PRTB, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	09 October 2014 at 10:30
Attendees:	Barry Horgan - Tribunal Respondent Landlord
In Attendance:	Gwen Malone - Stenographersa

1. Background:

On 29/04/2014 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 15/07/2014. The Adjudicator determined that;

1. The Notice of Termination served on 28 May 2014, by the Applicant Landlord on the Respondent Tenant, in respect of the tenancy of the dwelling at "Coillros", Sundrive Road, Rush, Co. Dublin, is valid.
2. The Respondent Tenant and all persons residing in the above dwelling, shall vacate and give up possession of the dwelling within 28 days of the date of issue of the Determination Order.
3. The Respondent Tenant shall pay the total sum of €658.10 to the Applicant Landlord within 28 days of the date of issue of the Determination Order, being rent arrears of €558.10 and €100.00 damages for the Respondent Tenant's breach of her obligations under the Act, in respect of the tenancy of the above dwelling;
4. The Respondent Tenant shall also pay any further rent outstanding from 15 July 2014 at the rate of €950.00 per month (€31.23 per day), unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as she vacates the above dwelling.
5. The Applicant Landlord shall refund the entire of the security deposit of €1000.00 to the Respondent Tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently an appeal was received from the tenant. The appeal was approved by the Board on 22/08/2014.

The PRTB constituted a Tenancy Tribunal and appointed Finian Matthews, Gene Feighery, Orla Coyne as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Finian Matthews 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 09/10/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, 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:

A spreadsheet setting out the up-to-date position with regard to rent arrears submitted at the Tribunal hearing by the Respondent Landlord was admitted into evidence. Two rent books in relation to the tenancy were also shown to the Tribunal.

4. Procedure:

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Tenant against a determination made following an adjudication held on 15 July, 2014 in the case of a dispute between the Tenant and the Respondent Landlord in respect of a tenancy at 'Coillros', Sundrive Road, Rush, Co. Dublin. He introduced the members of the Tribunal to the parties.

He asked the Party present and to identify himself and to state the capacity in which he was attending the Tribunal hearing. The attending party on being sworn in stated that the dwelling was previously owned by his parents John and Geraldine Horgan who had signed the original letting agreement. He said that he was now the owner of the dwelling and that he was the person entitled to receive the rent in respect of the current letting of the dwelling.

The Chairperson confirmed with the attending Party that he had received the relevant papers from the PRTB in relation to the case and that he had received and understood the PRTB document entitled "Tribunal Procedures". 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 explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that 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 attending Party confirmed that he 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 in cases such as this the Appellant Tenant if in attendance would be invited first to present her case; this would be followed by an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present his case, followed by an opportunity for cross-examination by the Appellant Tenant.

The Chairperson also said that at the end of the hearing, both parties would have been given the opportunity make a final submission should they so wish.

The Chairperson reminded the attending Party 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.

The Chairperson stated that in the absence of the Appellant Tenant the Tribunal proposed to uphold the Adjudicator's determination in relation to the dispute between the parties subject to any submission the Respondent Landlord might wish to make in relation to the amount of rent arrears, if any, owed by the Appellant Tenant.

5. Submissions of the Parties:

The Appellant Tenant did not attend the hearing, nor did she make any written submissions in support of her appeal.

The Respondent Landlord stated that as at the date of the Tribunal hearing the Appellant Tenant owed rent arrears in the amount of €1224.20. He provided documentary evidence to support his calculation of the amount of rent arrears due.

6. Matters Agreed Between the Parties

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:

- The tenancy commenced on 1 December, 2010
- The term of the tenancy specified in the letting agreement was 12 months
- The rent is €950 per month
- The Appellant Tenant paid a deposit of €1000
- The Appellant Tenant remains in possession of the dwelling
- The deposit is in the custody of the Respondent Landlord.

The Respondent Landlord stated that he was in agreement with the foregoing.

7. Findings and Reasons:

The Tribunal upholds the findings and determination of the Adjudicator in relation to the matters in dispute between the parties, subject to up-dating the amount of rent arrears due and owing on the part of the Appellant Tenant as at the date of the Tribunal hearing. The Tribunal accepts the Respondent Landlord's submission that the amount of rent arrears due and owing as at that date is €1,224.20.

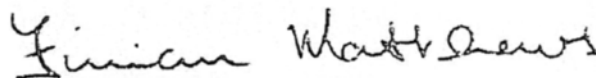
8. Determination:

Tribunal Reference TR0814-000784

In the matter of Maureen Daly (Tenant) and Barry Horgan (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served on 28 May 2014, by the Respondent Landlord on the Appellant Tenant, in respect of the tenancy of the dwelling at 'Coillros', Sundrive Road, Rush, Co. Dublin is valid.
2. The Appellant Tenant and all persons residing in the above dwelling shall vacate and give up possession of the dwelling within 14 days of the date of issue of the Determination Order.
3. The Appellant Tenant shall pay the total sum of €1,324.20 to the Respondent Landlord within 28 days of the date of issue of the Determination Order, being rent arrears of €1,224.20 and €100 damages for the Respondent Tenant's breach of her obligations under the Act, in respect of the tenancy of the above dwelling.
4. The Appellant Tenant shall also pay any further rent outstanding from 9 October, 2014 at the rate of €950 per month (or €31.25 per day), unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as she vacates the above dwelling.
5. The Respondent Landlord shall refund the entire of the security deposit of €1,000 to the Appellant Tenant on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Signed:



Finian Matthews Chairperson

For and on behalf of the Tribunal.