**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0815-001312 / Case Ref No: 0715-19361**

**Appellant Tenant:** Joanne McEvoy, Noel Chubb

**Respondent Landlord:** Stephen Murray

**Address of Rented Dwelling:** 403 Galtymore Road, Drimnagh , Dublin 12, D12EK65

**Tribunal:** Peter Shanley (Chairperson)

Andrew Nugent, Nesta Kelly

**Venue:** Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

**Date & time of Hearing:** 19 October 2015 at 2:30

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| **Attendees:** | Joanne McEvoy (Appellant Tenant)  Noel Chubb (Appellant Tenant)  Pat Dunne (Representative of the Appellant Tenant)  Alan McMurray, Bespoke Ltd (Representative of the Respondent Landlord) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 02 July 2015 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 22 July 2015. The Adjudicator determined that:

1. That the Applicant Landlord’s application for over holding in respect of the tenancy of the dwelling at 403, Galtymore Road, Drimnagh, Dublin 12 is upheld.
2. The Respondent Tenants and all persons residing in the dwelling shall vacate and give up possession of the dwelling within 21 days from the date of issue of the Order.
3. The Respondent Tenants shall also pay any further rent outstanding from the 22nd day of April 2015 at the rate of €31.23 per day unless lawfully varied and any other charges as set out in the terms of the tenancy agreement and under the Act for each month or part thereof, until such time as they vacate the dwelling.
4. The Applicant Landlord shall refund the entire of the security deposit of €950.00 to the Respondent Tenants on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received from the Tenant on 06 August 2015. The grounds of the appeal was Overholding. This appeal was approved by the Board on 21 August 2015.

The PRTB constituted a Tenancy Tribunal and appointed Peter Shanley, Andrew Nugent, Nesta Kelly as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Peter Shanley to be the chairperson of the Tribunal (“the Chairperson”).

On 24 August 2015 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 19 October 2015 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:**

* 1. PRTB File

**3. Documents Submitted at the Hearing Included:**

None.

**4. Procedure:**

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson 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 held in as informal a manner as was possible; that the Respondent Landlord would be invited to present his case first; that there would be an opportunity for cross-examination by the Appellant Tenant; that the Appellant Tenant would then be invited to present his case, and that there would be an opportunity for cross-examination by the Respondent Landlord.

The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson 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 or imprisonment or both.

The Chairperson also reminded the Parties that following the hearing that day, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only.

**5. Submissions of the Parties:**

The Respondent Landlord’s Case:

The Landlord was represented by his agent, Alan McMurray. The Landlord's representative submitted that the Landlord had contacted him explaining that he needed to sell the dwelling at 403, Galtymore Road, Drimnagh, Dublin 12. A Notice of Termination was therefore served by the Landlord's agent, on behalf of the Landlord, on 8 April 2015, which provided 56 days’ notice to the Tenants to vacate the dwelling. Notwithstanding this, the Tenants have remained in occupation. The Landlord's agent gave evidence that he had provided good references for the Tenants to assist them in finding new rental accommodation. The Landlord's agent noted, however, that he had not received any enquiries from prospective Landlords in connection with the reference provided. He said that the landlord was living in a room in his girlfriend’s house and needed to sell the house with vacant possession to enable him to to build his own house. The dwelling at 403, Galtymore Road, Drimnagh, Dublin 12 was his only asset and he had no choice but to sell it as otherwise he could not obtain sufficient finance from the banks to construct his new home. He said he was not a professional landlord and that the house was not an investment property, but that the house had belonged to his aunt now deceased. He had not been able to sell the property for several months due to the Tenants over-holding and this was causing him great difficulties and stress.

Appellant Tenants’ Case:

The Tenants were represented by Councillor Pat Dunne who initially queried whether the Landlord was entitled to be represented by Mr. McMurray. Submissions were made on behalf of the Tenants that they accepted the validity of the Notice of Termination and that they accepted that the Landlord wished to sell the dwelling. The Tenants gave evidence that they had been actively trying to secure alternative accommodation and had made enquiries on 40 to 50 advertisements on websites offering rental accommodation. They gave evidence that they have not yet succeeded in securing a viewing of any accommodation, such is the demand and lack of supply in the rental market at present. The Tenants gave evidence that they are due to attend a viewing of a property this week. The Tenants gave evidence that they had three children, aged 13, 9 and 2 and that the situation is causing them great stress. The Tenants proposed that they ought to be allowed remain in occupation until the property is sold at which point they will vacate the property.

**6. Matters Agreed Between the Parties**

1. The Tenancy commenced on 18 February 2013.

2. The Tenancy is a Part 4 Tenancy.

3. A Notice of Termination was sent on 8 April 2015 giving 56 days’ notice.

4. The Tenancy was due to expire on 3 June 2015.

5. The Tenants remain in occupation.

6. The Tenants are not in arrears of rent.

7. The deposit paid at the beginning of the tenancy was €950.

8. The monthly rent was €950.

**7. Findings and Reasons:**

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

7.1 Finding: The Tribunal finds that Mr. McMurray was entitled to represent the Landlord at the within hearing.

Reasons:

1. Section 104(6) of the Residential Tenancies Act 2004 provides that each of the parties shall be entitled to and be given the opportunity to be heard at the hearing and to be represented and to present evidence and witnesses before the Tribunal.

2. The Tribunal is satisfied, on the evidence before the Tribunal, that Mr. McMurray was authorised to represent the Landlord at the Tribunal Hearing.

7.2 Finding: The Tribunal finds that the Notice of Termination served on the Tenants by the Landlord on 8 April 2015 in respect of the tenancy of the dwelling at 403 Galtymore Road, Drimnagh, Dublin 12 is valid and that the Tenants are over holding.

Reasons:

1. As provided for in section 34 of the Residential Tenancies Act 2004 (the Act), the Landlord is entitled to terminate a Part 4 tenancy if (i) he intends, within 3 months after the termination of the tenancy under this section, to enter into an enforceable agreement for the transfer to another, for full consideration, of the whole of his or her interest in the dwelling or the property containing the dwelling and (ii) he serves a valid Notice of Termination giving the requisite period of notice.

2. The Tribunal is satisfied, and indeed the Tenants have accepted, that the Landlord intends to sell the property within 3 months after the termination of the tenancy.

3. Section 62 of the Act requires that, to be valid, a Notice of Termination must be in writing, signed by the landlord or authorised agent; specify its date of service; provide a reason for the termination where the tenancy is of greater than six months’ duration; specify the termination date and that the tenant has the full 24 hours to vacate possession on that date; and state that any issue regarding the validity of the notice or the right to serve the Notice can be referred to the PRTB within 28 days of receipt of it. The Tribunal is satisfied, and ideed the Tenants have accepted, that the Landlord complied with these requirements.

4. Section 66 of the Act provides that where a tenant has been in occupation of a dwelling for between 2 and 3 years, the period of notice to be given by the notice of termination is 56 days. As provided for by section 61 of the Act, this notice period begins on the day immediately following the date of service of the notice. The Notice of Termination was served on the 8 April 2015 and specified that the tenancy would terminate on 3 June 2015. The Tribunal is therefore satisfied that the Notice of Termination provided the requisite minimum notice period.

5. The Tribunal finds that the Appellant Tenants are over holding because they continue to reside at the dwelling despite the service upon them by the Respondent Landlord of a valid Notice of Termination and the expiry thereof.

**8. Determination:**

**Tribunal Reference TR0815-001312**

**In the matter of Joanne McEvoy, Noel Chubb (Tenant) and Stephen Murray (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 8 April 2015 by the Respondent Landlord on the Appellant Tenants in respect of the tenancy of the dwelling at 403 Galtymore Road, Drimnagh, Dublin 12 is valid.

2. The Appellant Tenants and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 21 days of the date of issue of the Order.

3. The Appellant Tenants shall continue to pay rent at the monthly rate of €950, or proportionate part thereof at the daily rate of €31.23, unless lawfully varied, and any other charges set out in the terms of the tenancy agreement, for each month or part thereof, until such time as they vacate the above dwelling.

4. The Respondent Landlord shall refund the entire of the security deposit of €950 to the Appellant Tenants, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 20 October 2015.

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| **Signed:** |  |

**Peter Shanley Chairperson**

For and on behalf of the Tribunal.