**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0815-001320 / Case Ref No: 0615-19098**

**Appellant Tenant:** Paul Carr

**Respondent Landlord:** Sinead Buttle

**Address of Rented Dwelling:** 62 Allen Park Road, Stillorgan, Dublin , Dublin,

**Tribunal:** John Keane (Chairperson)

Gene Feighery, Kevin Baneham

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

**Date & time of Hearing:** 28 October 2015 at 2:30

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| **Attendees:** | Paul Carr (Appellant Tenant)    Sinead Buttle (Respondent Landlord)  Brendan Curran, O’ Doherty Warren Solicitors (Respresentative of the Respondent Landlord) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 17 June 2015 the Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 76 of the Residential Tenancies Act 2004 as amended (“the Act”). The matter was referred to an Adjudication which took place on the 15 August 2015 (called in this report the “2015 Adjudication”)The Adjudicator determined that:

The Applicant Tenant’s claim for damages for breach of landlord’s obligations was not upheld.

Subsequently an appeal was received on the 25 July 2015 from the Appellant Tenant. The grounds of the appeal relate to breach of Landlord’s obligations. The appeal was approved by the Board on the 04 September 2015.

The PRTB constituted a Tenancy Tribunal and appointed Gene Feighery, Kevin Baneham, and John Keane as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Keane 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 28 October 2015 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.

The tenancy commenced on the 18 July 2013 and finished at the end of September 2014. A Letting agreement was entered into between Sinead Buttle (1) and Aonghus O’ Neill and Paul Carr (referred to in this report as “the Tenants”) (2) on the 18 July 2013 for the Letting of the dwelling at the rent of €1,400 and a deposit of €1,400 was paid.

There was a previous Adjudication hearing under Case Reference Number DR 0714-13285 on the 26 August 2014, between the other tenant Aonghus O’ Neill and the Respondent Landlord (called in this report “the 2014 Adjudication”). A Determination Order, Reference Number DR 0714-13285 (called in this report “the 2014 Determination Order”) dated the 16 December 2014 issued from the Board on foot of the 2014 Adjudication which determined that:

The Respondent Landlord shall pay the total sum of €400 to the Applicant Tenant within 14 days of the date of issue of this Order, being €1,700 damages for breach of her obligations pursuant to Section 12(1)(a) of the Act in failing to allow the Applicant Tenant peaceful and exclusive occupation, having offset €900 in respect of rent arrears and having offset €400 in damages for the failure of the Applicant Tenant to comply with his obligations under Section 16(a) of the Act, in respect of the tenancy of the dwelling at 62 Allen Park Road, Stillorgan, Co. Dublin.

The Appellant Tenant is claiming in relation to the same breach of the Landlord’s obligations pursuant to Section 12(1)(a) of the Act as Mr O’ Neill claimed in the 2014 Adjudication.

**2. Documents Submitted Prior to the Hearing Included:**

* 1. PRTB File

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

The Respondent Landlord’s Representative submitted the following documentation and there was no objection to the submission by the Appellant Tenant:

Determination Order Reference Number DR 0714-1328

**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 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 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 person who appealed (the Appellant) would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant.

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 or affirmation and be recorded by the official 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, or to the parties for a fee. 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 or up to 6 months imprisonment or both.

The Chairperson said that members of the Tribunal would ask questions from time to time to assist in clarifying the issues in dispute between the parties. The Chairperson explained that should the parties indicate that they would be able to resolve the dispute through negotiation, the Tribunal would facilitate any such settlement.

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

**5. Submissions of the Parties:**

Appellant Tenant's Case:

The Appellant Tenant stated that he did not know the procedure in relation to the Application to the PRTB. He said that he gave Mr O’ Neill a statement to be submitted at the hearing of the 2014 Adjudication which was not allowed as a submission by the Adjudicator. He told the Tribunal that in hindsight, it would have been a good idea to lodge both his own application and the application of Mr O’Neill at the same time. He said he did not believe that Mr O’ Neill said that he was representing both Tenants at the 2014 Adjudication. He explained that the award was paid into the joint account of the Tenants as this was the account that the rent was discharged from. He said he was aware of the Application to the PRTB for the 2014 Adjudication and that he discussed the case with Mr O’ Neill. He pointed out that he paid half the rent arrears of €450 to Mr O’ Neill as he was jointly and severally liable for the rent. In subsequent cross examination, the Appellant Tenant stated that his mother was sick around the time the complaint was made in relation to the 2014 Adjudication and he did not intend making a complaint himself at this time.

The Appellant Tenant claimed that there was a breach of his right to privacy as a result of the commencement of building works in the back garden of the dwelling and an attempt to carry out paving at the front of the dwelling. He explained that the works commenced on the 7 July 2014 and the first time that he had been informed about the works was on the 3 July 2014. He explained that the Respondent Landlord told the Tenants that the work would go on for a week or two but the works were not completed until early August. He drew the Tribunal’s attention to photographs of the works which he said were taken by both Tenants in relation to the extent of the works which he said showed the back garden to be a building site. He explained that part of the works carried out consisted of what appeared to be the foundations for an extension.

He said that the Tenants allowed the workmen to access the back garden and pointed out that one of the workmen’s trailers was parked in the front driveway in one of the photographs. He stated that the workers never asked the Tenants to move their cars or permission to park the trailer in the driveway.

He submitted that there was a breach of Section 12 of the Residential Tenancies Act as his right to privacy was affected. He outlined that there was dust and noise for 5 ½ days of each week that the works were ongoing.

Respondent Landlord's Case:

The Respondent Landlord’s Representative made a preliminary application to have the case against the Respondent Landlord dismissed on the basis that the claim was already heard in the 2014 Adjudication between the other tenant Aonghus O’ Neill and the Respondent Landlord. He submitted a copy of the 2014 Determination Order to the Tribunal. He outlined that Mr O’Neill, the other tenant, confirmed at the 2014 Adjudication that he was representing both Tenants and the Respondent Landlord gave evidence to this effect at the hearing. He referred to the four reasons given by Adjudicator for not upholding the Appellant Tenant’s application at the 2015 Adjudication which is the subject of this Appeal as follows: Firstly, that the letters from O’Doherty Warren & Associates indicate that Mr O’Neill represented that he was acting on behalf of both tenants; Secondly, the approach taken by the Adjudicator in the 2014 Adjudication being demonstrative of her treating the application by Mr O’Neill as being on behalf of both tenants. The rent referred to throughout her Report is expressed to be €1,400.00. This was not Mr O’Neill’s portion of the rent; rather, that sum was the entire rent payable by both tenants. Furthermore, there does not appear to be anything in the 2014 Adjudication to indicate that the damages of €1,700.00 assessed by the Adjudicator were particular to Mr O’Neill alone. Thirdly, prior to making a complaint to the PRTB, Mr O’ Neill dealt with the Respondent Landlord on behalf of both Tenants. Fourthly, the damages awarded under the 2014 Adjudication by the Adjudicator were paid by the Respondent Landlord to a joint account owned by both tenants.

The Respondent Landlord’s Representative added that the Appellant Tenant waited until the 7 January 2015 to email the Respondent Landlord in relation to his claim for the breach of the Landlord’s obligations. He pointed out that this email was after the award under the 2014 Determination Order was discharged by the Respondent Landlord in late December 2014. He submitted that his client should not have to deal with the complaint again.

The Respondent Landlord’s Representative submitted that notice was given by the Respondent Landlord in relation to the works and the Tenants agreed that the works could proceed. He stated that it was accepted by the Respondent Landlord that the notice period was short. He explained that it was anticipated by the Respondent Landlord that the works would be completed within three weeks from the commencement date on the 7 July 2014 but were not completed until the 4 August 2014. He referred to Special Letting Provision 3 in the Letting Agreement which states “The Landlord reserves the right for entry to the side garden, to begin construction of the extension to the existing property”.

The Respondent Landlord outlined that the reason the decking was removed related to a problem experience with rodents during a previous tenancy. She explained that she did not want to waste money putting in a patio and a concrete slab was put in place so an extension could be constructed in the future. She said this was her one opportunity to carry out the works and it was a case of now or never. She explained that an apartment adjoining the dwelling was demolished and re-built.

**6. Matters Agreed Between the Parties**

1. The tenancy commenced on the 18 July 2013 and finished at the end of September 2014.

2. A Letting agreement was entered into between Sinead Buttle (1) and Aonghus O’ Neill and Paul Carr (2) on the 18 July 2013 for the Letting of the dwelling at the rent of €1,400 and a deposit of €1,400 was paid.

3. Building works commenced in the back garden of the dwelling on the 7 July 2014 and ended in early August 2014.

**7. Findings and Reasons:**

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

7.1 Finding: The Tribunal finds that the Appellant Tenant should have submitted his Application for Dispute Resolution Services at the same time as the co- tenant, Aonghus O’ Neill and accordingly the Appellant Tenant’s application regarding breach of landlord’s obligations under Section 12 (1) (a) in respect of the tenancy of the dwelling in not uphled.

Reasons:

1. The Appellant Tenant did not give a sufficient reason for not making an Application for Dispute Resolution Services at the same time as his co-tenant Aonghus O’ Neill. The Appellant Tenant was aware that an Application for Dispute Resolution Services was being made to the PRTB and discussed the case with Mr O’ Neill. He gave evidence that he did not intend making a claim at the time Mr O’ Neill submitted his application. He acknowledged in hindsight that it would have been a good idea to submit his own application at the same time as Mr O’ Neill. He did not make his own Application until after the 2014 Determination Order issued.

2. The Tribunal finds that it is unfair to the Respondent Landlord that she should have to defend the same claims regarding the breach of the Landlord’s obligations on two separate occasions. There were no special circumstances justifying the Appellant Tenant not making his Application for Dispute Resolution Services at the same time as the co-tenant Mr O’ Neill.

3. In these circumstances, the Tribunal is of the view that this is an appropriate case in order to apply the rule in Henderson v. Henderson (1843) 3 Hare 100. As a starting point, common law estoppel can be applied in proceedings before quasi-judicial Tribunals (see the decision of the Labour Court in Jahan Company T/A Irema Ireland Limited v. Anne Power (EDA 1326) and the decision of the UK Court of Appeal in Divine-Bortey v. London Borough of Brent [1998] IRLR 525). The rule in Henderson v. Henderson provides that parties should bring forward their whole case in litigation and, except in special circumstances, parties will not be permitted to open up the same subject of litigation in respect of issues that might have been brought forward in a previous set of proceedings. In Culkin v. Sligo County Council [2015] IEHC 46, the Kearns P. considered the rule in Henderson v. Henderson in the following terms:

“The rule in Henderson v Henderson is well established and is frequently applied as part of the policy of the courts to avoid double litigation of the same issues, as considered by the Supreme Court in A.A. v. Medical Council [2003] 4 IR 302. This rule is in the interests of all parties to a case, who should not be expected to prosecute or defend the same proceedings repeatedly, and to the public, who have an interest in ensuring that court time is not wasted.”

**8. Determination:**

**Tribunal Reference TR0815-001320**

**In the matter of Paul Carr (Tenant) and Sinead Buttle (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Tenant’s application regarding breach of landlord’s obligations under Section 12 (1) (a) in respect of the tenancy of the dwelling at 62 Allen Park Road, Stillorgan, Dublin is not upheld.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 06 November 2015.

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| **Signed:** |  |

**John Keane Chairperson**

For and on behalf of the Tribunal.