**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0815-001321 / Case Ref No: 0515-18235**

**Appellant Tenant:** Padraig McAlister, Cait McAlister

**Respondent Landlord:** William Madden

**Address of Rented Dwelling:** 18 Gainsborough Close, Swords Road, Malahide , Dublin, K36AX62

**Tribunal:** John FitzGerald (Chairperson)

Nesta Kelly, Thomas Reilly

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

**Date & time of Hearing:** 29 September 2015 at 10:30

|  |  |
| --- | --- |
| **Attendees:** | Stephen Madden (Respondent Landlord's Representative)  Padraig McAlister (Appellant Tenant)  Cait McAlister(Appellant Tenant) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 05 May 2015 the Tenant 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 03 July 2015. The Adjudicator determined that:

1. The Notice of Termination served on 8 April 2015 by the Respondent Landlord’s agent, on behalf the Respondent Landlord, on the Applicant Tenants in respect of the tenancy of the dwelling at 18 Gainsborough Close, Malahide, Co. Dublin is valid.

2. The Applicant Tenants and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 14 days of the date of issue of this Order.

3. The Applicant Tenants shall pay the sum of €7,500 to the Respondent Landlord, within 56 days of the date of issue of this Order, being rent arrears in respect of the tenancy of the above dwelling.

4. The Applicant Tenants shall also pay any further rent outstanding from 3rd July 2015, at the rate of €1,500 per month or proportionate part thereof at the rate of €49.32 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 they vacate the above dwelling.

5. The Respondent Landlord shall refund the entire of the security deposit of €1,600 to the Applicant Tenants, upon the Applicant Tenants vacating and giving up possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received by the Board 11 August 2015. The grounds of the appeal was Invalid Notice of termination and this was approved by the Board at their meeting on 21 August 2015.

The PRTB constituted a Tenancy Tribunal and appointed John FitzGerald, Nesta Kelly and Thomas Reilly as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John FitzGerald 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 29 September 2015 the Tribunal reconvened 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:**

Rent analysis document.

**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 person who appealed (the Appellant) would be invited to present their 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 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.

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].

The Parties were then sworn in.

The Chairperson outlined that this was a reconvened hearing from 21 August 2015 and stated that the Tribunal would run before and after lunchtime to hear the original appeal and the counter appeal as set out in the casefile documentation following the adjournment on the basis of Res Judicata at the original hearing.

The Chairperson informed the parties that should they see merit in conferring with each other with a view to reaching an agreement the Tribunal would facilitate such a request and recess for a period to allow negotiations to take place.

Both Parties made submissions to the Tribunal in the course of which it became clear that both Parties were willing to negotiate and a recess was facilitated by the Tribunal. Following this recess the Parties indicated to the Tribunal that an agreement had been reached between them, committed to writing and signed by both Parties. The Parties were congratulated by the Tribunal upon reaching a satisfactory agreement amongst themselves

**5. Submissions of the Parties:**

N/a

**6. Matters Agreed Between the Parties**

The agreement reached between the Parties is annexed to the Determination Order.

**7. Findings and Reasons:**

N/a

**8. Determination:**

**Tribunal Reference TR0815-001321**

**In the matter of Padraig McAlister, Cait McAlister (Tenant) and William Madden (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Tribunal makes an order as per the Terms and Conditions of the said agreement, a copy of which is annexed hereto and forms part of the Order, in respect of the tenancy of the dwelling at 18 Gainsborough Close, Swords Rd, Malahide, Co Dublin.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 10 October 2015.

|  |  |
| --- | --- |
| **Signed:** | \\v-1-hq-fs-01\HOME\Common\Signatures\TribunalMembers\John FitzGerald.png |

**John FitzGerald Chairperson**

For and on behalf of the Tribunal.