**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0815-001339 / Case Ref No: 0615-18960**

**Appellant Tenant:** Joanne Teeling

**Respondent Landlord:** Eileen Burke

**Address of Rented Dwelling:** 9 Stanley Court, Prussia Street , Dublin 7, D07A253

**Tribunal:** Thomas Reilly (Chairperson)

Mary Doyle, Elizabeth Maguire

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

**Date & time of Hearing:** 27 October 2015 at 2:30

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| **Attendees:** | Eileen Burke (Respondent Landlord)  Joanne Teeling (Appellant Tenant)  Stephen Geraghty (Witness for the Appellant Tenant) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 09 June 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 04 August 2015. The Adjudicator determined that:

1. The Notice of Termination dated and served on the 3rd February 2015 by the Applicant Landlord on the Respondent Tenant in respect of the tenancy of the dwelling at 9 Stanley Court, Prussia Street, Dublin 7, is valid.

2. The Respondent Tenant 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 Respondent Tenant shall pay the sum of €9000.00 to the Applicant Landlord in 9 consecutive payments of €1000.00, on the 28th day of each month, commencing on the 28th day of the month immediately following the date of issue of the Order, being rent arrears in respect of the tenancy of the dwelling at 9 Stanley Court, Prussia Street, Dublin 7.

4. The enforcement of the Order for payment of the €9000.00 at paragraph 3 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments made by the Respondent Tenant to the Applicant Landlord on each due date until such time as the total sum of €9000.00 has been paid in full.

5. For the avoidance of doubt, any default in the payment of any monthly instalments shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Applicant Landlord.

6. The Respondent Tenant shall continue to pay rent from the 4th August 2015, at the rate of €900.00 per month, or proportionate part thereof at the daily rate of €32.88, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each week or part thereof, until such time as she vacates the above dwelling.

7. The Applicant Landlord shall refund the entire of the security deposit of €900.00 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 the following appeal was received from the Tenant on 27 August 2015. The grounds of the appeal were Invalid Notice of termination, Rent arrears and overholding. The Landlord did not collect the rent and there was no response from the Department of Social Protection. This appeal was approved by the Board on 11 September 2015.

The PRTB constituted a Tenancy Tribunal and appointed Mary Doyle, Elizabeth Maguire, Thomas Reilly as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Thomas Reilly to be the chairperson of the Tribunal (“the Chairperson”).

On 01 October 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 27 October 2015 the Tribunal convened a hearing at Board 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:**

Updated summary of payments received by the Landlord.

**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.

**5. Submissions of the Parties:**

Evidence of the Appellant Tenant:

The Appellant tenant resides in a two bedroom apartment and stated that she owed rent to her Landlord and was not contesting this aspect of the case. In accepting that rent was due and owing the Appellant submitted that she did not feel she owed the amount being claimed by the Landlord. She indicated that she resided in the dwelling with her two teenage children and had not received any rent allowance from the Department of Social Protection since 27 May 2015. The Appellant Tenant claimed that she had no explanation as to why this was the case and she referred to her most recent letter to the Department dated 24 August 2015 enquiring as to her position. No reference as to a response from the Department of Social Protection to this letter was forthcoming from the Appellant Tenant. On questioning by the Tribunal, the Appellant Tenant confirmed that she had been issued with a number of Termination Notices, however she had not vacated the dwelling as she had no other accommodation to go to and would be homeless were she to depart. She did accept that she had been served with a valid Notice of Termination. The Appellant confirmed that she had not paid her agreed top up rent to the Respondent Landlord but was not in a position to quantify the amount now due in arrears. She also said that the Landlord did not come to collect the rent in a timely fashion as was agreed.

Submission of the Respondent Landlord :

In her evidence, the Respondent Landlord confirmed that initially the rent agreed of €900.00 per month was paid satisfactorily until 2013 when problems arose with the payment of the Tenants top up payment said to be €200.00 per month. Notices were served upon the Tenant to regularise her payments but to no avail. A final 14 day warning notice was served on the Appellant Tenant on 15 January 2015 and this was followed by a Notice of Termination on 3 February 2015. The Department of Social Protection payments ceased in May 2015 and no payments of any description have been received by the Landlord since.

The Respondent Landlord stated that she was frustrated by the non payment of the top up with affect from August 2013 and the Department of Social Protection payment which have now placed her in the position of having to review her mortgage situation in order to meet the requirements of her Bank. When questioned by the Tribunal, the Respondent stated that her husband had signed the forms required for the Tenants claim for rent allowance and had submitted them to the Appellant Tenant for further processing. The Respondent Landlord submitted that the original lease agreement contained the Bank details of the Landlord, however, this option was never used by the Appellant Tenant and was a constant source of disquiet as numerous visits had to be made to the dwelling in order to seek the payment(s) due.

The Respondent Landlord confirmed that Top up payments ceased from August 2013.

The Respondent Landlord confirmed that Rent Allowance Payments ceased from May 2015.

In documents before the Tribunal the weekly rent allowance is featured as being €175.70 per week.

**6. Matters Agreed Between the Parties**

1.The tenancy commenced on 03 June 2011;

2.The tenancy continues to exist;

3.Rent payable is €900.00 per month;

4. A deposit of €900.00 was paid by the Tenant to the Landlord;

5.The deposit is retained by the Landlord.

**7. Findings and Reasons:**

Finding: The Tribunal finds that the Notice of Termination served by the Respondent Landlord on the Appellant Tenant on 3 February 2015 is valid.

Reason:

The Notice of Termination served on 3 February 2015 meets the requirements of section 34, 62 and 67 of the Residential Tenancies Act 2004 .

Finding: The Tribunal finds that the Appellant Tenant is overholding and is in arrears of rent in the sum of €7,133.97.

Reason:

The Appellant Tenant is in breach of her obligations under section 16 (a)(11) of the RTA 2004. Documentation before the Tribunal featured the weekly Rent Allowance as being €175.70 which equates to €761.37 per calendar month.( €175.70 x 52 weeks and divided by 12 months = €761.37 per month.)

The top up payment is therefore €138.63 per month ie €900.00 - €761.37 = €138.63.

No rent paid June-October 2015 @ €900.00 per month = €4.500.00

No top up payment paid September 2013 to May 2015 = 19months €2,633.97

Total arrears €7,133.97

**8. Determination:**

**Tribunal Reference TR0815-001339**

**In the matter of Joanne Teeling (Tenant) and Eileen Burke (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination dated and served on the 3rd February 2015 by the Respondent Landlord on the Appellant Tenant in respect of the tenancy of the dwelling at 9 Stanley Court, Prussia Street, Dublin 7, is valid.

2. The Appellant Tenant 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 the Order.

3. The Appellant Tenant shall pay the sum of €7,133.97 to the Respondent Landlord in 7 consecutive payments of €1,000.00 on the 28th day of each month, commencing on the 28th day of the month immediately following the date of issue of the Order, and one final payment of €133.97 in the immediately succeeding month being rent arrears in respect of the tenancy of the above dwelling.

4. The enforcement of the Order for payment of the €7,133.97 will be

deferred and the total sum owing reduced by the cumulative sum paid in the monthly

instalments made by the Appellant Tenant to the Respondent Landlord on each due date until such time as the total sum of €7,133.97 has been paid in full.

5. For the avoidance of doubt, any default in the payment of any monthly instalments

shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Respondent Landlord.

6. The Appellant Tenant shall continue to pay rent from the 27 October 2015, at the

rate of €900.00 per month, or proportionate part thereof at the daily rate of €29.59, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each week or part thereof, until such time as she vacates the above dwelling.

7. The Respondent Landlord shall refund the entire of the security deposit of €900.00 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.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 05 November 2015.

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

**Thomas Reilly Chairperson**

For and on behalf of the Tribunal.