**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0815-001343 / Case Ref No: 0715-19481**

**Appellant Tenant:** Mohammad Ahmed, Amina Ahmed

**Respondent Landlord:** Shahab Khalil

**Address of Rented Dwelling:** 43 Cedarhearst Road, Phoenix Park Racecourse, Castleknock , Dublin 15,

**Tribunal:** Peter Shanley (Chairperson)

John Keaney, Suzy Quirke

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

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

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| **Attendees:** | Mohammad Ahmed, (Appellant Tenant)  Vivan Marques, Galvin Property and Finance, (Representative of the Respondent Landlord)  Ciara McGovern, Galvin Property and Finance (Representative of the Respondent Landlord) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 09 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 30 July 2015. The Adjudicator determined that:

1. The Notice of Termination served on 5 March 2015 by the Applicant Landlord on the Respondent Tenants, in respect of the tenancy of the dwelling at 43 Cedarhearst Road, Phoenix Park Racecourse , Castleknock, Dublin 15, is valid;

2. The Respondent Tenants and all persons residing in the above dwelling, shall vacate and give up possession of the above dwelling, within 28 days of the date of issue of the Determination Order by the Board ;

3. The Respondent Tenants shall pay the sum of €753.63 to the Applicant Landlord, within 28 days of the date of issue of the Determination Order, being rent arrears in respect of the tenancy of the above dwelling;

4. The Respondent Tenants shall also pay any further rent outstanding from 30 July 2015 at the rate of €925.00 per month or proportionate part thereof at the rate of €30.41 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 Applicant Landlord shall refund the entire of the security deposit of €925.00 to the Respondent Tenants, upon the Respondent 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 from the Tenant on 31 August 2015. The grounds of the appeal were Invalid Notice of termination, Rent arrears and Anti-social behaviour. This appeal was approved by the Board on 11 September 2015.

The PRTB constituted a Tenancy Tribunal and appointed John Keaney, Peter Shanley, Suzy Quirke 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 18 September 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 30 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:**

The Respondent Landlord submitted a statement of account showing all rent payments due and all rent payments received by the Landlord’s letting agent as at 29 October 2015.

**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 an informal manner; that the Respondent Landlord would be invited to present his case first; that there would be an opportunity for cross-examination by the Appellant Tenants; that the Appellant Tenants would then be invited to present their 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:

Rent Arrears

The Landlord was represented at the hearing by Vivian Marques of Galvin Property & Finance, the Landlord’s letting agents. The Landlord’s representative submitted that from early on in the tenancy the Landlord experienced issues with rent arrears and that the Tenants are currently in rent arrears in the amount of €556.63. The Landlord’s agent gave evidence of the arrears now due with reference to a statement of rental arrears showing all rent payments due and all rent payments received by the Landlord’s letting agent from the commencement of the tenancy to date. The Landlord’s agent gave evidence that the rent payable up to 31 October 2015 under the lease was €50,508.06 and that the Landlord has been paid €49,951.43 since the commencement of the tenancy. Therefore, she stated that the shortfall in rent up to and including 31 October 2015 was €556.63. Although in 2013 the Landlord tried to increase the rent from the €925 per month initially agreed, due to the the first named Tenant’s health issues, the Landlord left the rent at €925 per month.

Over holding

Prior to September 2014, the Landlord informed the Tenants that he intended taking the property back. At a meeting between the Landlord and the Tenant in September 2014 the Landlord says that the Tenant agreed to find alternative accommodation. The Landlord’s representative stated that at this meeting it was noticed that the property was not in good condition with writing on the walls and a gas cylinder being used to cook food in the dwelling. The Landlord’s representative acknowledged, however, that no claim was being made for any breach of tenants’ obligations under the Residential Tenancies Act 2004. The Landlord’s representative submitted that they had never received any complaints from the Tenants regarding the condition of the property, save for an issue regarding the heating which was raised at the meeting in September 2014 and immediately resolved. The Landlord’s representative stated that on inspection of the dwelling, no damp was identified. In December 2014 the Landlord’s agent and the Tenants engaged in email correspondence concerning the provision by the Landlord’s agent of a reference, although the Landlord’s agent stated that she was sceptical about the efforts that the Tenants were making in attempting to secure alternative accommodation.

The Landlord’s representative submitted that a Notice of Termination dated 4 March 2015 was served on the Tenants on 5 March 2015 giving the Tenants 112 days in which to vacate the dwelling and specifying a termination date of 25 June 2015. The Notice of Termination stated that the reason for the termination was that the Landlord did not wish to renew the lease. A number of emails were subsequently sent by the Landlord’s letting agent to the Tenants reminding them of the termination date. The Landlord’s agent submitted that the Landlord sympathises with the Tenants’ situation but feels that as it is over one year since the Tenants agreed to find alternative accommodation, it is not reasonable for them to be still in occupation.

Appellant Tenants’ Case:

Over holding

The first named Tenant appeared and gave evidence on his own behalf and on behalf of the second named Tenant through an interpreter. He accepted that the Notice of Termination was valid. The Tenants also accepted that they received the Notice of Termination but submitted that he did not know that the Landlord was entitled to serve it. The first named Tenant stated that upon receiving an email directing him to leave the property, he replied stating that the Tenants were looking for alternative accommodation. He gave evidence that he also contacted the County Council, who suggested that he find Bed & Breakfast accommodation. The Tenants made enquiries with about eight to ten Bed & Breakfasts but none were available as they were all fully booked. The Tenants also contacted Threshold to seek assistance. The Tenants encountered problems with many Landlords not being willing to accept social welfare rental allowance.

Rent Arrears

While the Tenants could not adduce any evidence as how much arrears of rent they felt were due, the Tenants stated that they would pay any arrears on the Monday following the Tribunal hearing, following an examination of the rent arrears statement provided by the Landlord’s agent. The first named Tenant stated that he did not know how to ascertain which payments shown on the statement of rent arrears were made by the Department of Social Protection and which were made by the Tenants, but he acknowledged that any shortfall between the monthly rent of €925 and the amount paid by the Department of Social Welfare had to be paid by the Tenants. The first named Tenant stated that the he was required to pay rent monthly in advance under the tenancy agreement, however, the social welfare rental allowance was paid at the end of each month which caused a problem for the Tenants in keeping rent payments up to date. The first named Tenant acknowledged that he had not paid any rent over and above the social welfare rental assistance since 28 June 2015.

**6. Matters Agreed Between the Parties**

1. The original Tenancy commenced on 1 April 2011;

2. The deposit paid at the beginning of the tenancy was €925 which the Landlord still retains;

3. The monthly rent was €925 payable at the start of each month in advance;

4. A valid Notice of Termination was sent on 5 March 2015;

5. The Tenants remain in occupation.

**7. Findings and Reasons:**

7.1 Finding: The Tribunal finds that the Notice of Termination served on the Tenants by the Landlord on 5 March 2015 in respect of the tenancy of the dwelling at Apartment 43, Cedarhearst Road, Phoenix Park Racecourse, Castleknock, Dublin 15 is valid.

Reasons:

1. The parties agreed that the tenancy started on 1 April 2011. As the tenancy started on this date, the first Part 4 Tenancy ended on 31 March 2015 and a further Part 4 tenancy began on the following day. The Landlord is entitled to terminate the tenancy in accordance with section 42 of the Residential Tenancies Act 2004 (The Act). This section provides that not later than 6 months from its commencement, a landlord may serve a notice of termination in respect of a further Part 4 tenancy and the period of notice given by the Notice of Termination shall not be less than 112 days. The Notice of Termination was served on the 5 March 2015 and specified that the tenancy would terminate on 25 June 2015. The Tribunal is therefore satisfied that the Notice of Termination provided the requisite minimum notice period.

2. 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 that the Landlord complied with these requirements.

3. 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.

7.2 Finding: The Tribunal finds that the Respondent Tenants are in breach of Section 16(a)(i) of the Residential Tenancies Act 2004 (“the Act”) in that there are arrears of rent of €526.22.

Reasons:

1. Section 16(a) of the Act provides that a tenant must “pay to the landlord or his or her authorised agent (or any other person where required to do so by any enactment)—

(i) the rent provided for under the tenancy concerned on the date it falls due for payment…”.

2. The rent payable up to 31 October 2015 under the lease was €50,508.06 and the rent payable for 1 day being 31 October 2015 is €30.41. The Tribunal is therefore satisfied that the total amount payable under the letting agreement until 30 October 2015 was €50,477.65. The Landlord has been paid €49,951.43 since the commencement of the tenancy.

3. Therefore, the shortfall in rent paid until 30 October 2015 was €526.22.

**8. Determination:**

**Tribunal Reference TR0815-001343**

**In the matter of Mohammad Ahmed, Amina Ahmed (Tenant) and Shahab Khalil (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on the Tenants by the Landlord on 5 March 2015 in respect of the tenancy of the dwelling at Apartment 43, Cedarhearst Road, Phoenix Park Racecourse, Castleknock, Dublin 15 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 28 days of the date of issue of the Order.

3. The Appellant Tenants shall pay the total sum of €526.22 to the Respondent Landlord, within 28 days of the date of the issue of the Order being rent arrears in respect of the above dwelling.

4. The Appellant Tenants shall also pay any further rent outstanding from 30 October 2015 at the rate of €925 per month or proportionate part thereof at the rate of €30.41 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 dwelling.

5. The Respondent Landlord shall refund the entire of the security deposit of €925 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 03 November 2015.

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| **Signed:** |  |

**Peter Shanley Chairperson**

For and on behalf of the Tribunal.