

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0913-000427 / Case Ref No: 0213-04727

Appellant Landlord: Maureen O’Riordan

Respondent Tenants: Carla Brogan, Denis Kaye

Address of Rented Dwelling: Tir na Spideoga, Inchageela , Cork

Tribunal: Patricia Sheehy Skeffington (Chairperson)
Finian Matthews, Thomas Reilly

Venue: Committee Room 1, Cork City Council, City Hall,
Anglesea Street, Cork

Date & time of Hearing: 12 May 2014 at 11:00

Attendees: For the Appellant:
Maureen O’Riordan (Appellant Landlord)
Orla Kenneally (Appellant Landlord’s Witness)
Treasa Ní Riordain (Appellant Landlord’s Witness)
John Kenneally (Appellant Landlord’s Witness)
For the Respondent
Carla Brogan (First Named Respondent Tenant)
Denis Kaye (Second Named Respondent Tenant)

In Attendance: Gwen Malone Stenographers

1. Background:

On 22 February 2013 the Tenants made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Residential Tenancies Act, 2004 (“the Act”). The matter was referred to an Adjudication which took place on 5 June 2013. The Adjudicator determined the Landlord should pay damages of €3000.00 to the Tenants for the unlawful termination of the tenancy of the dwelling at Tir na Spideoga, Inchageela, County Cork.

Subsequently the Landlord applied to appeal the Adjudicator’s determination, which application was received on 3 September 2013. The grounds of the appeal were in respect of the validity of the Notice of termination and the application was approved by the Board on 13 September 2013.

The PRTB constituted a Tenancy Tribunal and appointed Patricia Sheehy Skeffington, Thomas Reilly and Finian Matthews as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Patricia Sheehy Skeffington 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 12 May 2014 the Tribunal convened a hearing at Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

Copies of emails between the parties, previously submitted at Adjudication.

4. Procedure:

The Chairperson asked the Parties 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 first in time (the Appellant Landlord in this case) would be invited to present her case first; that there would be an opportunity for cross-examination by the Respondent Tenants; that the Respondent Tenants would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant Landlord. Upon a query from the Respondent Tenants, it was clarified that the Appellant Landlord could have any person she chose to speak on her behalf, as set out in the Tribunal Procedures document.

The Chairperson explained that following their evidence, 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 she 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 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 (pursuant to section 123(3) of the Act.

The Chairperson also informed the parties that if it seemed that they might be able to resolve their dispute by agreement, the Tribunal would facilitate any such negotiations.

The Parties intending to give evidence were then sworn in.

5. Submissions of the Parties:

SUBMISSIONS

The parties agreed that the only issue between them was whether a Notice of Termination of the tenancy, dated 26 September 2012, was valid.

APPELLANT LANDLORD'S SUBMISSIONS

The Appellant Landlord stated that at the time material to servicing the Notice of Termination it was valid. She said that the cited reason for the termination of the tenancy, being that she wanted the dwelling for her own occupation, reflected her intention at the end of September 2012.

The Appellant Landlord told the Tribunal that she had been living in London for the past six years and had wanted to start a family. She said however that she had always wanted to come home and gave evidence of her attachment to the dwelling subject of the tenancy, which she said she had built with the assistance of her family. She said that in August of 2012 she was offered a job by a company called Shebang, and although the three-month contract in question was not going to start until January of 2013, she was delighted to accept it because it represented getting a foot in the door of sound production in Ireland which was something that she was anxious to do.

The Appellant Landlord stated that after she had accepted the job and after the Notice of Termination of the tenancy had been served on the Respondent Tenants, her personal situation changed considerably because she first found out that she was pregnant and subsequently had a miscarriage. She said that this was a personal tragedy: she and her partner had been trying to have a child for some years without success. She said that the professional advice she then received was to stay in London as a change in location would be disruptive to her chances of getting pregnant again and that she accepted this advice. As a result she said that she did not return to Ireland in January 2013 but it remained her intention to return and to live in the dwelling again in the future.

The Appellant Landlord said that the dwelling was re-advertised and re-let in January 2013.

In response to questions, the Appellant Landlord explained that although the job she had been offered had its base in Dublin, she could do a lot of the sound editing and post production from home. She was asked where her prospective employer's studio was: she confirmed it was in Dublin. She was then asked to comment on the job offer letter's terms which said that the work would primarily take place in the studio, with some field work. She said that she was willing to commute for the job and that she saw it as getting a foot in the door in order to re-establish herself in Ireland, but that it was her firm intention at the time of terminating the tenancy to move home and base herself in the dwelling.

The Appellant Landlord was then asked what preparations she had made to relocate. She said that she was packed up and ready to go and that the intention was that her partner would see how she got on and then move over to West Cork with her. As her partner would not be moving over immediately, she said that she did not have to end any lease in London or arrange for shipping as she could travel light and move over in dribs and drabs.

In response to the Respondent Tenants' contention that the real reason that she terminated the tenancy was her discontent with the Respondent Tenants' behaviour, she said that this behaviour had speeded up her decision to move home but that it was a parallel concern which coincided in time.

The Appellant Landlord and her witnesses availed of an opportunity to reply to the Respondent Tenants' view of the events which had lead to the deterioration in their relationship.

The Appellant Landlord's First Witness said that she had been present when she and the Appellant Landlord's mother, who had acted as her letting agent, had received a phone call from the First Named Respondent Tenant in which she could hear the First Named Respondent Tenant's voice as she screamed down the telephone. She said that she heard her mother telling the First Named Respondent Tenant to calm down and that the episode related to what she characterised as a genuine mistake over a rent allowance form. She said that it was her understanding that her sister, the Appellant Landlord, wanted to move home and that upon being offered a job she was going to avail of the opportunity to so do. In response to a contention that the Appellant Landlord had failed to maintain the gardens, she said that her offer to strim the garden had been refused by the Second Named Appellant Tenant who wanted her to bring a strimmer but did not want her to take on the work herself.

The Appellant Landlord's Second Witness said that she had been asked by her sister, the Appellant Landlord, to attend at the dwelling in order to inspect it in or around the 21 or 22 September 2012. She said that the reason for this was that certain complaints had been made by the Respondent Tenants, in particular in relation to a bathroom fan and black mould in the bathroom. She said that on the way to the inspection she received a call from her mother saying that the First Named Respondent Tenant had phoned her and screamed down the telephone that the inspection should not go ahead that day. She said that she re-sent an email to the First Named Respondent Tenant highlighting that she had agreed to the time of the inspection and therefore attended with her husband, who was an engineer. She said that she introduced her husband as an engineer and would not confirm or deny whether she or he had denied that they were married in order to give the impression that the Appellant Landlord had paid for the attendance of a third party professional who was neutral. However she did say that she was surly at the door because she had been recently speaking to her mother on the telephone who she said had suffered a barrage of abuse from the First Named Respondent Tenant. She detailed incidents during the course of a fractious inspection, some of which went beyond the jurisdictional remit of the Tribunal. On questioning from the Tribunal as to whether her sister, the Appellant Landlord terminated the tenancy because of the deteriorating relationship with the Respondent Tenants, she said that the Respondent Tenants' behaviour had hastened her sister's decision to return home, but that she was aware that the Appellant Landlord intended to move home in any event.

The Appellant Landlord's third witness gave evidence that he had attended the premises to address a mould problem which the Respondent Tenants attributed to a broken fan. He said that the bathroom in question had two large windows which could be opened which would have prevented the mould. He said that Second Named Respondent Tenant initially agreed that this would have been the appropriate course of action but when he expressed the same thing to the First Named Respondent Tenant she accused him of being stupid and failing to understand that the fan was broken. The Appellant Landlord's Third Named Witness attributed the breakdown in the relationship with the tenants to their abusive and threatening demeanour, in particular in respect of his mother-in-law, the Appellant Landlord's mother. However he said that the Appellant Landlord had clearly stated that she wanted to come home and it was the change in her personal

circumstances that had diverted her from this course of action after the tenancy had ended.

RESPONDENT TENANTS' SUBMISSIONS

The Respondent Tenants accepted the Adjudicator's finding that they had not supplied the Appellant Landlord with their contact details within the statutory timeframe in order that she could fulfil her obligation to offer them first refusal of the tenancy if she did not take up occupation of the dwelling. However they maintained their claim in respect of the invalidity of the Notice of Termination. They contended that the reason given in the Notice, being the Appellant Landlord's intention to move back to the dwelling, was a ruse and did not reflect her real intention.

They said that there was no dispute that the dwelling was in fact re-advertised for rent in January 2013. In respect of the Appellant Landlord's intention to use the dwelling for her own use, they argued that she bore the onus of proof and the Respondent Tenants could not be put in a position whereby they had to prove an unknown negative. In any event, they queried the reality of a job offer which was evidenced by only one letter and no contract and they further queried the reality of a move back to West Cork for a job that was primarily based in Dublin. They queried why further documentation or evidence of a firm job or steps taken to relocate were not available from the Appellant Landlord if she had in fact intended to move back to the dwelling.

The Respondent Tenants stated that prior to receiving the Notice of Termination, they had received a phone call from the Appellant Landlord in which she stated that the relationship had soured and she thought that they should go their separate ways. They said that they had (each, in two separate phone calls) told the Appellant Landlord that they did not have to listen to this, that they had rights, and that they had hung up on the telephone calls. The Second Named Respondent Tenant related that he had told the Appellant Landlord to go and read a book and come back to him when she had figured out the situation. The Respondent Tenants stated their belief that the Appellant Landlord's view of the souring of the relationship was the reason why she had terminated the tenancy, rather than any intention on her part to move back to the dwelling.

The Respondent Tenants refuted the contention that they were responsible for the development of the Appellant Landlord's negative perception of them. The First Named Respondent Tenant said that at the start all had gone well in the tenancy but on a rent allowance review, the Appellant landlord's mother (who was acting as her agent) failed to fill in the forms correctly and thereby jeopardised their rent allowance payment. The Respondent Tenants explained that they had had interactions with the Revenue Commissioners in which they discovered that a certain amount of tax had to be withheld where a landlord was non-resident, and posited that this may have been the reason why rent supplement forms were filled in with the Appellant Landlord's mother's name on it rather than the Appellant Landlord. It was put to the Respondent Tenants that the withholding tax obligations on tenants fell away where there was an agent in place within the jurisdiction; they inferred that this was not the information that they had received and which had caused them concern as the Second Named Respondent Tenant stated that he did not want to be responsible for the Appellant Landlord's tax bill. He confirmed that no state agency had asked him to discharge any of this tax bill.

The Respondent Tenants also stated that the relationship with the Appellant Landlord seemed to have soured over the making of complaints in respect of the tenancy, which

included garden maintenance and mould in the bathroom. They said that initially the Appellant Landlord had assumed responsibility for the garden maintenance, and after the sad death of the gardener they had expected that she would find somebody to continue the garden maintenance. The Second Named Respondent Tenant stated that the weeds in the garden had grown as tall as he was and that there was no equipment in the dwelling to maintain the gardens. He said that despite request the members of the Appellant Landlord's family who had attended at the dwelling had not supplied any garden maintenance tools.

They further said that the response to the mould in the bathroom was unsatisfactory as it amounted to stating that the windows of the bathroom should be opened to allow moisture to escape. They said that this was not possible given the cold Irish climate.

The Respondent Tenants refuted entirely the allegations made in respect of their behaviour. The First Named Respondent Tenant said that she had not raised her voice or been abusive in telephone calls. They were in sharp disagreement with the Appellant Landlord's witnesses in respect of the nature of the attendances at the dwelling and what had transpired during those visits.

The Respondent Tenants stated that upon receipt of the Notice of Termination they had queried its validity with Threshold who said that on its face it was valid and that it was difficult to disprove a landlord's intention to return to occupy a dwelling. They said that as a result they left the dwelling. They pointed out that although they had been asked to leave prior to the termination date by the Appellant Landlord's solicitor, they had in fact moved out on the termination date having found a place to live very late into the termination period. They said that the place that they had found was an hour and a half's drive away and was on a main road. As such they said it was not as good as the dwelling subject of the tenancy on account of the amenities they had sought for their dogs. They said that the notice period had been a stressful time for them.

6. Matters Agreed Between the Parties

- (a) The monthly rent was €570;
- (b) The Respondent Tenants paid a deposit of €570 to the Appellant Landlord, which has been retained by the Appellant Landlord;
- (c) The tenancy commenced on 23 June 2011 and terminated on 8 November 2012;
- (d) The Respondent Tenants did not pay the last month's rent.

7. Findings and Reasons:

Finding One:

The Respondent Tenants were unjustly deprived of possession of the dwelling, which caused them damage assessed at €1,500.

Reasons:

1. Section 34(4) of the Act allows for the termination of a tenancy where a landlord requires the dwelling for her own occupation. However section 56(1)(c) and 56(2) of the Act provides that where the occupation by the landlord does not take place within a reasonable time, the tenant may make a complaint to the Board that they have been

unjustly deprived of the dwelling by the landlord. In those circumstances, pursuant to section 53(3), the Tribunal may, if it considers it proper to do so, determine that the landlord shall pay damages to compensate for the deprivation of possession.

2. It is noteworthy that section 56(6) states that the remainder of the section operates without prejudice to a previously held determination that a Notice was valid or the tenant's right to put the Notice in dispute. Thus it appears that where a Notice may have been valid at the date of service, if the intention (in this case, to occupy) the dwelling is not followed through the tenant may apply for damages for the deprivation of their dwelling.

3. While the section states that damages may be awarded where the Tribunal considers it proper, it seems that this discretion is more properly focused on whether actual damage was suffered, rather than whether the Notice was valid at the time of service. This is because section 56(6) specifies two circumstances in which a Notice may be held valid, but because the occupation of the dwelling did not take place in a reasonable time, the facility to award damages remains in place. It seems that the reason for this statutory provision is protective: the tenancy can only be terminated for reason of occupation without fear of damages for unjust deprivation if the landlord is extremely serious about moving back into the dwelling such that occupation does in fact take place.

4. In this case, the Appellant Landlord did not resume occupation of the dwelling. Albeit the reasons for not so doing were reasonable, the protective provisions of the Act in respect of unjust deprivation of the dwelling apply. The Tribunal found that the steps the Appellant Landlord took to relocate fell far short of those required to evidence anything like occupation of the dwelling which is required in order that the section 56 damages provisions are not triggered.

5. The Tribunal finds that the Respondent Tenants were inconvenienced by having to move out of the dwelling which had been their home for over a year. It notes that they found alternative accommodation which had some features which they would not have chosen. In the circumstances, the Tribunal makes an award of €1,500, being the equivalent of approximately 2.5 months' rent, to the Respondent Tenants.

8. Determination:


Tribunal Reference TR0913-000427

In the matter of Maureen O'Riordan (Landlord) and Carla Brogan, Denis Kaye (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlords shall pay the Respondent Tenants the total sum of €1,500 within 56 days of the date of issue of this Order. This sum represents damages for the Appellant Landlord unjustly depriving the Respondent Tenants of their tenancy of the dwelling at Tir Na Spideoga, Inchageela, County Cork.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 25/05/2014.

Signed:

A handwritten signature in cursive script, reading "Patricia Sheehy Skeffington".

Patricia Sheehy Skeffington Chairperson

For and on behalf of the Tribunal.