**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0915-001356 / Case Ref No: 0715-19384**

**Appellant Landlord:** Derek Fitzpatrick

**Respondent Tenant:** Mohamed Vandi

**Address of Rented Dwelling:** Flat 10, 2 Williams Park, Rathmines , Dublin 6, D06WV32

**Tribunal:** Louise Moloney (Chairperson)

Finian Matthews, Mervyn Hickey

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

**Date & time of Hearing:** 19 October 2015 at 2:30

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| **Attendees:** | Derek Fitzpatrick (Appellant Landlord)  Mohamed Vandi (Respondent Tenant) |
| **In Attendance:** | Gwen Malone Stenographers. |

**1. Background:**

On 03 July 2015 the Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 76 of the Act. The matter was referred to an Adjudication which took place on 11 August 2015. The Adjudicator in the matter of Mohamed Vandi (Applicant /Tenant) and Derek Fitzpatrick (Respondent/ Landlord), the Private Residential Tenancies Board, in accordance with section 121 of the Residential Tenancies Act, 2004, determines that:

The Respondent Landlord shall pay the total sum of €125 to the Applicant Tenant, within 7 days of the date of issue of the Order, being the portion of the security deposit unjustifiably retained together with damages of €50 for its unlawful retention in respect of the tenancy of the dwelling at , Flat 10, 2 Williams Park, Rathmines, Dublin 6.

Subsequently the following appeal was received from the Landlord on 07 September 2015. The grounds of the appeal were Breach of tenant obligations and Deposit retention. This appeal was approved by the Board on 18 September 2015.

The PRTB constituted a Tenancy Tribunal and appointed Louise Moloney, Finian Matthews, Mervyn Hickey as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Louise Moloney to be the chairperson of the Tribunal (“the Chairperson”).

On 25 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 19 October 2015 the Tribunal convened a hearing at Board Room, PRTB, 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:**

None

**4. Procedure:**

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. She 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 while the Tribunal Hearing was a formal procedure the Tribunal would seek to be as informal as was possible; that the person who appealed (the Appellant Landlord) would be invited to present his case first including the evidence of any witnesses; that there would be an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present his case, including the evidence of any witness, and that there would be an opportunity for cross-examination by the Appellant Landlord. She said that members of the Tribunal might ask questions of the Parties from time to time.

The Chairperson explained that following this, the Appellant Landlord and the Respondent Tenant would be given an opportunity to make a final submission.

She stressed that all evidence would be taken on oath or affirmation and would be recorded by the official stenographer present, she 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 and up to 6 months imprisonment or both. The Chairperson drew the Parties attention to Section 7 of the Tribunal Procedures. She asked the Parties if they had any queries about the procedure, there were no queries.

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 giving evidence were then sworn in.

**5. Submissions of the Parties:**

Appellant Landlord’s Case:

The Appellant Landlord said that the Respondent Tenant vacated the dwelling without cleaning the dwelling to a standard acceptable to him or to an incoming Tenant. He said that he had to engage a cleaning lady to clean the dwelling to an acceptable standard. He said that prior to the ending of the tenancy in the dwelling he had sent details by text of a person the Respondent Tenant could contact to make arrangements to have the dwelling cleaned and that he had estimated the costs that the Respondent Tenant would incur in this regard at €12 per hour for 5 hours. He said when the dwelling was vacated it was clear that the Respondent Tenant had not made any reasonable effort to clean the dwelling and that is why he retained €75 from the security deposit which he said covered the actual cleaning costs incurred for 5 hours at the rate of €15 per hour. He said that this did not compensate him for his time in making the arrangements nor did it cover the cost of cleaning materials.

The Appellant Landlord confirmed that he had re-let the dwelling quickly, he said he could not remember the date of the re-letting but said that it was within three or four days from the date the Respondent Tenant vacated the dwelling.

He referenced the photographs he had submitted which are on the PRTB file to support his submission concerning the condition in which the dwelling was left by the Respondent Tenant on vacating the dwelling and said that these photographs were taken on the 1 July 2015. He accepted that no joint inspection of the dwelling had taken place. He said that he told the Respondent Tenant to leave the keys in the dwelling but that he had also offered to meet the Respondent Tenant at the dwelling.

The Appellant Landlord confirmed that the tenancy was for a year. He said that he spent €12,000 refurbishing the dwelling prior to the commencement of the tenancy and that the floors, curtains and kitchen white goods were new. He said that in his claim he had made allowance for normal wear and tear arising during the tenancy in the dwelling. He said that it was bad manners not to clean the dwelling at the end of the tenancy, that if a reasonable effort had been made by the Respondent Tenant to clean the dwelling he would not have retained portion of the security deposit. In response to questions from the Tribunal the Appellant Landlord said he is an experienced and professional Landlord, he said that costs of €75 to €100 could be incurred in terms of the changeover from one tenancy to another but in this instance given that the dwelling was refurbished only a year ago he did not expect to incur these costs at the end of the tenancy in the dwelling. He did not accept that some cleaning costs would be incurred on a change of tenancy, he said this should not arise especially where the tenancy was only for one year. He said that there are ten units in the building in which the dwelling is situated, and that there can be a turnover of tenants on average about every three or four years with an occasional one year tenancy. When asked about expenses on a tenancy change he said that expenses can arise, that it might depend on the length of the tenancy and that he takes a fair/practical approach to such expenses. He said that he encourages the engagement of a cleaning lady by any tenant when vacating.

The Appellant Landlord said in response to questions from the Tribunal that the dirt in the dwelling when the tenancy ended was unacceptable. He reiterated that no effort had been made by the Respondent Tenant. He accepted that he did not offer the Respondent Tenant the opportunity of addressing the matter of cleaning the dwelling after the tenancy ended. He said that the brand new cooker and fridge were not cleaned properly, that the tiles were dirty and had not been washed down, that the draining board was stained and dirty, that the kitchen floor had not been swept or mopped and he said that this was a general flavour of the standard of cleanliness in the dwelling. The Tribunal observed to the Appellant Landlord that the photographs submitted by him are of a part of the kitchen area only rather than the dwelling generally.

The Appellant Landlord confirmed that the dwelling comprised of a bedroom, bathroom, kitchen cum living area.

In his final submission, the Appellant Landlord said that he gave the Respondent Tenant the opportunity to get the dwelling cleaned before the tenancy ended by giving him the details of a cleaning lady, that the Respondent Tenant made no effort to clean the dwelling at the end of the tenancy and that he “just packed his bag and left”. He said that it was disrespectful and bad manners to make no effort to clean the dwelling, that the dwelling had been professionally cleaned before the tenancy commenced, that certain standards had to be adhered to, that the €75 retained from the security deposit was a sizeable amount but it was not unreasonable in the circumstances to withhold this payment to cover the cleaning costs incurred by him. He said that the cleaning costs of €75 represented five hours work, that there was a lot of work involved and that these costs do not cover the cost of his time or of the cleaning products used.

Respondent Tenant’s Case:

The Respondent Tenant said that he stayed in the dwelling for one year. He said when he left he gave two weeks` notice to the Appellant Landlord that he would be leaving. He said that he made every effort to clean the dwelling and he referred to the photographs he had submitted which are on the PRTB file and which he said he took just before leaving the dwelling at the end of the tenancy. He said that these photographs show the dwelling, not just the kitchen area in the dwelling, and support his submission that the dwelling was clean when the tenancy ended.

He said that he was unsure of the Appellant Landlord`s intention or motivation in withholding portion of his security deposit. The Respondent Tenant said that he moved out, that he left the keys in the dwelling and he said he felt that the Appellant Landlord was taking the view that the Respondent Tenant would take whatever he gave him in terms of the return of his security deposit.

The Respondent Tenant confirmed that the dwelling had been refurbished prior to the commencement of his tenancy, he said that the furniture was not new but everything else was new. He submitted that wear and tear does arise when a dwelling is lived in. He said that the Appellant Landlord`s photographs only show one area in the dwelling, he said that these photographs do not show anything broken or food left in the fridge. He said that the fridge and the oven were cleaned but that there will be some wear and tear over the course of a tenancy. He said that the floor tiles are brown which makes it hard to distinguish the condition of the oven glass when looking at one of the Appellant Landlord`s photographs.

He said there was a delay in the return of his security deposit, that he did not receive portion of his security deposit in the amount of €825 until a few days after the 1st of July 2015, that the failure to return his full deposit promptly at the end of the tenancy in the dwelling hampered him in making financial arrangements for his future accommodation and that he is still without €75 of his security deposit.

In his final submission the Respondent Tenant said he had an agreement with the Appellant Landlord, that he paid his rent and when the tenancy ended he was entitled to get his deposit back. He said that he cleaned the dwelling and that the dwelling was not left in a condition that would prevent another tenant from moving in. He said that the Respondent Landlord was not entitled to withhold portion of his security deposit.

**6. Matters Agreed Between the Parties**

* The tenancy in the dwelling commenced on the 8 June 2014 on foot of a fixed term tenancy agreement for one year to the 31 June 2015;
* The rent for the dwelling during the tenancy was €900 per month;
* A security deposit of €900 was paid to the Appellant Landlord by the Respondent Tenant at the commencement of the tenancy and the Appellant Landlord retains portion of deposit in the amount of €75 having refunded €825 to the Respondent Tenant;
* The Respondent Tenant vacated the dwelling on the 30 June 2015.

**7. Findings and Reasons:**

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

Finding 7.1: The Tribunal finds that a portion of the deposit in the amount of €75 paid by the Respondent Tenant has been unlawfully retained by the Appellant Landlord.

Reasons:

The Appellant Landlord has not shown evidence of deterioration in the condition in the dwelling in excess of normal wear and tear to support his withholding of portion of the security deposit paid at the commencement of the tenancy in the dwelling. The Tribunal on the basis of the evidence furnished is satisfied that the Respondent Tenant left the dwelling in a clean, tidy and reasonable condition at the end of the tenancy and that the Respondent Tenant complied with his obligations under the Act in particular Section 16 thereof. The Tribunal is satisfied from the evidence furnished that the Respondent Tenant had not, as alleged by the Appellant Landlord, “just pack his bag and left” without making any reasonable effort to clean the dwelling.

Therefore, the Respondent Tenant is entitled to the return of the unjustifiably retained portion of the security deposit of €75.

There is an obligation under the Act and in particular Section 12.1(d) on a Landlord to return or repay promptly any security deposit paid at the commencement of the tenancy. Section 12.1(d) applies and has effect subject to the provisions of Section 12 (4) which relate to arrears of rent and the costs of restoring the dwelling to the condition the dwelling was in at the commencement of the tenancy but disregarding deterioration in that condition owing to normal wear and tear arising during the tenancy as per Section 16(f) of the Act. No issue arises with regard to rent payments.

The Appellant Landlord seeks to withhold portion of the security deposit in the amount of €75 to cover cleaning costs which he submits are costs incurred in restoring the dwelling to the same condition as at the commencement of the tenancy and he says this is so disregarding deterioration arising in the course of the tenancy. The Tribunal does not having regard to the evidence find in favour of this submission.

Finding 7.2: The Tribunal finds that the Respondent Tenant is entitled to damages in the amount of €50 against the Appellant Landlord because of the unlawful retention of a portion of his deposit by the Appellant Landlord.

Reason:

The Tribunal is satisfied that the Respondent Tenant has suffered loss and inconvenience as a result of the unlawful retention of a portion of his deposit by the Appellant Landlord. The Tribunal considers in the circumstances that €50 is the appropriate level of damages for breach of the Appellant Landlord`s obligations under the Act and in particular Section 12.1 (d).

**8. Determination:**

**Tribunal Reference TR0915-001356**

**In the matter of Derek Fitzpatrick (Landlord) and Mohamed Vandi (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlord shall pay the total sum of €125.00 to the Respondent Tenant within 14 days of the date of the issue of the Order being the unjustifiably retained portion of the security deposit of €75.00 plus damages of €50.00 for retaining the said portion of the security deposit in respect of the tenancy in the dwelling at Flat 10, 2 Williams Park, Rathmines, Dublin 6.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 03 November 2015.

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

**Louise Moloney Chairperson**

For and on behalf of the Tribunal.