

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1013-000471 / Case Ref No: 0613-06214

Appellant Landlord: Eileen Smyth T/A Gate Properties

Respondent Tenant: Jacinda McSorley, Conall McSorley

Address of Rented Dwelling: 1 Haven View, Malahide , Dublin

Tribunal: Patricia Sheehy Skeffington (Chairperson)
Aidan Brennan, John Tiernan

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

Date & time of Hearing: 04 June 2014 at 2:30

Attendees: For the Appellant:
Eileen Smyth (Appellant Landlord)
Canice Smyth (Appellant Landlord's husband)

For the Respondent:
Jacinda McSorley (First Named Respondent
Tenant)
Conall McSorley (Second Named Respondent
Tenant).

In Attendance: Gwen Malone Stenographers

1. Background:

On 6 June 2013 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 11 September 2013. The Adjudicator determined that:

The Landlord should pay the total sum of €1,207 to the Applicant Tenants, being the unjustifiably retained portion of the security deposit of €1,700, having deducted the sum of €493 for rent arrears.

Subsequently the Landlord applied to appeal on 22 October 2013, citing as grounds the standard and maintenance of the dwelling, damage in excess of normal wear and tear, rent arrears and Breach of tenant obligations. The application for the appeal was approved by the Board on 1 November 2013.

In a separate action the Landlord made an application to the PRTB pursuant to Section 78 of the Act. This matter was also referred to an Adjudication which took place on 21st February 2014. That Adjudicator determined that:

- 1) the Respondent Tenants were not in breach of their obligations pursuant to the Residential Tenancies Act.
- 2) The Applicant Landlord was entitled to withhold the sum of €490 in respect of rent arrears from the security deposit.
- 3) The Applicant should return the balance of the security deposit in the sum of €1,210.

Subsequent to the adjudication on 21st February 2014 the landlord applied to appeal on 11th April 2014 citing as grounds damage in excess of normal wear and tear and rent arrears. The application for this appeal was also approved by the Board.

The PRTB constituted a Tenancy Tribunal to hear the appeals in respect of both cases and appointed Patricia Sheehy Skeffington, Aidan Brennan and John Tiernan 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 4 June 2014 the Tribunal convened a hearing at Tribunal 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 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 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. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission. She clarified that albeit the Tribunal could have regard to the Adjudicator's report, it was not bound by it and that the Tribunal was a fresh re-hearing of the matter.

The Chairperson stressed that all evidence would be taken on oath 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 Residential Tenancies Act, 2004, hereafter referred to as the RTA).

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 were then sworn in.

5. Submissions of the Parties:

The parties agreed that the matters in dispute comprised:

- (a) What date did the tenancy terminate?
- (b) What sum of rent or other charges were outstanding on the termination of the tenancy?
- (c) Did any damage in excess of normal wear and tear occur?

APPELLANT LANDLORD'S SUBMISSIONS

- (a) What date did the tenancy terminate?

The Appellant Landlord said that she had served the Notice of Termination on 23 March 2013 which purported to terminate the tenancy on 15 June 2013. She said that subsequently in discussion with the Respondent Tenants it was agreed that they would vacate on the 10th May 2013. The Appellant Landlord stated that upon that date it transpired that the dwelling was not yet ready to be handed back. She said that on 10th May 2013 she had returned the keys to the Respondent Tenants and required further cleaning and refurbishment works to be carried out. She did not deny that despite the fact that the Respondent Tenants assured her that the works would be completed on Monday 13th May she herself had asserted that she was not in a position to collect the keys again until 17 May 2013 which was the date on which they keys were finally returned. She contended that the date of Termination should therefore be 17th May 2013. She stated that the Respondent Tenants did not have access to the Dwelling subsequent to that date.

- (b) What sum of rent or other charges were outstanding on the termination of the tenancy?

The Appellant Landlord said that she was claiming rent up until 17th May 2013. When asked to clarify whether she had waived her claim to the rent for the entire month of May 2013, she said that it had been her understanding that if a person went even one day over a contract which read 'month or part thereof' (as appeared in the lease) that they were liable for the full charge for the month. However she said she had been corrected in that understanding by the Adjudicator's report. She said that she was not clear what the legal basis of limitation of the rental liability was given the terms of the lease.

- (c) Did any damage in excess of normal wear and tear occur?

The Appellant Landlord said that upon inspecting the house on the 10th May 2013, the agreed vacation date, matters arose which required further attention and an extra week was afforded to the Respondent Tenants to rectify matters. However she said that a number of matters were not adequately addressed and that other matters became evident to her on resumption of possession of the Dwelling. She referred to the following items which she said constituted damage in excess of normal wear and tear and which remained outstanding on 17th May 2013:

(i) The Linoleum/flooring

The Appellant Landlord stated that during the course of the tenancy the First Named Respondent Tenant had asked that the tiled floor of the kitchen be altered by fitting linoleum so that it would be warmer as she had young children. The Appellant Landlord said that the kitchen floor had two cracked tiles which she had intended to replace, but that she agreed to the fitting of the linoleum in the kitchen, the bill for which she paid. She could not recall the amount she paid for the linoleum, but stated that she was called on to pay for it prior to the commencement of the work. The Appellant Landlord gave evidence that with her consent the first named Respondent Tenant had arranged the purchase of the linoleum and had submitted quotations for the job to her in advance.

The Appellant Landlord said that the First Named Respondent Tenant in fact fitted linoleum to the conservatory and the kitchen, whereas she had only permitted it in the kitchen. She agreed that as the conservatory had later blown down and had not been replaced this element was no longer in issue. However she said that upon receiving vacant possession of the dwelling she saw the linoleum in the kitchen had become ripped. She highlighted the tear in a photograph and characterised this defect as abuse of the dwelling, having regard in particular to the fact that she had paid in full for the job to be done. She said that she understood that the tear had arisen because of the way a fridge door was pulling against it, but she said that had she had a fridge which caused this pull she would lift it in order to avoid damage.

She further stated that she was not made aware that the fitting of the linoleum involved laying a screed which rendered the tiles underneath it unusable, although she said that she had subsequently found out that this was normal practice. Upon questioning she agreed that she had not given any specific direction or set boundaries in regard to the manner in which the original linoleum work was to be carried out, which in hindsight she said she should have done.

The Tribunal queried the sum of €2,780.75 claimed in respect of the kitchen floor in a submitted document entitled "Statement of Claim". The Appellant Landlord stated that this related to the removal and disposal of the linoleum and replacement of the tiles in the kitchen and conservatory and referred to a quotation for this work which had been submitted. She said that this work was required because of the screed applied to the floor.

(ii) Marks on a table

The Appellant Landlord said that the table was one of the items which she took issue with on 10 May 2013 and which the First Named Respondent Tenant said that she would attend to. The Appellant Landlord highlighted two photographs of the table, one prior to

the tenancy which she said illustrated its good condition and high quality, and another in which a reddish mark was visible on it and which she said was impossible to remove.

(iii) The carpets

In respect of the carpet in the children's rooms, the Appellant Landlord said that this had first been put down during the tenancy, approximately a year prior to its termination. She said that these carpets had been fitted to make the rooms warmer for the children. The Appellant Landlord highlighted a photograph showing a mark on the floor of a room and said that this had not been visible on the initial inspection because a chair had been pulled over it. She said that she had got a carpet cleaner in but that the stain would not lift and the carpets had had to be replaced. She said that two bedrooms had been affected similarly but she was annoyed about the room with the chair pulled over the stain. She said that she had been persuaded by the carpet salesperson to replace the carpet in both rooms at the same time and that the initial carpet had not been expensive and did not wear well. She said that she replaced it with a better carpet.

In respect of the stain on the stairs carpet, the Appellant Landlord said that while this carpet had been in situ some years prior to the Respondent Tenants' tenancy it was good quality wool (the age of the carpet being put at between seven and ten years at the time of the hearing). She said that upon inspection of the dwelling this carpet was so dirty that she had asked for it to be cleaned further. She referred to photographs which she said showed how the carpet had been worn away after having been scrubbed.

The amount claimed in the 'Statement of Claim' document in respect of carpets was €2,000.

(iv) Crayon marks on the door jam

The Appellant Landlord referred to photographs showing green crayon mark on a door jam.

(v) Torn border on the wallpaper on the child's bedroom

The Appellant Landlord highlighted that a wallpaper border which had been put up by the Respondent Tenants in the baby's room had been left there and was torn. She said that this border was not acceptable to her and required extra work in its removal prior to repainting work. She referred to a photograph highlighting this damage.

(vi) Garden

The Appellant Landlord said that the garden was not maintained and that while some work was done after the inspection on 10 May 2013, the cutting of the grass revealed yellow patches in the lawn.

(vii) Holes in walls/redecorating costs

The Appellant Landlord said that the Respondent Tenants had put up coat hooks in the hallway which were not to her liking and she asked that they be removed and the holes covered in when the Respondent Tenants vacated. She said that although the holes were filled, they were left with plaster around them which took a long time to sand down in preparation for to painting.

The repainting cost claimed by the Appellant Landlord was €1,600. She pointed out that during the tenancy she had undertaken some re-painting work in the dwelling but that she had to repaint the whole dwelling on the tenancy's termination.

The Appellant Landlord said that during the course of the tenancy she had attended to any matters which arose expeditiously. She said that the Respondent Tenants were demanding

RESPONDENT TENANT'S SUBMISSIONS

(a) What date did the tenancy terminate?

The Respondent Tenants said that after offering to sell the house to them (which offer the Respondent Tenants declined) the Appellant Landlord's husband informed the Respondent Tenants that they were going to put the house on the market. The First Named Respondent Tenant said that she followed up on this to obtain a written Notice of Termination which was then sent on 23rd March 2013 setting the termination date for 15th June 2013. It was later agreed between the parties that the termination date would be the 10th May 2013.

The First Named Respondent Tenant said that she had some trouble arranging a final inspection of the dwelling and thus it took place on the scheduled date for leaving, being the 10th May 2013. The Respondent Tenants said that their belongings had been removed from the dwelling at that point and that two of the three sets of keys were returned. The First Named Respondent Tenant said that she had organised for the cleaners to be on standby to return on Monday as she had discovered that the oven had not been cleaned properly. However she said that while she had been willing and able to return the final set of keys on the 12th May 2013, the Appellant Landlords were not in a position to meet to take them until the 17 May 2013. On questioning, the Respondent Tenants agreed that it was on the Monday rather than on the Sunday upon which they were able to return the keys, being the 13th May 2013.

(b) What sum of rent or other charges were outstanding on the termination of the tenancy?

The Respondent Tenants' position was that they had agreed the termination date of 10th May 2013 and this was the operative date up until which rent remained owing. The First Named Respondent Tenant pointed out that there was no use of the house by them after that date, and thus no loss had occurred by virtue of her having one set of keys to finish off some items of cleaning.

(c) Did any damage in excess of normal wear and tear occur?

The Respondent Tenants' position was that the damage alleged by the Appellant Landlord amounted to normal wear and tear over the course of a tenancy which lasted three years and nine months, and in which a family with children had been in occupation of the dwelling. In relation to the particular matters raised by the Appellant Landlord, they remarked as follows:

(i) The Linoleum/flooring

The First Named Respondent Tenant said that upon securing agreement for the purchase and installation of linoleum, she obtained three quotes which she supplied to the Appellant Landlord. She said that it was clear from these quotes that the price was for the kitchen and the conservatory. She gave evidence that she had explained the process of the screeding and floor preparation to the Appellant Landlord, who had not overseen the work but who had directly paid the contractor who fitted the linoleum.

The First Named Respondent Tenant stated that it transpired after the work was done that rather than pull out the fridge and take the linoleum to the wall of the kitchen, that the contractors had simply cut it at the line of the fridge and inserted a strip of lino between the fridge and the adjoining unit. She said that because the fridge was faulty and required defrosting on a regular basis, she had to pull it out from the wall to unplug it, which caused the lino to pull and eventually rip. The First Named Respondent Tenant said that she had informed the Appellant Landlord of this issue and the problems it was causing, and that eventually at around Christmas time when the fridge completely broke she had sought and bought a replacement fridge, for which she was reimbursed.

The First Named Respondent Tenant said that she had organised the quotes but under questioning clarified that she did not mean this as overseeing the work or taking responsibility for it as she had no expertise in this area. She contended that the tear in the lino was normal wear and tear given the persistent problem with the fridge which was eventually resolved.

(ii) Marks on a table

The First Named Respondent Tenant said that the kitchen table was not particularly special but had seen a great amount of use in the first few years of the tenancy, whereby her family had eaten at it every day for three years. She said that upon replacing it with her own table (which the Respondent Tenants had taken with them) she had stored the original table upstairs, detaching its legs. She said that it was not a solid table and that its wear was beginning to show towards the end of the time she used it, highlighting in particular the edges of the table which she said were starting to come away. She said that she had tried to remove the mark referred to in evidence including photographic evidence by the Appellant Landlord. She attributed any mark on the table to normal wear and tear.

(iii) Carpets

The First Named Respondent Tenant said that every effort had been made to clean the carpets before they left. She said that in any event the carpets had been marked prior to the commencement of the tenancy.

In respect of the carpet in the children's room, the First Named Respondent Tenant said that the chair had been moved there to facilitate her feeding her child and any mark on it was from milk, which was not staining and easy to clean. She denied that she had positioned the chair to hide the stain.

In respect of the carpets on the stairs, the Respondent Tenants highlighted their age, the fact that they had been in use in a previous tenancy, and that they were cream carpets where the tenancy was let to a family with children. The Respondent Tenants said that the photographs depicting badly marked steps were the bottom -steps next to the front door, whereas the cleaner looking carpeted stairs were located on the stairs up to the attic which saw much less traffic. The First Named Respondent Tenant said that she differentiated the pictures of the stairs by the banisters and wall adjoining them.

(iv) Crayon marks on the door jam

The First Named Respondent Tenant said that she had not seen this mark and had she seen it or had it been notified to her she would have cleaned it off.

(v) Torn border on the wallpaper on the child's bedroom

The First Named Respondent Tenant said that this issue was simple to remediate as it had only taken her twenty minutes to put up the border, which a child must have started to peel off. She said that in a child's bedroom this was normal wear and tear.

(vi) Garden

The First Named Respondent Tenant said that after the inspection on 10 May 2013 she had thoroughly weeded the garden. The Second Named Respondent Tenant said that he had mowed the garden, which he said that he had done on a regular basis during the tenancy. He said this would have been every two or three weeks when required in the summer.

(vii) Holes in walls/redecorating costs

The First Named Respondent Tenant said that she had filled the holes as requested, and had in fact filled more than she had created as there were others which had predated the tenancy. She described one large hole in the kitchen in particular. The First Named Respondent Tenant stated that the colour difference was simply due to the colour of the 'Polyfilla'. She said however that every hole had been filled and sanded down.

The First Named Respondent Tenant contended that the Appellant Landlord by retaining the deposit was attempting to unfairly pass on house refurbishment costs to the Respondent Tenants. She said that the house was not pristine at the start of the tenancy and that she had undertaken to improve it during the course of the tenancy.

6. Matters Agreed Between the Parties

1. The monthly rent was initially set at €1,800 and was subsequently reduced to €1,500 per month;
2. A deposit of €1,700 was paid by the Respondent Tenants which has been retained by the Appellant Landlord;
3. The tenancy commenced on 22 August 2009;
4. The Respondent Tenants had paid their rent in full up to 30 April 2013;
5. The Appellant Landlord served a Notice of Termination on 23 March 2013, on foot of which the Respondent Tenants vacated the dwelling.

7. Findings and Reasons:

Having considered the parties' oral, photographic and written submissions, the Tribunal finds as follows:

Finding One;

The tenancy terminated on 13th May 2013.

Reasons

1. The Respondent Tenants were not in a position to return the dwelling on the agreed date of 10 May 2013 as certain cleaning jobs remained outstanding, which they agreed to undertake. While they were aware of some such repairs in advance (such as the oven) a further list was given to them by the Appellant Landlord on 10th May 2013, thus an

expectation was created between the parties on that day that they would remain until the cleaning had been finalised.

2. The cleaning was finalised on 13th May 2013 and the Respondent Tenants were willing and able to return the final set of keys on that date. The keys were not returned on this date because the Appellant Landlord was not in a position to take possession of them.

Finding Two:

The Respondent Tenants were in breach of their obligation to pay rent and were in rent arrears of €641.10 at the termination of the tenancy.

Reasons:

1. A tenant's primary obligation is to pay rent as it falls due: section 16(a)(i) of the Act.
2. The Tribunal rejects the suggestion as contended by the Appellant Landlord that a lease may demand a full month's rent for any part of a month in which a tenant in residence where the lease has rolled on and has become a periodic tenancy. Such a clause may be applicable to a fixed term tenancy made up of a certain number of fixed months where a tenant has agreed to rent the dwelling for each and every one of those months. Beyond the fixed term of the tenancy, neither party operated by full monthly units, as evidenced by the Appellant Landlord's Notice of Termination fixing a termination date for the middle of the month and the subsequent agreement for the tenancy to terminate on 10th May 2013. This agreement was to facilitate the Appellant Landlord's wish for vacant possession to sell the property and cannot then operate to the detriment of the Respondent Tenants. Where a tenant is not permitted access to a dwelling by virtue of the tenancy's termination it is clear that they cannot be charged rent for that period.
3. In this case, the termination date has been found to be 13 May 2013 whereas the Respondent Tenants paid rent up until 30 April 2013. Thirteen days' rent was therefore outstanding. The daily rate of rent is calculated at €49.32 ([€1,500 x 12] divided by 365) which multiplied by 13 is €641.10.

Finding Three

The Respondent Tenants caused damage in excess of normal wear and tear to the dwelling in respect of the marks on the door jam and the torn wallpaper and the Tribunal awards the Appellant Landlord €100 in this regard.

Reasons:

1. The Respondent Tenants admitted that some crayon/marker markings had been left and that a wallpaper border strip they had placed on the walls had been torn and on the evidence of the Appellant Landlord was not suitable and required removal. This required extra remediation work by the Appellant Landlord. Furthermore there was extra sanding and other repairs required to holes in wall in the hallway.
2. Having regard to the evidence heard, the age of the carpets, the circumstances of the ripping of the lino, the extent of residence of the dwelling over an extended period and the further work beyond the filling of holes in the walls caused prior to the tenancy, the Tribunal does not find any further damage which can be characterised as being beyond normal wear and tear. It notes in particular that a common feature of lengthy tenancy's ending is a requirement for redecoration and the cleaning of carpets. The Tribunal cannot

hold the Respondent Tenants responsible for the manner in which linoleum in the kitchen was fitted nor that linoleum's interaction with a faulty fridge.

Finding Four:

The Appellant Landlord was justified in retaining €741.10 of the €1,700 deposit.

Reasons:

1. Pursuant to section 12(4) of the Act, as amended, a landlord may only retain a deposit where there rent or utilities arrears arise or where there has been damage in excess of normal wear and tear.
2. It has been found in this case that rent arrears accrued in the sum of €641.10 and that damage in excess of normal wear and tear arose which has been quantified at €100. Thus the Appellant Landlord was justified in retaining €741.10 of the deposit.
3. Given the partial justification for the retention of the deposit, the Tribunal declines to award any damages in this case for deposit retention.

8. Determination:

Tribunal Reference TR1013-000471

In the matter of Eileen Smyth trading as Gate Properties (Landlord) and Jacinda McSorley, Conall McSorley (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 €958.90 to the Respondent Tenants within 28 days of the date of issue of this Order, being the unjustifiably retained portion of the security deposit of €1,700, having deducted €100 for damage in excess of normal wear and tear and €641.10 rent arrears in respect of the tenancy of the dwelling at 1 Haven View, Malahide, County Dublin.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 13/06/2014.

Signed:



Patricia Sheehy Skeffington Chairperson
For and on behalf of the Tribunal.