

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1013-000477 / Case Ref No: 0612-01508

Appellant Tenant:	Marion Beirne
Respondent Landlords:	Maire Higgins, Breen Higgins
Address of Rented Dwelling:	4 Garran Ard, The Walk , Roscommon, County Roscommon.
Tribunal:	Finian Matthews (Chairperson) Thomas Reilly, Vincent P. Martin
Venue:	Ante Chamber, Athlone Civic Centre, Church Street, Athlone, Co. Westmeath
Date & time of Hearing:	13 August 2014 at 2:30
Attendees:	Marion Beirne, Tribunal Appellant, Tenant, Jason Crean, Witness for Appellant Tenant John Kelly, Respondent Landlords' Representative
In Attendance:	Gwen Malone Stenographers

1. Background:

On 20/06/2012 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 31/05/2013. The Adjudicator determined that:

The Respondent Tenant shall pay the sum of €849.75 to the Applicant Landlords within 56 days of the date of issue of the Determination Order by the Board, being damages of €1,599.75 for breach of the Respondent Tenant's obligations pursuant to Section 16(f) of the Act in causing damage in excess of normal wear and tear having allowed for the justifiably retained security deposit of €750 in respect of the tenancy of the dwelling at 4 Garran Ard, The Walk, Co. Roscommon.

Subsequently the following appeal was received:

Tenant : received on 24/10/2013. The grounds of the appeal: Deposit retention ; Approved by the Board on 01/11/2013

The PRTB constituted a Tenancy Tribunal and appointed Finian Matthews, Thomas Reilly, Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Finian Matthews to be the chairperson of the Tribunal ("the Chairperson").

On 11/07/2014 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 13/08/2014 the Tribunal convened a hearing at Ante Chamber, Athlone Civic Centre, Church Street, Athlone, Co. Westmeath.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

None

4. Procedure:

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Tenant against a determination made following an adjudication held on 31 May, 2013 in the case of a dispute between the Tenant and the Respondent Landlords in respect of the tenancy of a dwelling at 4 Garran Ard, The Walk, Roscommon. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. He confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received and understood the PRTB document entitled "Tribunal Procedures". Both Parties confirmed that they had done so. The Chairman said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson then explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the stenographer present, and that based on that recording a transcript could be made available to the Tribunal if necessary, to assist it in preparing its report on the dispute. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the PRTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Tenant would be invited first to present her case, including the evidence of any Witness; this would be followed by an opportunity for cross-examination by the Respondent Landlords; that the Respondent Landlords would then be invited to present their case, followed by an opportunity for cross-examination by the Appellant Tenant. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

He also said that at the end of the hearing, both the Appellant Tenant and the Respondent Landlords would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the PRTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

All persons giving evidence to the Tribunal were then sworn in.

5. Submissions of the Parties:

Appellant Tenant's Case:

The Appellant Tenant told the Tribunal that she viewed the dwelling in the second week of September, 2008 accompanied by the second-named Appellant Landlord's sister. She said that the dwelling was in reasonable condition but she pointed out to the Landlord's sister that there were some burn marks on a carpet, some markings on lino and that the inside pane on a double glazed window in the utility room was cracked. She said that the Landlord's sister gave an undertaking that this would be fixed but this had never happened. She added that no photographs had been taken to show the condition of the dwelling at the commencement of the tenancy. She said that she agreed to rent the dwelling and signed the lease.

The Appellant Tenant said that after she moved in to the dwelling she obtained permission to hang pictures on the walls and also to install a Sky satellite dish for tv reception. She said that in May, 2009 a previous tenant called seeking to collect a picnic table from the back garden. She contacted the Landlord who said to let the previous tenant have the item in question.

The Appellant Tenant also said that in October, 2009 the Landlord replaced the electric cooker in the dwelling which had stopped working. She added that in late 2010 the washing machine had been repaired at her request, but that the repairman told her that the machine was 'on its last legs'. She said that the carpet in the living room had become very worn and she requested new flooring which was not supplied, but in any event she had arranged to have the carpet professionally cleaned. She also said that by late 2011 the paintwork throughout the dwelling needed to be re-painted and she arranged to have this done at her own expense. She said that she had not asked for the Landlord's permission to do this work, but when she advised him after it had been done, he said he was delighted. She also said that the dwelling was expensive to heat with oil and that she had requested the Landlord to install a back boiler, but this had been refused. She also described how the washing machine mal-functioned again around Christmas 2011. The Landlord had agreed to supply a new one, but wanted to install this on Christmas Eve, which she was not happy about.

The Appellant Tenant said that in early February, 2012, she decided to vacate the dwelling largely because of the difficulties and expense involved in heating it. She said that she gave the Landlord 4 weeks notice of her intention to leave which he accepted. She said that she contacted the Landlord to arrange an inspection on or before she moved out on the agreed date of 1 March, 2012. She said that the Landlord was not available to meet her at the dwelling by then, but having moved out on 1 March, 2012, she went back on 2 March with cleaning products to complete the cleaning of the dwelling. She said that the Landlord met her at the dwelling that evening and they agreed to carry out a full inspection, the following morning, Saturday 3 March, 2012. She said that the Landlord then left and asked her to lock up and leave the key under the front door-mat.

She said that when she met the second-named Respondent Landlord at the dwelling the following morning he told her that he had already been through the dwelling and had noticed a few minor details but that there was nothing to worry about. She said that she and the Landlord then went through each room in the dwelling, and that the Landlord had made no complaints except to agree that the carpet in the living room needed to be replaced. She said that the only queries he raised related to a loose wheel on the bed in the master bedroom, which she said had always been loose, a missing shower head which she agreed to return and missing bolts from a metal bed which had been dismantled to make room for a cot. She undertook to try to find these. She said that at the end of the inspection the Landlord asked her if there was anything he needed to know about. She mentioned to him that the back garden flooded during heavy rainfall to which he replied this was not her problem. She said she also drew the Landlord's attention to some extra rubbish at the bins near the dwelling which he said was no problem.

The Appellant Tenant said that the Respondent Landlord then gave her a cheque for €750 in repayment of her deposit, saying that she had saved him a lot of time and money in the way she had left the dwelling. She added that as she and the Landlord were leaving the dwelling a cat came round the corner, which she said was a stray cat which she had been feeding for over a year but had never let into the house. She said that the Landlord, who was averse to cats asked her to take the cat with her and she did so. The tenant also said that on the following day the Landlord contacted her to say that he had found a portable TV in the attic which he dropped over to her new dwelling, at which point her witness also returned the missing metal bolts from the bed which they had found in the meantime. She added that on the following day she called over to the dwelling with a new shower head she had purchased. The Landlord wasn't there at the time and asked her to leave this on the back window which she did. She said that in the following days she also took away a collapsed plastic pool, a child's bicycle and her own bins which had been left behind. She stated that each of these two subsequent occasions the Respondent Landlord failed to convey to her any concern or unhappiness with the condition of the dwelling at the time the tenant vacated it.

The Appellant Tenant said that on 8 March her bank told her that the Landlord's cheque for the deposit had been stopped. She said that she rang the Landlord who became nasty and rude and told her she wouldn't be getting anything back. When she asked him why he did not give her an opportunity to remedy any further defects in the house he said that he did not have to tell her anything. She told the Landlord that she wanted to see evidence or receipts in relation to the matters to be attended to or that she would take the matter further. The Appellant Tenant said that she also asked for a list of the relevant matters and received one two weeks later from the Landlord. She subsequently asked for receipts on two occasions but received nothing in response. At her request Threshold wrote to the Landlord by which time he had referred the matter to the PRTB. She said that the first time she saw any receipts was when she received the PRTB file in relation to the dispute. She also said that she saw a To Let sign at the dwelling around March 2012 and that it had been re-let by 11 May, 2012.

In response to questions from the Respondent Landlord's representative the Appellant Tenant agreed that the Respondent Landlords were reasonable people and that this was supported by the way that they had addressed any issues arising in the course of the tenancy.

The Appellant Tenant's witness said that the dwelling had been painted in good faith by him - throughout with the exception of 1 room that was covered in posters - a few months before the tenancy terminated. He said that he and the Appellant Tenant would not have carried out this work if they were keeping the dwelling in a dirty condition. He added that he had worked previously as a painter for about 2 years. He said that some of the walls had required 2 to 3 coats because the paint was not drying evenly due to dampness, which he said was evident in some parts of the dwelling and may have been caused by condensation.

In further evidence later in the hearing the Appellant Tenant, having heard the Respondent Landlord's evidence, said that none of the issues allegedly shown in photographs were drawn to her attention when she accompanied the second-named Respondent Landlord in his inspection of the dwelling on 1 March, 2010. She was of the view that if many of the issues were evident, the Landlord could not have failed to notice them, including a dirty back door, the dirty fireplace, the alleged missing lamp-shades and damaged light-fitting, dis-coloration on the walls, the missing toilet seat, the condition of the shower door and tray, the sink detached from the wall, the dirty and cracked hob in the kitchen, the dirt on tiles and in the kitchen presses and the damage to those presses and damaged chair. She denied that she had caused any of the foregoing alleged damage.

The Appellant Tenant conceded that she had forgotten to clean the extractor hood and to defrost the freezer. She added that the towel rail had loosened and she had attempted to fix it but it was not hanging off the wall as shown in the relevant photograph. She also said that the silicone seal behind the sink had worn away, but a big gap as shown in the photograph between the sink and the wall had not developed while she was in the dwelling; she said that the front part of the freezer had come loose, but the door, having been left in the vicinity of the freezer was not missing; she said also that a door handle had come loose but she left this on a nearby window sill; she also said that the iron from which a plug was missing was her own, no iron having been supplied by the Landlord; she added that the hole in plaster board behind one of the doors had been caused by a door handle banging into it, no door-stop having been provided to prevent this. She said that this hole had been filled on a number of occasions, but she had forgotten to do so again before she vacated. The Appellant Tenant also queried the dates on some of the invoices supplied by the Landlords, suggesting that they were trying to make her responsible for paying for items replaced for subsequent tenants.

Respondent Landlord's case

The Respondent Landlord's representative said that the dwelling was a fine home that had been kept to a very high standard and would not have been possible to let, in a competitive market, if it had been sub-standard. He said he regretted the aspersions that had been cast on the characters of the Appellant Landlords and referenced the number of issues that had been attended to promptly during the tenancy, including the replacement of the hob and the repair of the hob. He submitted that all of this demonstrated that the Landlord was a good Landlord. He said that the Respondent Landlord's had a baby born on 1 March, 2012 and that when the Landlord, who was not a professional Landlord and owned only 1 property for rent at the time, inspected the dwelling on 3 March 2012 he was fatigued and wanted to get through the matter quickly. He added that the Landlord had hoped for a 1 month transition in terms of re-letting the dwelling but it had not been

re-let until 12 May, around 70 days after the Appellant Tenant had left. He apologised for the Landlord's having earlier and inadvertently given a later date for the re-letting.

The Respondent Landlord's representative said that when the second-named Respondent Landlord inspected the dwelling again in the days after his first inspection, he noticed a strong smell of cat's urine in the dwelling. He also found that the walls were stained and that there were scorch marks on the carpets. He referred to the photographs which had been submitted in support of the Respondent Landlord's case and went through each of these stating that they showed the condition of the path at the side of dwelling, the dirty condition in which the back door had been left, the condition in which the fireplace in the living room had been left, burns on the carpet, miscellaneous items left under a chair, a missing lampshade and damaged light fitting, discoloration on walls, a missing toilet seat, a towel rail pulled from the wall, a shower door and tray left in very poor condition, a sink detached from the wall, a dirty extractor hood over the cooker in the kitchen, a dirty and cracked hob in the kitchen, dirty wall tiles behind the hob, freezer not de-frosted and door of one freezer drawer missing, dirt inside presses in the kitchen, damage to kitchen units, marks on lino in the kitchen, a chair which looked OK but was damaged on closer inspection, a missing door handle, dirt on a vent, an iron from which a plug had been removed, a hole in the wall behind the door in one room. He said that the final photograph was a composite view of the items that had to be discarded from the dwelling.

The Respondent Landlords' representative said that although it had cost several thousand euro to restore the dwelling to the condition it was in at the commencement of the tenancy, the Respondent Landlords in a spirit of compromise were willing to limit their claim for damages in excess of normal wear and tear to €750 on the basis of which the Landlords would retain the tenant's deposit but would waive any claim for damages above that amount. He also said that the Respondent Landlords' were not attempting to benefit at the Appellant Tenant's expense.

The Chair thanked both parties for attending and advised them that following the hearing the Tribunal will prepare a report and make its Determination in relation the dispute and will notify the PRTB of that Determination.

6. Matters Agreed Between the Parties

Before inviting the parties to make their submissions the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

- The tenancy commenced on 13 September, 2008
- The term of the tenancy specified in the initial letting agreement was 6 months
- A second letting agreement was signed under which the tenancy became a RAS tenancy with effect from 20 April 2009
- The tenancy terminated on 1 March, 2012
- There were no rent arrears
- The Appellant Tenant paid a deposit of €750

- The deposit has been retained by the Respondent Landlords.
- The dwelling was occupied initially by the Appellant Tenant and one child and later by a second child.

Both parties accepted that they were in agreement in relation to the foregoing matters.

7. Findings and Reasons:

Having considered all of the documentation before it and having considered the evidence presented to it by the parties, the Tribunal's findings and reasons therefor are set out hereunder.

Finding 1:

The Appellant Tenant was, to the extent set out hereunder and to that extent only, in breach of the provisions of section 16(f) of the Act.

Reasons: Under sub-section (f) of section 16 of the Act, a tenant must not do any act that would cause a deterioration in the condition a dwelling was in at the commencement of a tenancy. In determining whether or not the Appellant Tenant was in breach of this obligation the Tribunal was required to disregard any deterioration in the condition of the dwelling owing to normal wear and tear, having regard to the time that had elapsed since the commencement of the tenancy, the extent of occupation of the dwelling and any other relevant matters.

The Tribunal accepts the evidence of both parties that the dwelling was in good condition at the commencement of the tenancy but also accepts the Appellant Tenant's evidence that certain markings on the carpet and lino and a cracked window in the utility room were brought to the attention of the Landlords' relation when the tenant viewed the dwelling before deciding to proceed with the letting. It would have been good practice nevertheless for these matters to have been noted in an addendum to the written lease agreement. Photographic evidence as to the condition of the dwelling at the commencement of the tenancy would also have been helpful, but was not available.

The Tribunal further accepts that a number of issues which arose during the course of the tenancy were attended to promptly by the Respondent Landlords.

In relation to extent, if any, to which the condition of the dwelling had deteriorated on the termination of the tenancy with effect from 1 March, disregarding normal wear and tear as defined in section 16(f) of the Act, there was a total conflict in the evidence put forward in this regard by the Appellant Tenant and by the Respondent Landlords. In carefully considering the conflicting evidence, the Tribunal has concluded on the balance of probabilities that the Appellant Tenant did not through any acts on her part during the course of the tenancy cause deterioration in the condition of the dwelling to the extent alleged by the Landlords, with particular reference to dirt on the back door, condition of the fireplace, burn marks on the carpet, missing lampshades, damaged light fittings, discoloration on walls, missing toilet seat, damaged towel rail, condition of the shower door and tray and damage to kitchen units and a chair. In coming to this conclusion the Tribunal found the evidence of the Appellant Tenant with regard to her efforts to leave the dwelling in a clean and tidy state to be compelling; the Tribunal also found that the photographic evidence put forward by the Respondent Landlords did not in large part support their allegations with regard to the extent of deterioration beyond normal wear

and tear in that a number of the photographs were unclear; the explanations as to the subject of some of the photographs was unconvincing, while in some other cases it was not possible to establish what certain photographs allegedly depicted.

The second-named Appellant Landlord's conduct of the inspection he carried out in conjunction with the Appellant Tenant on 3 March 2012, further reinforces the Tribunal's conclusions in relation to the extent of any damage beyond normal wear and tear. In uncontested evidence the Appellant Tenant stated that in the course of that inspection the Landlord drew her attention to a small number of minor matters which she agreed to address, told her that he was otherwise happy with the condition of the dwelling and gave her a cheque for her deposit. It is a matter of regret that the Respondent Landlords subsequently cancelled the cheque without informing the Appellant, leaving it up to her bank to let her know that the cheque had been cancelled.

The Tribunal further finds that the Respondent Landlords were in breach of section 16(g) of the Act in that they failed to advise the Appellant Tenant of any steps they might reasonably require her to take for the purposes of restoring the dwelling to the condition it was in at the commencement of the tenancy or to defray any costs incurred by the Landlords for that purpose.

Notwithstanding its finding that the Appellant Tenant did not cause a deterioration, beyond normal wear and tear, in the condition the dwelling was in at the commencement of the tenancy to the extent alleged by the Appellant Landlords, the Tribunal nevertheless finds that the Appellant Tenant did cause certain deterioration in the condition of the dwelling, above normal wear and tear, particularly in regard to her failure to fully clean in certain instances, the condition of the freezer and the hole in the wall in one of the bedrooms.

Finding 2:

The Respondent Landlords are entitled to deduct the sum of €250 from the deposit of €750 paid by the Appellant Tenant.

Reasons: Having found that the Appellant Tenant caused deterioration in certain respects in the condition of the dwelling beyond normal wear and tear, it falls to the Tribunal to assess the costs in that regard that would be incurred by the Appellant Landlords in taking such steps as are reasonable for the purposes of restoring the dwelling to the condition it was in at the commencement of the tenancy. In respect of the deterioration in the condition of the dwelling, above normal wear and tear, accepted by the Tribunal to have been caused by the Appellant Tenant, the Tribunal assesses the amount of costs to be incurred by the Appellant Landlords at €250.

Finding 3:

The balance of the Appellant Tenant's deposit in the sum of €500 has been unjustifiably retained by the Respondent Landlords and must be repaid to the Appellant Tenant.

Reasons: Under sub-section (1)(d) of section 12 of the Act, the Respondent Landlords were obliged, subject to sub-section (4) of section 12, to return or repay promptly the deposit paid to him by the Respondent Tenants on their entering into the Tenancy Agreement.

Sub-section (4) of section 12 of the Act provides, among other things, that where a tenant is in breach of his or her obligations not to cause damage to a dwelling beyond normal wear, a landlord - in cases where the costs to be incurred in restoring the dwelling to the

condition it was in at the commencement of the tenancy are less than the deposit - is only required to return to the tenant the difference between those costs and the deposit. Having regard to the Tribunal's finding that the Respondent Landlords are entitled to deduct an amount of €250 from the Appellant Tenant's deposit in respect of costs that would be incurred in taking steps to restore the dwelling as a result of the deterioration in the condition of the dwelling above normal wear and tear caused by the Appellant Tenant, the Respondent Landlords must repay the balance of €500 to the Appellant Tenant

8. Determination:

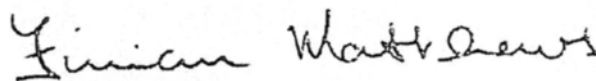
Tribunal Reference TR1013-000477

In the matter of Marion Beirne (Tenant) and Maire Higgins, Breen Higgins (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlords shall pay the sum of €500 to the Appellant Tenant within 21 days of the date of issue of the Determination Order by the Board, being the unjustifiably retained balance of the deposit of €750 paid by the Appellant Tenant, having deducted the sum of €250 to defray costs to be incurred by the Respondent Landlords for the purposes of restoring the dwelling to the condition it was in at the commencement of the tenancy, the Appellant Tenant being in breach of her obligation pursuant to section 16(f) of the Act not to do any act that would cause damage in excess of normal wear and tear in respect of the tenancy of the dwelling at 4 Garran Ard, The Walk, Roscommon, Co Roscommon.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 17/08/2014.

Signed:



Finian Matthews Chairperson

For and on behalf of the Tribunal.