

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1014-000881 / Case Ref No: 0714-13360

Appellant Tenant:	Michele Keane
Respondent Landlord:	Ken O' Hanrahan, Judy De castro
Address of Rented Dwelling:	17 Gainsborough Court, Malahide , Dublin, K36R232
Tribunal:	Vincent P. Martin (Chairperson) Eoin Byrne, Gene Feighery
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	09 July 2015 at 10:30
Attendees:	For the Applicant Tenant: Michele Keane (the Applicant Tenant) Mark C.Taylor (brother and advocate on behalf of the Applicant Tenant) For the Respondent Landlord: Kenneth O'Hanrahan (advocate on behalf of the Respondent Landlord) Garda Matthew O'Connor (witness)
In Attendance:	Gwen Malone Stenographers.

1. Background:

On 25/07/2014 the Applicant Tenant made an application to the Private Residential Tenancies Board ("the PRTB") pursuant to Section 78 of the Act. The matter was referred to a Mediation which took place on 09/09/2014. The Mediation process was not successful. Subsequently an application to refer the dispute to the Tribunal under the provisions of Section 96(6) of the Act was received from the Tenant on the 14/10/2014. The grounds of the appeal were deposit retention which said application was approved by the Board on 07/11/2014. The PRTB constituted a Tenancy Tribunal and appointed Vincent P. Martin, Eoin Byrne, Gene Feighery as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Vincent P. Martin 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 09/07/2015 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

- A transcript of the recording of a meeting held at the dwelling made by the Applicant Tenant.

4. Procedure:

The Chairperson asked the parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the parties that they had received the relevant papers from the PRTB in relation to the case and that they had received the PRTB document entitled "Tribunal Procedures". The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be conducted in a manner as informal as possible. The Chairperson said that members of the Tribunal might ask questions of both parties from time to time. He also stated that the parties must follow any instructions given by the Chairperson and directed that neither party should interrupt the other when oral testimony is being given. He stated that in this case it was most appropriate for the Respondent Landlord to present her case first and that there would be an opportunity for cross-examination by the Applicant Tenant. The Applicant Tenant would then be invited to present her case, and that there would be an opportunity for cross-examination by the Respondent Landlord. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission. The Chairperson said that he would be willing to clarify any queries in relation to the procedures either then or at any stage during the course of the Tribunal hearing. He also stated that the Tribunal would be willing to consider an application made at any stage during the Hearing seeking a short adjournment for the purpose of allowing the parties to try to negotiate, on a without prejudice basis, a consent settlement of the dispute.

The Chairperson stated that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present and he reminded the parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or up to 6 months imprisonment or both. The Chairperson also reminded the parties that as a result of this Hearing, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court only on a point of law. All persons giving evidence to the Tribunal were then sworn in.

5. Submissions of the Parties:

The Applicant Tenant's Case:

In an advance written submission to the Tribunal, the Applicant Tenant stated that it was agreed between the Applicant Tenant and the Respondent Landlord that if the Applicant Tenant agreed to open the dwelling for viewings, and that if the Respondent Landlord secured a new tenant, then the Applicant Tenant could move out early (on the 22nd July 2014). She further claimed that there were four viewings that week and that she had

made the house 'very presentable' for those viewings. She stated that the Respondent Landlord informed her that a new tenant had been secured but that the new tenant wanted to move in as soon as was feasible therefore making it possible for the Applicant Tenant to vacate the dwelling on the 22nd July 2014.

She alleged that on the moving out date, a heated discussion between the parties developed which resulted in the refusal of the Respondent Landlord to return her entire deposit. She alleged that the Respondent Landlord then asked her partner to write her a cheque in the sum of €1,000.00 which did cool down the situation. She stated that this cheque was cancelled the next morning and was informed that she would be paid once the issue of floor staining could be properly assessed.

Mark C. Taylor (brother and advocate on behalf of the Applicant Tenant) stated that she did not cause any deterioration to the condition of the dwelling. In relation to the Respondent Landlord's claim for damage caused to the condition of the dwelling beyond normal wear and tear, the Applicant Tenant denied causing damage as alleged stating that she had requested the Respondent Landlord to assess the alleged damage but that she denied being afforded this opportunity. She claimed that the premature termination of the tenancy had denied her the right personally to carry out repairs.

She submitted that any staining on the floor was residual and due to normal wear and tear. It was submitted that the removal of some food remnants from the dishwasher, the cleaning/removal of crumbs from a drawer as alleged and cutting weeds outside the dwelling should have been simple, non-expensive tasks. She stated that the dwelling was not in pristine condition at the outset of the tenancy.

Under cross examination she stated that the floor was cleaned properly and that the Applicant Tenant never told the Respondent Landlord about the stains on the floor because after cleaning the floor the said stains had always previously dried out. She stated that the dog was only allowed in the dwelling when people were in the dwelling.

The Respondent Landlord's case

Kenneth O' Hanrahan (advocate on behalf of the Respondent Landlord) accepted that there was one issue in dispute between the parties, namely, a claim for damage caused to the condition of the dwelling beyond normal wear and tear. In relation to the said claim for damage, he stated that the Respondent Landlord was claiming a total of €1,268.60 under 6 separate categories alleging that the following damage was done:

1. A claim for €550.00 in respect of repairs to hardwood floors.
2. A claim for €337.40 resulting from having to clean the dwelling which it was submitted was necessary to restore the premises to the level of cleanliness required by the tenancy agreement. He stated that the Respondent Landlord did not go with the first estimate/ quotation for cleaning but opted for the lower quotation.
3. A claim in the amount of €200 for carpet and upholstery cleaning. He referred to receipts for carpet cleaning incurred at the commencement of the tenancy. In response to a query raised by the Tribunal, he accepted that the amount claimed was more expensive than the previous cleaning due to what he described was a strong smell of dog urine and due to the degree of staining.
4. Refuse collection - bin tags and charges and unpaid annual refuse charges. The Respondent Landlord alleged that refuse remained (uncollected) at the dwelling after the conclusion of the tenancy. He stated that the Respondent Landlord had to arrange for

bins to be emptied which cost €27.50. He submitted that this annual charge was not honoured which was a tenant obligation under the written tenancy agreement entered into between the parties (clause 3.4 of the agreement). He submitted that the second element of this cost incurred is bin tags totalling €18.70.

5. €35.00 was claimed for change of lock although he accepted that the keys may have been returned but due to the fraught way the tenancy ended, it was considered necessary to change the locks.

6. A claim of €100.00 in respect of a replacement rug in the living room which it was submitted was necessary due to animal soiling. He stated that the rug was about 3 or 4 years old, cost originally €300/€350, and it had to be replaced and submitted that the Respondent Landlord was seeking a reduced amount of €100.00 for same.

He accepted that the Applicant Tenant should receive a portion of her security deposit returned in the sum of €173.60 submitting that the Respondent Landlord was entitled to justifiably retain the balance of the deposit in the sum €1,426.40. He confirmed that the Respondent Landlord sent a cheque to the Applicant Tenant in the amount of €173.60 but that the Applicant Tenant declined to cash it.

In response to queries raised by the Tribunal, he accepted as a general proposition that hardwood floors have to be sanded occasionally and he stated that he was aware that the dog would be in the dwelling but did not ever expect the dog to cause serious damage as alleged. Under cross-examination he also accepted that a number of previous inspections had been carried out on a regular basis and on these occasions there was no evidence detected of damage or smells. He denied that the staining on the floor pre-existed the tenancy. He stated that the inspection meeting and subsequent discussion with the Applicant Tenant held on the date when it was agreed that the tenant would vacate the dwelling became very heated. He stated that it became very heated when the Applicant Tenant was informed by the Respondent Landlord that she was withholding her deposit until further assessment of damage to the hardwood floors would be carried out. He stated that the Gardaí were called and visited the dwelling in order to help calm a potentially volatile situation. He stated that a cheque in the sum of €1000.00 (portion of the Applicant's deposit) was given to her and this helped calm the situation. He stated that soon after the Applicant Tenant vacated the dwelling and upon carrying out a further more detailed inspection, it was discovered that there was damage caused to the dwelling in excess of normal wear and tear. He stated that this discovery caused the Respondent Landlord to take prompt action to cancel her cheque on the following morning.

Evidence of Garda Matthew O' Connor

He stated that on the 21st July 2014 he was on duty when the Respondent Landlord called in person to the Garda station located nearby. He stated that 2 members of An Garda Síochána arrived at the dwelling and that Garda Hession found the Respondent Landlord's keys which the Respondent Landlord had alleged had suddenly and without explanation gone missing. He stated that the said keys were found outside the dwelling near wheelie bins which were located around 10 feet from the hall door dwelling.

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

6. Matters Agreed Between the Parties

- The monthly rent was €1,600.00.
- The Applicant Tenant paid the Respondent Landlord a security deposit in the amount: €1,600.00 and the Respondent Landlord has retained the said deposit.
- The written tenancy agreement commenced on 17/08/2013 and ended in or around the 21st July 2014.
- The daily rent is €52.60 and it is agreed that the Applicant Tenant owes the Respondent Landlord 3 days of rent (3 x €52.60) which amounts to €157.80.
- Judy de Castro is the Landlord.

7. Findings and Reasons:

Having considered all of the documentation before it, and having considered the evidence presented to it by the parties, on the balance of probabilities, the Tribunal's findings are as follows:

Finding No. 1 The Applicant Tenant owes the Respondent Landlord 3 days of rent in the sum €157.80.

Reason: This was agreed between the parties. It was agreed between the parties that the daily rent is €52.60 (3 x €52.60) which amounts to €157.80.

Finding No. 2: The Tribunal finds that the cancellation of the cheque in the sum of €1000.00 may have caused the Applicant Tenant to suffer some upset and inconvenience. However in the given circumstances of this case and considering the totality and context of the evidence adduced, the Tribunal does not propose to make an award for damages against the Respondent Landlord in respect of same.

Reason: The Tribunal has considered the totality and context of the evidence adduced in respect of same.

Finding No. 3: The Tribunal finds that the Applicant Tenant caused deterioration in the condition of the dwelling in excess of normal wear and tear and in respect of same awards the Respondent Landlord the total sum of €428.70.

Reason: In relation to the claim made by the Respondent Landlord that the Applicant Tenant caused deterioration in the condition of the dwelling beyond normal wear and tear, the Tribunal notes that there was a conflict in the evidence presented by the parties. On the balance of probabilities the Tribunal finds the evidence of the Respondent Landlord including the photographic and documentary evidence adduced by the Respondent Landlord to be more persuasive. Under Section 16(f) of the Act the Applicant Tenant is liable for any deterioration in the condition of the dwelling in excess of normal wear and tear. Taking into account of nature of the occupancy and duration of tenancy and making allowance for depreciation and/or obsolescence, in the given circumstances of this case, The Tribunal makes the following findings:

- The Tribunal makes an award in favour of the Respondent Landlord in respect of a deterioration caused to the hardwood floor beyond normal wear and tear in the total sum of €110.00. The award is for 20% of the amount claimed as the Tribunal must take into consideration depreciation and notes that it was accepted by the Respondent Landlord that the floor was not treated since at least 2010 and possibly not treated since the

dwelling was built in 2004 and also accepted by the Respondent Landlord that hardwood floors require periodic maintenance as a result of normal wear and tear.

- A claim made by the Respondent Landlord in the amount of €200.00 for carpet and upholstery cleaning is allowed in full as the Tribunal is satisfied that same was incurred and necessary as a result of the breach of obligations by the Applicant Tenant.
- The Tribunal is satisfied that the Respondent Landlord had to arrange for bins to be emptied which cost €18.70 and therefore allows the price of two tags (€18.70) which was incurred but declines to allow for other claim made (annual bin charge) in the sum of €27.50 because the timing when these monies became due (liable) was unclear as it was not made clear to the Tribunal that the sum claimed covered the period of the said tenancy
- A claim made by the Respondent Landlord in the sum of €100.00 in respect of a replacement rug in living room is allowed in full as taking into consideration depreciation, the amount claimed is reasonable and proportionate, and was necessarily incurred as a result of the Applicant Tenant not complying with her obligations.
- The Tribunal make no allowance for the cleaning expenses claimed as it is not satisfied that the dwelling was less clean than at the commencement of the tenancy as it was accepted by both parties that it was not professionally cleaned immediately prior to commencement of this tenancy and that the Applicant Tenant moved in on the afternoon of the morning that the previous tenants moved out.
- The Tribunal finds that the Respondent Landlord failed to prove an entitlement to claim any loss incurred as a result of having to change the locks. The Tribunal notes there were no receipts and/or no photographic evidence to support this claim and in any event the Respondent Landlord accepted that all keys were returned and were basing this claim on a potential security fear in the future.

8. Determination:

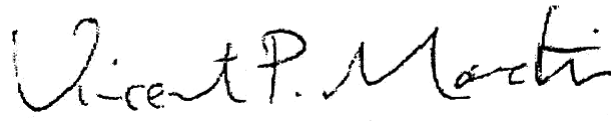
Tribunal Reference TR1014-000881

In the matter of Michele Keane (Tenant) and Judy De castro (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlord shall pay the total sum of €1,013.50 to the Applicant Tenant within 7 days of the issue of this Order. This sum represents the unjustifiably withheld portion of the entire security deposit of €1,600.00, having deducted €428.70 for damages in excess of normal wear and tear and €157.80 in rent arrears, respect of the tenancy of the dwelling at 17 Gainsborough Court, Malahide, County Dublin.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 16/08/2015.

Signed:

A handwritten signature in black ink that reads "Vincent P. Martin". The signature is written in a cursive style with a large, stylized "V" and "M".

Vincent P. Martin Chairperson

For and on behalf of the Tribunal.