

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1113-000499 / Case Ref No: 0813-07233

Appellant Tenants: Ciaran Coburn, Lynda Hughes

Respondent Landlords: Ann Lacy, John Lacy

Address of Rented Dwelling: Tara Rose, Tara Hill, Gorey , Wexford

Tribunal: Gene Feighery (Chairperson)
Aidan Brennan, Vincent P. Martin

Venue: Conference Room, Dept. of Environment, Newtown Road, Wexford

Date & time of Hearing: 15 May 2014 at 11:00

Attendees: For the Appellant Tenant:
Ciaran Coburn (Tenant)
Lynda Hughes (Witness for the Appellant Tenant)

For the Respondent Landlord
John Lacy (First Named Landlord)
Ann Lacy (Second Named Landlord)
Dolores Doyle (Witness)

In Attendance: Gwen Malone Stenographers

1. Background:

On 14 August 2013 the Tenant made an application to the Private Residential Tenancies Board ("the PRTB") pursuant to Section 78 of the Act, this application was followed by an application by the Landlord on 20 August 2013. The matter was referred to an adjudication which took place on 25 September 2013. The Adjudicator determined that:

The Tenant shall pay the total sum of €20.50 to the Landlord within 14 days of the issue of the Determination Order being €1,430.50 in respect of damage in excess of normal wear and tear having deducted the security deposit of €750 plus €660 in respect of an overpayment of rent.

Subsequently a valid appeal was received from the Tenant by the PRTB on 13 November 2013.

The Board, at its meeting on 15 November 2013, approved the referral to a Tenancy Tribunal of the appeal. The PRTB constituted a Tenancy Tribunal and appointed Gene Feighery, Vincent P. Martin and Aidan Brennan as Tribunal members, pursuant to Section 102 and 103 of the Act and appointed Gene Feighery to be the chairperson of the Tribunal ("the Chairperson").

On 23 April 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.

The Tribunal convened a hearing at 11am on 15 May 2014 at the offices of the Department of Environment Community and Local Government, Newtown Road, Wexford.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

Photographs of dwelling

Copy of Sample Invoice from Carpet Suppliers

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 held in as informal a manner as was possible; that the person who appealed (the Appellant) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant.

The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson stressed that all evidence would be taken on oath 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 €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 [reference section 123(3) of the 2004 Act].

5. Submissions of the Parties:

Appellant Tenant's Case:

Evidence of Ciaran Coburn

In his direct evidence to the Tribunal the Appellant Tenant stated that there were three aspects to his appeal. He wished to challenge (i) the claim by the Respondent Landlord for replacement carpets on the landing and upstairs bedroom in the dwelling in

circumstances where he alleged he could now prove that the carpets were not replaced, (ii) a claim for the cost of bleeding the central heating boiler due to an allegedly empty oil tank which he contends was not necessary and (iii) the fact that the Respondent Landlord claimed that the dwelling was 'unlettable' following termination of their tenancy when he was aware that the house was rented out to a language school. He stated however that he wished to confine his claim to the issue of the replacement carpets and the charge for removal of old carpet though he stated that there were many other areas of dispute that he could raise and that he was willing to raise in relation to the Respondent Landlord's claim should it be necessary.

He stated that the Respondent Landlord was intelligent and resourceful and he used his sole access to the dwelling to take advantage of the situation where he (the Appellant Tenant) could not defend a claim by the Respondent Landlord for damage in excess of normal wear and tear to the carpets without photographic evidence. He stated that the dwelling was sold subsequent to the said tenancy and he described how he asked the new purchaser for permission to get photographic evidence of the carpets, and how a niece of the witness for appellant tenant had also visited the dwelling when it was on view for sale to take photographs. The photographic evidence was adduced in evidence to the Tribunal and the Appellant Tenant stated that it depicted a patchwork of replacement carpet in areas where the Respondent Landlord alleged there was damage and for which he claimed for full cost of replacement with new carpet and removal of the old carpet.

The Appellant Tenant stated that he was not a party to the original tenancy agreement signed on 1st September 2011 by the witness for appellant tenant. He said that he joined the witness for appellant tenant mid way through the tenancy and he conceded that no notification in writing of his ordinarily residing in the dwelling was given to the Respondent Landlord when he took up occupancy. He stated that when he moved into the dwelling he had an amount of furniture and belongings, which included, inter alia, a very large cabinet which was stored on the landing of the dwelling, a washing machine and dryer which were stored in the hallway and bathroom of the dwelling. He also had a large dog. He stated that he considered himself to be a tenant in circumstances where he paid the rent to the Respondent Landlord and the Respondent Landlord accepted it.

He stated that the witness for appellant tenant was happy with the inventory and standard of the dwelling when she signed the lease and took up occupancy of the dwelling and that a positive Landlord Tenant relationship existed between the parties. However he said that this changed when he entered the existing tenancy because he was not prepared to accept what he considered to be below standard conditions within the dwelling. For example, he said that when the witness for appellant tenant had taken up occupancy of the dwelling she was aware that the dishwasher did not function, however she told the Respondent Landlord that she did not need one as she never used a dishwasher but that she always washed dishes by hand. The Appellant Tenant told the Tribunal how he convinced the witness for appellant tenant of the merits of a dishwasher and that having done so he sought a new dishwasher from the Respondent Landlord. He said that the replacement dishwasher supplied was not new, but that it was a reconditioned machine. He said that he sought a reduction in rent in the sum of €140 for three months in lieu of work carried out to the dwelling.

He stated that he did not trust the Respondent Landlord and that the breakdown in trust arose from an incident where the daughter of the witness for appellant tenant had lost the

key to the back door of the dwelling. When he asked the Respondent Landlord to replace the lock and key, he was asked to contribute €45 towards the cost of replacement in the sum of €90. He said that when the Locksmith was at the dwelling replacing the lock he asked him the price of the replacement and call out charge. The Locksmith told him it was €16 for the lock and €14 for fitting. This, he stated alerted him to the fact that he could not trust the Respondent Landlord.

He said that there were further incidents he could raise before the Tribunal that could go towards diminishing the credibility of the Landlord and could attack the claim by the Respondent Landlord for alleged repair and replacement costs of items in the dwelling, however he wished to confine his claim in particular to the sum of €881.50 awarded by the Adjudicator for 50% replacement costs of carpet on the landing and bedroom, €125 for removal and disposal of old carpets where he felt he could now conclusively prove, through photographic evidence that the carpets were not replaced and were repaired and patched up from off-cuts of carpet which he alleged the Respondent Landlord had.

In relation to other matters claimed by the Respondent Landlord regarding missing items, he said that the tenancy inventory was unsatisfactory which resulted in him not knowing what items belonged to the dwelling and what items belonged to him or the witness for appellant tenant. He rejected that he was responsible for a stain on the carpet in the hall where he stored his clothes dryer. He further rejected the Landlord's claim that there was no oil in the tank when he vacated the dwelling. He said the fact that the Respondent Landlord carried out cleaning of the dwelling with hot water demonstrated that the heating, which was used to heat the water, was functioning normally. In addition, he stated that it is not possible to 'bleed' an empty oil tank.

In relation to the Respondent Landlord's claim that the dwelling was unlettable at the termination of the tenancy, he stated that the dwelling had been let to a language school and that when he viewed the dwelling there was an occupancy of 20 people, including beds in the sitting room.

Finally, the witness for appellant tenant conceded that she had told the Respondent Landlord that she loved the garden and she would take care of the maintenance of the garden, as stipulated in the lease, but that she had failed to do so because she was a single parent with two children and she had to get a job. She said that initially she paid a gardener €45 euros every two weeks to do the garden, but this became too expensive for her and she stopped the arrangement. She further conceded that the Respondent Landlord agreed to let her have a small Schih tzu dog in the dwelling.

In conclusion the appellant tenant stated that if the Respondent Landlord had retained the deposit it would have been acceptable to him; however he does not accept that the overpayment of rent in the sum of €660 is justified.

Respondent Landlord's Case:

Evidence of Ann Lacy

In her direct evidence the second named Respondent Landlord described how the dwelling was for sale on the market however they had agreed to accommodate the daughter of an acquaintance who was moving from the UK with her two children and who wished to rent a dwelling in the area as soon as possible. She described how they were kind to her and did everything they could for her, including allowing her to get a small Schih tzu dog for her daughter.

She described how initially they were not sure of the residential status of the Appellant Tenant, e.g. whether he was a visitor, whether he was permanently in the dwelling or whether he only visited at weekends. She said they were flexible about this arrangement however they objected to the presence of a large dog belonging to the appellant tenant in the dwelling.

Evidence of John Lacy

He stated that when the witness for the appellant tenant took up occupancy of the dwelling it was for sale and garden and dwelling was in show-house condition at the commencement of the tenancy. However he conceded that there were a number of items that needed replacement, such as the dishwasher and carpet. He said he were reluctant to spend money on the replacement of these items with new items in circumstances where the house was being sold and that in any event, the witness for appellant tenant was happy with the condition of the dwelling and specifically refused the offer of a replacement dishwasher and carpet.

The Respondent Landlord said that a very positive Landlord Tenant relationship existed between the parties until the appellant tenant arrived on the scene mid way through the tenancy. He stated that the appellant tenant had written to them complimenting them on their conduct as Landlord early in the tenancy, however he said that there followed a litany of complaints and issues raised by the Appellant Tenant, including the fact that he wanted the dishwasher replaced, new carpets in addition to a reduction in rent in the sum of €140 lieu of work within the dwelling. The Respondent Landlord stated such was the volume of 'nit-picking' issues raised by the Appellant Tenant that he got tired of all of his complaints.

In relation to the charge for replacement carpets, the Respondent Landlord stated that he and his wife lived in the dwelling from 2000 to 2007 for approximately 6 months per year, and therefore the suggestion that there was 13 years wear and tear on the carpets was irrelevant. In addition, he stated that he was required to make a reduction in the sale price for the dwelling to the new purchaser in the sum of €4,000 to reflect the fact that the carpets and garden were in such poor condition. The Respondent Landlord showed the Tribunal samples of the damaged carpet which was eaten by moths and he described, with the assistance of photographic evidence, damage to areas of carpet in the dwelling where he alleged the appellant tenant stored his dryer and where the dog had been sick on the carpet. He said that the clutter arising from the appellant's furniture and build up of clothes prevented the proper cleaning of the dwelling and as a result the moth infestation was allowed to develop.

In relation to the charge for 'bleeding' the tank in the sum of €55 and replacement oil in the sum of €200, the Respondent Landlord stated that the appellant tenants allowed the oil tank for the central heating to run dry and that this meant that he had to get a 5 gallon drum of oil to fill the tank and bleed it in order to get it functioning again. He said that the hot water used to clean the dwelling when the appellant tenants vacated came from the immersion water heater and not the central heating which he alleged did not function.

The Respondent Landlord said that when they carried out an inspection of the dwelling they were shocked at the amount of clutter and untidiness in the dwelling. He described how the appellant tenant had moved in with a considerable amount of furniture from his previous accommodation and that various items were stored inappropriately all over the dwelling, including a dryer in the hallway on the carpet, a washing machine in the

bathroom and a very large cabinet on the landing. He said that there were piles of clothes on the floor on the landing and that it would have been impossible to clean or Hoover the dwelling.

The Respondent Landlord stated that he was not happy with the decision by the Adjudicator, however that he was prepared to accept it because he found the experience to be very stressful and he wished to move on with his life.

Evidence of Dolores Doyle (Witness for the Respondent Landlord)

In her direct evidence to the Tribunal the witness stated that she was regularly employed by the Respondent Landlords to clean the dwelling following lettings. She described how she was engaged to clean the dwelling following the tenancy under dispute. She said that although the appellant tenants alleged that the dwelling was thoroughly cleaned, there was ingrained dirt, grease and grime which required extensive cleaning, including the use of a toothbrush and that some sort of cleaning agent used by the appellant tenant had left a sticky residue on everything and the entire house, including windows, radiators, freezer had to be cleaned. She said that there was laundry left behind the radiators and there was dog hair everywhere and that the Hoover was blocked with dog hair and did not function.

6. Matters Agreed Between the Parties

There were no matters agreed by the parties. There was a direct conflict of evidence between the parties on almost every aspect of the case and a total breakdown in relations was evident.

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 the underlying reasons are set out hereunder.

7.1 Finding: The Tribunal find that a part 4 tenancy existed between the parties in circumstances where the tenants were in occupation of the dwelling for a continuous period of 6 months commencing on 1 September 2011 when a lease agreement was signed between the Respondent Landlord and the witness for appellant tenant, and terminated on 31 July 2013.

7.2. Finding: The Appellant Tenants are in breach of their obligations under section 16 (f) by acting in a way that caused a deterioration in the condition that the dwelling was in at the commencement of the tenancy having regard to deterioration in that condition owing to normal wear and tear.

Reason:

Photographic evidence and a sample of carpet taken from the dwelling indicate the presence of a moth infestation and consequent damage to the carpets as a result. This damage was caused to the dwelling during the time when the appellant tenant was responsible for the upkeep and preservation of the dwelling. However despite the fact that the Landlord claims that normal wear and tear on the carpet is consistent with his sole use for a period of 6 months of the year for 13 years, this is contradicted by evidence to the effect that the dwelling was used for summer lettings and rentals and was

supported by the Landlord's own witness who stated that she cleaned the dwelling following such lettings. The Respondent Landlord did not contradict the Appellant Tenant's claim that the dwelling was let to a language school with up to 20 people accommodated in the dwelling. Therefore taking this, into account the Tribunal concurs with the calculation of the Adjudicator when she awarded €881.50 to the Respondent Landlord and not €3,888.90 as claimed.

The Tribunal does not award the cost of removal and disposal of carpet claimed by the Respondent Landlord in circumstances where it was clearly demonstrated that the entire carpets were not replaced, but instead were patched and replaced solely in areas of damage caused by the moth infestation, and leaking radiator together with damage arising from the dog and haulage and storage of items of furniture and white goods within the dwelling.

The Tribunal allows for the replacement of a brown/beige rug which was purchased two months before the commencement of the tenancy and which was damaged as a result of coal falling onto the rug during the period of occupancy of the tenants in the sum of €350. The Tribunal does not allow for the replacement of the blue rug which condition it considers is consistent with normal wear and tear.

The Tribunal finds that remedial work on the garden was necessary following the termination of the tenancy, and the second named appellant tenant conceded that whereas she intended to maintain and keep the garden in good condition, she was unable to do so and that she disengaged the services of the Respondent Landlord's gardener who maintained the garden on a fortnightly basis at a cost of €45. This is a direct breach of a clause in the lease agreement signed between the parties. Based on the photographic evidence adduced in evidence to the Tribunal it is considered that an appropriate sum for this remedial work is €200, and not €585 as claimed by the Respondent Landlord.

Finding 7.3. The Tribunal makes no award in relation to the Respondent Landlord's claim for replacement oil in the sum of €200 and for €55 for bleeding the system.

Reason: There is insufficient evidence before the Tribunal in relation to the amount of oil in the tank at the start of the tenancy or at the end, save for an invoice indicating that oil was purchased by the Respondent Landlord following the tenancy. There was a direct conflict of evidence between the parties as to whether or not the central heating was functioning at the end of the tenancy and whether water used for cleaning the dwelling was heated by central heating or by the immersion.

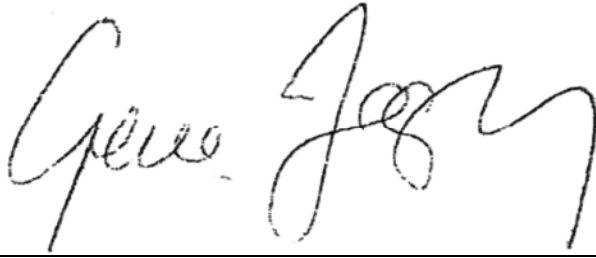
8. Determination:

Tribunal Reference TR1113-000499

In the matter of Ciaran Coburn, Lynda Hughes (Tenants) and Ann Lacy, John Lacy (Landlords) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Tenant shall pay the total sum of €21.50 to the Respondent Landlord within 14 days of the date of issue of this order being €1,431.50 for damage to the dwelling in excess of normal wear and tear having deducted the security deposit in the sum of €750 plus an overpayment of rent in the sum of €660 in respect of the tenancy of the dwelling at Tara Rose, Tara Hill, Gorey, Co. Wexford.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 09/06/2014.

A handwritten signature in black ink, appearing to read 'Gene Feighery', written over a horizontal line.

Signed:

Gene Feighery Chairperson

For and on behalf of the Tribunal.