

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1113-000500 / Case Ref No: 0713-06687

Appellant Landlords: Jim O'Sullivan, Eileen O'Sullivan

Respondent Tenant: Liam Conlan

Address of Rented Dwelling: Navillus, Dooradoyle Road , Limerick

Tribunal: Patricia Sheehy Skeffington (Chairperson)
Thomas Reilly, John Tiernan

Venue: Council Chamber, Limerick City Council, City Hall,
Merchants Quay, Limerick

Date & time of Hearing: 9/5/2014 at 11:00

Attendees: For the Appellant:
Jim O'Sullivan (First Named Appellant Landlord)
Eileen O'Sullivan (Second Named Appellant
Landlord)
M.J Caffrey, GL Auctioneers (Appellant Landlords'
Agent)
Tommy O'Sullivan (Appellant Landlord's witness)

For the Respondent:
Liam Conlan (Respondent Tenant)
Simon McAleese, Simon McAleese Solicitors
(Respondent Tenant's Representative)

In Attendance: Gwen Malone Stenographers

1. Background:

On 11 July 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 2 September 2013. The Adjudicator determined that the Landlords should pay damages of €4,000 to the Tenant for breach of the Landlords' obligations under the lease agreements in respect of the tenancy of the dwelling at Navillus, Dooradoyle Rd, Limerick.

Subsequently both parties applied to appeal against the Adjudicator's determination. The Landlords' application was received on 13 November 2013 and approved by the Board on 15 November 2013. The Tenant's application to appeal was received on 25 November 2013 and his application was approved by the Board on 6 December 2013.

The PRTB constituted a Tenancy Tribunal and appointed Tricia Sheehy Skeffington, Thomas Reilly and John Tiernan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Tricia 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 19 March 2014 and on 9 May 2014 the Tribunal convened hearings at Council Chamber, Limerick City Council, City Hall, Merchants Quay, Limerick.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

Copy of a Notice of Termination dated 11 February 2014.

4. Procedure:

On the first hearing date, the Tribunal was informed that the Appellant Landlords' key witness had taken ill suddenly, was attending hospital and therefore applied for an adjournment. The Tribunal granted this adjournment.

On the second hearing date, 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 first in time (the Appellant Landlords in this case) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present his case, and that there would be an opportunity for cross-examination by the Appellant Landlords.

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 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 intending to give evidence were then sworn in.

Towards the end of the hearing, the Appellant Landlords' Agent requested permission to leave. There was no objection raised to his departure by the Respondent Tenant's Representative. The Agent responded to a number of final questions that the Tribunal put to him prior to absenting himself.

5. Submissions of the Parties:

At the start of the hearing, the parties agreed that the matters in dispute were:

(a) The factual and legal nature of an agreement, if any, for the Landlords to have use of a room in the dwelling, which question raised ancillary and alternative issues being:

(i) whether the Appellant Landlords had acted in compliance with any such agreement; or

(ii) whether the Appellant Landlords interfered with the Respondent Tenant's peaceful and exclusive occupation of the tenancy; and

(iii) whether the Appellant Landlord(s) resided in the dwelling, and what impact that may have on the jurisdiction of the PRTB to hear the dispute.

Further issues were:

(b) The setting of the rent; and

(c) During the course of the Tribunal Hearing, the parties indicated that they were amenable to the Tribunal determining whether a Notice of Termination of the tenancy dated the 11 February 2014 was valid.

Certain of the evidence in this case related to the Respondent Tenant's Advocate. This refers to an Advocate who was assigned through the National Advocacy Services for People with Disabilities and who worked with the Respondent Tenant around the time that he moved into the Dwelling. It does not refer to the Respondent Tenant's solicitor/representative who was present at the Tribunal.

(a) The Nature of the agreement allowing for the landlord to access a room in the dwelling

The Appellant Landlords' Agent stated that in early October 2011 he showed the dwelling to the Respondent Tenant who was accompanied by his Advocate and the Respondent Tenant was very enthusiastic about moving in. He said that he explained to the Respondent Tenant that the market rent for the property, which was a detached bungalow on half an acre of land, was €800 but that it was on offer for €650. He said that he explained to the Respondent Tenant that the lower rental price took into account a condition of the tenancy which was that the Appellant Landlords would have use of a room in the dwelling on occasion, which he explained to mean that they would stay for the occasional weekend for Munster matches, over summer and at Christmas. He said at that point there was no discussion of how the weekends would be fixed or how notice of them would be communicated to the Respondent Tenant.

The Appellant Landlords' Agent said that the Respondent Tenant had signed the lease on 7 October 2011 and countersigned a handwritten addendum to the lease on 21 October 2011. This handwritten addendum, which he said was attended to by a colleague in his office, read "Please note that as agreed landlords will be staying in the reserved rooms on an occasional weekend, Christmas and summer". The Appellant Landlords' Agent stated that the signature underneath this addendum was that of the Respondent Tenant and rejected the contention that any person from his office had forged the Respondent Tenant's signature on the document. The Appellant Landlords' Agent emphasised that he had explained the condition of the Appellant Landlords' right to stay in the dwelling to both the Respondent Tenant and to his Advocate when they viewed the dwelling.

The Appellant Landlords' Agent explained that when the initial lease expired in October 2012 he had proffered a further lease to the Respondent Tenant which encapsulated the special condition in typed format. This lease (submitted on the case file) had a Special Clause 13 which read 'Landlord and his family will be staying in reserved rooms on an occasional weekend at Christmas and during summer, they will always inform the tenant as agreed prior to arrival'. He explained that this lease was of six month duration because the Respondent Tenant had expressed the wish to move elsewhere in the near future and that this shorter duration was at the Agent's suggestion in order to ensure that the Respondent Tenant's deposit would not be jeopardised.

The Appellant Landlords' Agent said that he brought the October 2012 lease down to the street for the Respondent Tenant to sign (as his office had steps up to it and was not wheelchair accessible) and that he had specifically brought the newly type-written Clause 13 to the Respondent Tenant's attention. In response to a question from the Tribunal, he said that the signature section of the lease asserted that it had been signed in the presence of Carol Dowling because she had prepared the lease in advance; he said that in order that the Respondent Tenant would not be kept waiting she had countersigned it in advance of him arriving. He said that this was normal practice and while it might technically be wrong to say that the document was signed in the presence of Carol Dowling and that this was a legal document, that he stood over his contention that he had been the person present when the Respondent Tenant signed it and that he had drawn his attention to Clause 13 of the Special Conditions of the lease, which referred to the Appellant Landlords visiting.

The Appellant Landlords and their Agent pointed out that the Respondent Tenant had failed to sign any further lease when one was proffered to him and was currently residing in the dwelling without a written lease agreement in effect.

(a) (i) and (ii) Whether the Appellant Landlords was acting in breach of the agreement and/or in breach of the Respondent Tenant's peaceful and exclusive occupation of the dwelling

Each of the Appellant Landlords stated that within weeks of the commencement of the tenancy they visited the dwelling and explained that they would be staying on occasion and that the Respondent Tenant had not objected to this. They further said that when they did in fact stay at the dwelling, the Respondent Tenant made no complaint in respect of their or their family's presence. The Appellant Landlords stated that they had asked the Respondent Tenant on a number of occasions whether everything was alright in the house and that he did not raise complaint. They expressed the opinion that the Respondent Tenant would not have felt constrained in expressing himself to them by the presence of their other family members there.

The Appellant Landlords stated that the Respondent Tenant was incorrect in his statement of the dates and durations of their visits to the dwelling. The Second Named Appellant Landlord, referring to her personal diaries (which were not formally submitted in evidence) responded to the Respondent Tenant's account as set out below (the Second Named Appellant Landlord's submission is shown in brackets following the dates that the Adjudicator noted in his report that the Respondent Tenant claimed).

23 - 26 December 2011 (27 December 2011)

7 - 14 April 2012 (8 April)

28 July - 8 August 2012 (10 - 19 August 2012)

1-2 September 2012 (did not agree that a visit around this time had occurred)

23 - 27 December 2012 (did not agree that a visit around this time had occurred)

Two or 3 days in June 2013 (4-5 March 2013)

3 - 11 August 2013 (4-10 August 2013).

The first named Appellant Landlord gave evidence of having stayed on 14th and 15th June 2013 when he undertook painting of the Dwelling and upgrading of the insulation in the Dwelling.

The Second Named Appellant Landlord very fairly noted that there may have been more dates that they stayed at the dwelling but that to confirm this would entail a detailed trawl through her diaries.

The Appellant Landlords stated that when they stayed at the dwelling they were usually accompanied by their three teenage children. They indicated that they and their children stayed in rooms which had en suite bathrooms and thus the only room they in fact shared with the Respondent Tenant was the kitchen. They said that he had a private room with a television in it and they did not think that he was disturbed. The Second Named Appellant Landlord said that the bedroom which the Respondent Tenant used was not set and that he could select whichever he wished when they were not in the Dwelling.

The First Named Appellant Landlord rejected the contention that their or their children's' presence was disturbing, stating that no complaint whatsoever had been received during the first eighteen months of the tenancy and that the Respondent Tenant had bought his children sweets, which he submitted was not the action of a person disturbed by their presence. They expressed upset that the first indication of complaint which they received came by way of a solicitor's letter. He correlated the timing of the Respondent Tenant's first complaints with newspaper articles in which he was interviewed on the impact of cuts in mobility allowance.

The Appellant Landlord's Agent said that the Respondent Tenant used to call to his premises to pay the rent regularly and never mentioned any issue regarding the Appellant Landlords' visits until latterly. He said that he had first heard of a complaint from the Respondent Tenant a few weeks prior to the solicitor's letters. The first of these letters was sent to him on 28 March 2013, which expressed the Respondent Tenant's complaint that the Appellant Landlord and his family stayed for protracted periods of up to ten days at a time, kept a locked room in the house, and did not give any or adequate notice of their visits. The Appellant Landlord's Agent denied that he had received any complaint from the Respondent Tenant's Advocate prior to his solicitor coming on record. He said that upon receiving the complaint from the Respondent Tenant, he referred to the terms

of the agreement between him and the Appellant Landlords and suggested that they did not visit excessively.

The Appellant Landlords stated that they had difficulty in contacting the Respondent Tenant to alert him to their intended visits, explaining that he did not answer the landline or his mobile phone. The First Named Appellant Landlord stated that as his brother lived next door, he would often pass on the message through him. The First Named Appellant Landlord's brother and witness gave evidence that he did pass messages of intended visits on from the Appellant Landlords to the Respondent Tenant a few days or a week prior to them arriving. He could not say how often the visits were but thought it was up to five times a year. The Appellant Landlords' witness said that he did not receive any complaint from the Respondent Tenant when he delivered such messages or when he saw him otherwise, which he said was frequently as he lived next door. He said that on one of the last occasions he had told the Respondent Tenant that the Appellant Landlords would be coming that the Respondent Tenant had reacted angrily, but that he could not recall when that was.

The First Named Appellant Landlord said that they had been very accommodating to the Respondent Tenant, in particular by making certain adaptations to the house, showing forbearance in respect of rent payments while rent allowance was being processed and purchasing heating oil for the dwelling. He said that if there were breaches of the lease agreement they were minor and on both sides, stating that under the terms of the lease the Respondent Tenant had the responsibility to maintain the garden but had never done so. He said that he arranged for the garden maintenance at his own expense. The Second Named Appellant Landlord stated that while she had had suspicions that another person had resided in the dwelling with the Respondent Tenant she had no proof of this. The Appellant Landlords stated that they had not been told by their Agent at any time that the Respondent Tenant's sister would temporarily reside at the dwelling (the Appellant Landlords' Agent had taken his leave of the hearing at the point that this issue arose and as such was not in a position to respond). She said that the fact that this only transpired at the Tribunal hearing bolstered her suspicions that a person had in fact been staying in the dwelling without the Appellant Landlords' consent or knowledge.

The Second Named Appellant Landlord submitted that they had rented out the dwelling in good faith and stated that any misunderstanding that had occurred was not of their own making. She said that it appeared that neither the Respondent Tenant nor the Appellant Landlords had got what they had signed up for.

a(iii) Whether the Appellant Landlords resided in the dwelling

The Appellant Landlords' evidence was that their presence at the dwelling was occasional and in no way permanent.

(b) The Setting of the Rent

The Appellant Landlords and their Agent submitted that the monthly rent set represented a 'reduction' of €150 to take into account the condition permitting the Appellant Landlords' occasional visits.

In respect of a letter sent to the Respondent Tenant on 5 December 2013 which gave two revised options to the Respondent Tenant in respect of rental payments, the Appellant Landlords stated that had been issued in response to the Respondent Tenant's discontent with their visits. They explained that the offer of €850 per month for the whole

dwelling was in line with market rents in the area. The alternative offer of €120 per week was expressed in the letter as being 'per the current agreement, i.e. leasing a bedroom and having use of the remainder of the house excluding the other bedrooms and the landlord and his family may have use of these bedrooms on occasion throughout the year but always giving prior notice... this will include the use of the oil which will be supplied by the landlord and the landlord will maintain the gardens'.

The Appellant Landlords' Agent said that the Respondent Tenant had not selected either of these options or signed a new lease. Upon questioning that the €120 per week arrangement seemed to in fact reduce the rent payable from the current arrangement, the Second Named Appellant Landlord stated that this arrangement would facilitate her oldest child attending university as it had always been their intention that the dwelling could be used as accommodation for their children when they got to third level education.

(c) The Validity of the Notice of Termination

The Appellant Landlords said that they understood that if they required the dwelling for themselves that they had a right to terminate the tenancy. They said that they did want the dwelling for themselves, which reason was set out in the Notice of Termination dated 11 February 2014 which was submitted at the Tribunal Hearing and which gave 56 days' notice. The Appellant Landlords' Agent stated that the Notice was in a form which followed guidance obtained from the PRTB and Threshold. He said that he was not familiar with statutory requirements as he contended that the regulations changed frequently.

The submitted Notice of Termination stated that the landlord 'require possession of the property for their sole use', gave 56 days advance notice, set out that the date of the termination of the tenancy was 8 April 2014 and that the Respondent Tenant had 28 days within in which to refer an issue as to the validity of the Notice to the PRTB.

On cross examination it was put to the Appellant Landlords that the offer of continued occupation on two options of rental of 5 December 2013 was inconsistent with the intention expressed in the Notice to use the dwelling themselves. The Second Named Appellant Landlord rejected this, stating that they visited often and needed a place to stay and that they had college aged children who could use the dwelling. The First Named Appellant Landlord stated that if the Respondent Tenant did not want them to stay at the dwelling this meant they had to source alternative accommodation which was costly. However the Respondent Tenant had not agreed to pay a higher level of rent to live in the dwelling without their occasional visits occurring.

RESPONDENT TENANT'S SUBMISSIONS

(a) The Nature of the agreement allowing for the landlord to access a room in the dwelling

The Respondent Tenant stated that due to the progression of his medical condition (cerebral palsy ataxia) his ability to work had diminished and as a result he had found himself in residential care alongside people with extreme mental and physical disabilities. He said that he found this situation extremely difficult and that he and his Advocate, an extremely committed woman from the National Advocacy Services for People with Disabilities, had commenced seeking private residential accommodation. He said that they had looked for a long time for a suitable place before they had found the dwelling in which he now resides.

The Respondent Tenant said that he clearly remembered the conversation with the Appellant Landlords' Agent in which it was stated that a condition of the tenancy would be that the Appellant Landlords would use the dwelling once a year at Christmas time for a few days. He said that this posed no problem to him because he would stay at a relative's house at this time. He referred to a letter from his Advocate dated 28 August 2014 in which his Advocate stated her recollection of the agreement as being that the Appellant Landlords would stay for a few days over Christmas.

The Respondent Tenant stated that the signature purporting to be his underneath the handwritten lease dated 21 October 2011 was not his. He said that the handwriting was too clear or transparent to be his and that his condition prevented any such clarity of writing.

In respect of the lease dated 21 October 2012, after some confusion as to which document was being referred to, the Respondent Tenant stated that the signature on it was his, although he could not remember signing it. He said that Condition 13 of that lease which stated 'Landlord & his family will be staying in the reserved rooms on an occasional weekend at Christmas and during summer, they will always inform the tenant as agreed prior to arrival' was not drawn to his attention. He said that he would not have signed a lease which contained this condition and that he normally examined such documents very closely.

(a) (i) and (ii) Whether the Appellant Landlords acting in breach of the agreement and/or in breach of the Respondent Tenants peaceful and exclusive occupation of the dwelling

The Respondent Tenant said that he stood by the list of dates he said the Appellant Landlords and family had stayed at the dwelling and which he had submitted to the Adjudicator. He said that he initially complained to his Advocate, but in essence her service had scaled down once he had secured accommodation as she had other clients on her waiting list. He said that he did not complain directly to the Appellant Landlords when they visited because he did not feel able to and he also said that after expending so much time sourcing a suitable place in which to live he felt that 'beggars cannot be choosers'. The Respondent Tenant said that after some time he complained to the Appellant Landlords' Agent about their visits but he said that the Agent told him that the visits were not often and that he should put up with them.

The Respondent Tenant said that he found the Appellant Landlords' family visits extremely stressful and that the stress exacerbated his condition. He said that he did not get proper notice of the visits and that on occasion the Appellant Landlords would let themselves into the dwelling. He said that he did not answer the landline because this was the Appellant Landlords' telephone and it often rang for them rather than for him.

The Respondent Tenant said that he did not feel it appropriate to complain to the First Named Appellant Landlord's brother who resided next door. It was put to him by this witness that he had given and received messages in respect of the tenancy to him previously, citing in particular the request that a sister might move in. The Respondent Tenant said that this request was then relayed through the Appellant Landlords' Agent who indicated that it was acceptable to the Appellant Landlords.

The Respondent Tenant said the on an occasion in December of 2013 in which the Appellant Landlord and his family had entered the dwelling without his consent he had gone to a local shopping centre until they had left. He rejected the contention put to him that by the Appellant Landlords that they had merely parked their car at the dwelling and

then had gone into town. He said that the First Named Respondent Landlord came over the threshold of the dwelling, albeit for a short amount of time, but that the interaction was confrontational and stressful because the First Named Appellant Landlord was frustrated with the solicitor's letters. He said that he left and took refuge in a nearby shopping Centre because he panicked and wanted to avoid confrontation.

The Respondent Tenant said that he had arranged for oil to be delivered to the house and he strenuously rejected that any person who had not been notified to the Appellant Landlords had been living at the dwelling. He said that although his sister had stayed for a while due to a personal situation, he had informed the Appellant Landlords' Agent of this. He said that because of the Appellant Landlords' visits and the stress they caused he rarely even had visitors now and so utterly refuted that he had somebody living in the house with him.

The Respondent Tenant's Representative stated that the behaviour of the Appellant Landlords was oppressive and interfered with his client's peaceful and exclusive occupation of the dwelling. He said that the clause in the contract was not validly incorporated into the contract, and if it was it had been breached by the Appellant Landlords and their family staying more than on occasion, but being there for sometimes ten days in a row. He said that the clause had to be read contra proferentum or with a narrow interpretation that gave most benefit to the person who was not relying on the term. He said that the Appellant Landlords' unannounced and frequent visits caused extreme distress which he said warranted an award of damages close to the Tribunal's jurisdictional limit of €20,000.

a(iii) Whether the Appellant Landlords resided in the dwelling

The evidence was that the Respondent Tenant resided in the dwelling and that the Appellant Landlords' visits did not amount to living at the dwelling.

(b) The Setting of the Rent

Under cross-examination, the Respondent Tenant replied to a question from the Appellant Landlords' Agent as to whether he had initially told him that the rent was €650 instead of €800 because of the Appellant Landlords' right to occasionally visit, the Respondent Tenant said that his initial understanding of the agreement was that they would visit only at Christmas.

He said that he would have difficulty in finding a similar dwelling if his tenancy was terminated because similar dwellings were renting for a few hundred euro more than the rental of this tenancy.

(c) The Validity of the Notice of Termination

The Respondent Tenant said that receiving the Notice of Termination caused him considerable stress given the difficulty he had had in finding the dwelling initially. He said that although he was searching now, he did not have any help from an Advocate so the process was more difficult and the prospect of his tenancy ending was disturbing.

The Respondent Tenant's Representative said that the Notice of Termination was not valid in the circumstances as the reason given, being that the Respondent Landlords wanted the dwelling for their own use, was not borne out by the facts.

6. Matters Agreed Between the Parties

- (a) The tenancy commenced on 11 October 2011;
- (b) Rent was initially set at €650 euro per month
- (c) A deposit of €650 was paid to the Appellant Landlords by the Respondent Tenant

7. Findings and Reasons:

Finding One:

The PRTB has jurisdiction to hear this case.

Reasons:

1. Section 3(g) of the Act excludes its application to dwellings in which the landlord also resides. The evidence from both parties in this case indicated that the Appellant Landlords did not reside in the dwelling.

Finding Two:

Any condition of the lease allowing the Appellant Landlords' occasional visits is invalid and is deemed to be severed from the tenancy agreement between the parties.

Reasons:

1. A primary duty of a landlord is to afford a tenant peaceful and exclusive occupation of the dwelling: section 12(1)(a) of the Act. This provision was echoed in the written lease agreement between the parties and signed by them in October 2011.

2. The Act further provides under section 18 that no provision of any lease agreement may modify, vary or restrict section 12 in any way other than to afford the tenant more favourable terms than those provided for by the statutory framework and which is in any event consistent with the provisions of the Act. The lease provides that its special letting conditions must be in compliance with the Residential Tenancies Act.

3. While the Tribunal does not exclude the possibility that a circumstance might arise whereby a term of a lease might reserve a use of a portion of a dwelling to a landlord in a tightly defined way over which a tenant has input and control such that the use does not in fact interfere with the tenant's right of peaceful and exclusive occupation (such as the exclusive use of a shed or of an annex with a separate entrance), the Tribunal finds that the clause in this case did in fact impact on the tenant's right. In this regard, it was vague, it provided for a unilateral right of access including shared use of portions of the living area at the behest of the Appellant Landlord, and it impacted on the Respondent Tenant's ability to peacefully enjoy the dwelling. Whilst it is accepted that the Appellant Landlords' intentions in reserving occasional accommodation for themselves in the Dwelling and in devising the lease agreements in the manner presented was done with good and reasonable intention ultimately this provision of the lease agreements is found to be in contravention of section 18 of the Act and thus is deemed to be severed from it, allowing the remainder of the lease to carry on in effect.

4. In the circumstances, the Tribunal does not have to make any further finding in respect of the circumstances surrounding the incorporation or otherwise of the term into the lease agreement.

Finding Three

The Appellant Landlords were in breach of their obligation to afford the Respondent Tenant peaceful and exclusive occupation of the dwelling, which caused the Respondent Tenant inconvenience and distress measured in damages at €3,200.

Reasons:

1. The parties gave evidence that over a twenty month period the Appellant Landlords and on occasions their three children stayed overnight at the dwelling on at least eighteen nights.
2. The Tribunal accepts the Respondent Tenant's evidence that this caused him great inconvenience and distress and precluded his ability to fully enjoy the amenity of the dwelling as his own home. The Tribunal further accepts that the lack of clarity around the timing and duration of the stays as well as the uncertainty inherent in the wording of the clause purporting to reserve such terms in favour of the Appellant Landlords further compounded the distress and inconvenience caused to the Respondent Tenant.
3. The Tribunal notes that in all other respects that the Appellant Landlords were attentive and well intended in their approach to the tenancy. This included provision of at least some of the domestic heating oil being used by the Respondent Tenant and the provision of wheelchair access ramps at the front and back of the Dwelling. However the impact of the breach of the obligation in question on the party who has made complaint about such breach must be the focus of an assessment of damages. In this case, the breached obligation went to the heart of a tenant's right to enjoy his dwelling under the tenancy itself. The damage he suffered was substantial, having regard to the Respondent Tenant's personal circumstances and the impact and disruption experienced by him.
4. The Tribunal however does not accept that it is appropriate in this case to award damages at the higher scale of the PRTB's jurisdiction, noting that such awards of damages have been awarded in cases where the tenancy has been unlawfully terminated and the impact on the tenant in question encompassed situations including homelessness. While the breach of the obligation to afford the Respondent peaceful and exclusive occupation of the dwelling clearly disturbed him, it is noted that his ability to remain in the home was not vitiated and that he continues to wish to remain there.

Finding Four:

The rent applicable to the tenancy is €650 per month

Reasons:

1. While the clause in respect of the Appellant Landlords' visits has been deemed void and severed from the agreement, this does not impact on the other lawful elements of the lease agreement between the parties.
2. The Tribunal notes that while no signed lease is currently extant between the parties, the terms of lease applicable to the tenancy carry on as if it were continued under Part IV and in particular section 30 of the Act, and no term of that tenancy shall be varied save in accordance with the terms of the Act. There is no obligation on either party to sign a further lease for these terms to remain in place.
3. While it is possible to review rent during a Part IV Tenancy under section 22 of the Act, no Notice of Rent Review pursuant to section 22 has been served in this case.

Therefore the rent remains for the time being at the monthly rate at which it was initially set, unless and until it is lawfully varied.

Finding Five:

The Appellant Landlords' Notice of Termination dated 11 February 2014 is invalid

Reasons:

1. Section 62 of the Act sets out the elements a Notice of Termination must contain in order to be valid. These are that it must be in writing, be signed by the landlord or authorised agent; specify the date of service; where served by the landlord state the reason for the termination of the tenancy; specify the termination date; state that the tenant has the full 24 hours on that date to vacate the dwelling; and state that the person upon who it is served has the right to refer the Notice's validity or the right to serve it to the PRTB within 28 days' of receipt of it: section 62 of the Act.
2. Where a tenancy has been in being for more than 6 months, a landlord can so do where the reason is one of those specified in the Table to section 34 of the Act, which includes that the landlord requires the dwelling for his or her or a family member's own "occupation". Such a notice must state the relationship of the intended occupier to the landlord, the intended period of occupation, and that the landlord is required to offer the tenant a tenancy of the dwelling if that intended occupant vacates within 6 months, and thus requiring the tenant to furnish contact details such that this offer can be effected.
3. The Notice of Termination in this case was defective in two respects. First, it omitted a statement giving the tenant the full 24 hours on the intended termination date to vacate the dwelling. Second, in setting out that the landlords' required the dwelling for their own 'use', it failed to stipulate who the intended occupant was, what their intended period of occupation was, and stating the landlord was obliged to re-offer a tenancy to the tenant if the intended occupant vacated within six months. In the circumstances, the Notice is invalid.

8. Determination:

Tribunal Reference TR1113-000500

In the matter of Jim O'Sullivan, Eileen O'Sullivan (Landlord) and Liam Conlan (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Notice of Termination served by the Appellant Landlords on the Respondent Tenant on 11 February 2014, is invalid

The Appellant Landlords shall pay the Respondent Tenant the total sum of €3,200 within 56 days of the date of issue of this Order. This sum represents damages for the consequences of breaches of the landlords' obligations to afford the Respondent Tenant peaceful and exclusive occupation of the dwelling subject of the tenancy at Navillus, Dooradoyle Road, Limerick.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 26/05/2014.

Signed:

A handwritten signature in cursive script, reading "Patricia Sheehy Skeffington".

Patricia Sheehy Skeffington Chairperson

For and on behalf of the Tribunal.