

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1113-000501 / Case Ref No: 0913-07589

Appellant Landlords:	Ita O'Malley, Sean O'Malley
Respondent Tenant:	Katty Aerts
Address of Rented Dwelling:	Boleyglass, Bofeenau, Ballina , Mayo
Tribunal:	Patricia Sheehy Skeffington (Chairperson) Gareth Robinson, Gene Feighery
Venue:	Council Chamber, Sligo County Council, County Hall, Riverside, Sligo
Date & time of Hearing:	01 July 2014 at 2:30
Attendees:	(For the Appellant Landlords) Ita O'Malley (First Named Appellant Landlord) Sean O'Malley (Second Named Appellant Landlord) Rory O'Connor, Garavan and O'Connor Solicitors (Appellant Landlords' Representative) (For the Respondent Tenant) Katty Aerts (Respondent Tenant)
In Attendance:	Gwen Malone Stenographers

1. Background:

On 5 September 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 October 2013. The Adjudicator determined that the Respondent Landlords would pay €20,000 in damages to the Applicant Tenant for the unlawful termination of the tenancy and breaches of landlord obligations in relation to the tenancy of the dwelling;

Subsequently the Landlords applied to appeal, which application was received on 13 November 2013. They cited rent arrears as the grounds of the appeal. The application for the appeal was approved by the Board on 15 November 2013.

The PRTB constituted a Tenancy Tribunal and appointed Patricia Sheehy Skeffington, Gareth Robinson and Gene Feighery as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Patricia Sheehy Skeffington to be the chairperson of the Tribunal ("the Chairperson").

The Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing.

On 1 July 2014 the Tribunal convened a hearing at Council Chamber, Sligo County Council, County Hall, Riverside, Sligo.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

The Chairperson asked the Parties to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received the PRTB document entitled "Tribunal Procedures".

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; that the person who appealed (the Appellant Landlords in this case) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent Tenants; that the Respondent Tenants would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant Landlord. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission. She clarified that albeit the Tribunal could have regard to the Adjudicator's report, it was not bound by it and that the Tribunal was a fresh re-hearing of the matter.

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present and she reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of €4,000 or up to 6 months imprisonment or both.

The Chairperson also reminded the Parties that as a result of the Hearing that day, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only (pursuant to section 123(3) of the Residential Tenancies Act, 2004, hereafter referred to as the RTA).

The Chairperson also informed the parties that if it seemed that they might be able to resolve their dispute by agreement, the Tribunal would facilitate any such negotiations.

The Parties were then sworn in.

The parties agreed that as the Appellant Landlord had not attended the Adjudication by oversight, it was more convenient in this case for the Respondent Tenant to set out her claim first.

5. Submissions of the Parties:

Introduction

While the Respondent Landlord's representative stated that the whole matter revolved around the rent arrears, the items which appeared in dispute from the papers, and which the parties did not agree on at the outset of the hearing, comprised:

- (a) Whether the Appellant Landlord interfered with the Respondent Tenant's peaceful occupation of the dwelling;
- (b) Whether the tenancy was lawfully terminated;
- (c) Whether rent arrears accrued and if so in what sum;
- (d) Whether the Appellant Landlord is in possession of any of the Respondent Tenant's belongings
- (e) Whether damage in excess of normal wear and tear was caused by the Respondent Tenant to the dwelling.

A further issue arose during the hearing, being:

- (f) the cost and liability for electricity powering a newly built shed.

Submissions on each of the issues

- (a) Whether the Appellant Landlord interfered with the Respondent Tenant's peaceful occupation of the dwelling

The Respondent Tenant stated that in June of 2013 the water to the dwelling was cut off and she was without water for a period of three weeks. She said that she had to buy bottled water to cook with and to shower. She said that there had been problems with the water supply in the past which the Second Named Appellant Landlord had dealt with, as these problems were due to an airlock in the pipes when the well was low or when there was over-usage of supply. She said that such over usage occurred when the Second Named Appellant Landlord power-cleaned his vehicles. She said that a subsequent cut in her water supply was different to the June incidents when the water ran but it ran brown, and this was in her view because the water had been deliberately cut off. She said that the Landlord told her, on 5 or 6 occasions that he was cutting off her water because she was in rent arrears. She said that she reported this to the Gardai however they did not become involved due to the civil nature of the matter.

The Respondent Tenant said that the Appellant Landlords had allowed sheep onto the curtilage of the house, which she said was fully enclosed by a wall. She rejected the contention that the sheep had strayed into the garden in such numbers, detailing an incident in which one sheep had jumped the wall to lamb as evidence that they did not do so in numbers. She said that the Appellant Landlords had deliberately put animals, including a pig and ducklings in the garden in an attempt to harass her. She said that she had not directly seen the Appellant Landlords putting the sheep in the garden but she had seen them put ducklings there. She said that the sheep's horns had damaged her car and referred to a photograph showing scratches on a silver car.

The Respondent Tenant also highlighted photographs of her car which had grass clippings all over it as a result, she said, of the Appellant Landlords' actions. She also said that around a week before the tenancy terminated her cars had been dragged off the property and that the gate had been locked shut, but the lock was ineffective and so she was able to move the cars back in.

It was put to the Respondent Tenant by the Appellant Landlords' Representative that she had been informed that the dwelling was situated on a working farm at the outset. She said that she had specifically chosen the dwelling because it was quiet and that during the course of the tenancy a large shed had been erected, replacing a smaller one, and that it had become a full scale business which meant people were often around the place and interfering with her peace.

The Appellant Landlords said that when there had been problems with the water pressure (on approximately three occasions) they had dealt with it immediately. They said that the Respondent Tenant had not had any problem with the property being part of a working farm with animals on it, and said that the Respondent Tenant had taken the pig for a walk and bought a paddling pool for the ducklings, so queried why complaint was now being made. They denied deliberately putting sheep onto the property and stated that they could gain entry from the part of the enclosing boundary that was fence rather than a wall.

The Second Named Appellant Landlord did agree that he had moved the Appellant Tenant's cars and blocked the gate with a JCB.

(b) Whether the tenancy was lawfully terminated

The Respondent Tenant said that on Friday 19 July 2013 a digger and tractor were placed in front of her gate such that she could not leave the property in her car, which caused distress as she had an appointment to attend. She said that she got to the appointment with the assistance of a friend but when she got home she found that the front door had been blocked by an animal feeding unit held up by a JCB and pallets against windows. Photographs of these barricades were on the Tribunal file. The Respondent Tenant said that many of her possessions, including medicines and her cats, were in the dwelling.

The Respondent Tenant said that she sought the assistance of the gardai, the first set of whom refrained from intervening but the second set who came to assist. She said that she gained access to the door which opened inwards, so was able to make her way through the door and then remove certain belongings via the windows. She said that as she had nowhere to go she in fact stayed at the dwelling for the weekend and moved her possessions and her cars on the Monday. She said she moved into alternative accommodation at that point, but that it was not the accommodation she would have opted for had she had more time to select. She said that she was only able to take possessions that fitted in the car (which she had loaded previously in any event) and thus an array of further possessions which were not in the cars and she could not fit through the windows remained in the dwelling.

On questioning, the Respondent Tenant said that she had not received any Notices in respect of rent arrears or terminating the tenancy in her post box, which was a new post box she had affixed to the end of the drive way after blocking up the front door's post box to prevent drafts entering the dwelling.

The Appellant Landlords agreed that they had blocked access to the dwelling but said that that this was in response to rent arrears. The First Named Appellant Landlord said that she had delivered rent arrears notices to the Respondent Tenant's post box and a Notice of Termination, which expired on 19 July 2013 having given two week's notice. Their solicitor argued that as the tenancy had terminated on a date upon which there had been rent arrears in existence, the tenancy could be deemed terminated pursuant to the provisions of the Residential Tenancies Act 2004.

(c) Whether rent arrears accrued and if so in what sum

The Respondent Tenant said that in around September or October 2012 rent allowance had dropped across Ireland and as a result her allowance fell from €440 to €390. She said that the First Named Appellant Landlord had signed the pink slip acknowledging this, and she had agreed to top up the extra €50 herself, but that this had become difficult. She said that she had managed to make up the difference approximately 5 times prior to the termination of the tenancy. She said that an undated letter from the First Named Appellant Landlord stating that she was 'paid up to date' stemmed from around June 2012 when she was contemplating moving to Galway.

The Respondent Tenant said that initially she had paid by transferring money as it arrived into her account into the Appellant Landlords' account but as it was easier for both parties, she began to pay in cash when the monies came into her account. She said that the First Named Appellant Landlord had two rent books, one for each party, but that as the First Named Appellant Landlord had to make an adjustment to the Respondent Tenant's rent book prior to her leaving she did not have a copy of the rent book at the time the tenancy terminated.

It was put to the Respondent Tenant by the Appellant Landlords' solicitor that she had simply stopped paying rent at all in around February 2012. The Respondent Tenant rejected this. She queried why, upon having temporarily left the dwelling in June of 2012, the Appellant Landlords would have agreed to her return if she was in such serious rent arrears.

The Appellant Landlord's case was that they had received no monies from the Respondent Tenant since February 2012. The First Named Appellant Landlord said that in June 2012 there were four months arrears but they were willing to forgive this because of the situation with the electricity (outlined below). The First Named Appellant Landlord stated that because of the pause in the tenancy in June 2012 she accepted that there was some delay in resuming the social welfare payments but she said that she received only €680 by way of back dated rent from the social welfare office.

(d) Whether the Appellant Landlord is in possession of any of the Respondent Tenant's belongings

The Respondent Tenant submitted an inventory of items which she had not been able to retrieve from the dwelling, some of which had been inaccessible because they were in the attic and others which had not been able to be retrieved due to the manner of leaving the dwelling.

The inventory included items such as curtains, amplifiers, grandfathers' war medals, small electrical items, cabinets, mirrors, towels, extensions leads, plant in pots and personal items. She estimated that the items in the attic alone may have had a value of €1000 but stated it was difficult to evaluate given that they were second hand or had sentimental value.

The Appellant Landlords stated that they had not interfered at all with the dwelling and any possessions were still in it. They said they had no objection to the Respondent Tenant collecting her possessions, although they required a representative to be present at the time. The Respondent Tenant also expressed a reluctance to attend the dwelling on her own but was unable to think of anybody who might assist her in removing the items.

(e) Whether damage in excess of normal wear and tear was caused by the Respondent Tenant to the dwelling

The First Named Appellant Landlord stated that nails had been put into the walls despite request not to do so. She said that she had repainted in June 2012 but that the Respondent Tenant had again put nails in the walls after this.

(f) The cost and liability for electricity powering a newly built shed

The Respondent Tenant said that a shed which the Appellant Landlords used had abutted the property at the beginning of the tenancy. However during the course of the tenancy a larger shed had been constructed. She complained that she had been given no warning of this construction.

She said that the electricity for the shed was run from the dwelling's supply which she paid for. She said that she got credits for electricity but that the amounts of usage varied and did not fully cover the electricity bills. She said that she might spend €100 per month on the electricity at the dwelling, and that in a metered dwelling now she paid between €3 and €4 per day for it.

The Second Named Respondent Landlord said that the current cost of electricity on the account for the dwelling, which was not in use but ran the shed's electricity supply, was €35 per month.

6. Matters Agreed Between the Parties

(a) The Tenancy commenced on 18 October 2010;

(b) The monthly rent was €440 initially, albeit there was a dispute over the rental rate in the latter part of the tenancy;

(c) The tenancy ended on 19 July 2013.

7. Findings and Reasons:

Finding One:

The Rent was at all times €440 per month

Reasons:

1. The Respondent Tenant agreed with the Appellant Landlord to make up any short fall in the rent from €390 and gave clear evidence of her attempts to do so. Any new rental rates set by the Department of Social Welfare do not impact on the contractual relations otherwise entered into by parties.

Finding Two:

The Respondent Tenant owes rent arrears of €4874.85.

Reasons:

1. A tenant's primary obligation is to pay rent as it falls due: section 16(a) of the Act.
2. The Tribunal found the Appellant Landlords' evidence to be clear and candid and it accepts that they had not received any rent from the Respondent Tenant since July 2012, other than a back-dated social welfare payment of €680. The Tribunal dates the arrears

from July 2012 in circumstances whereby the Appellant Landlords had issued the Respondent Tenant a letter stating that she was 'up to date' with rental payments in June 2012.

3. The rent from July 2012 to 19 July 2013 is €4874.85 ($€440 \times 12 = €5280$ for the year, plus 19 days at $5280/365 \times 19$, being €274.85, minus €680 in rent paid, = €4874.85)

Finding Three:

The Appellant Landlords are liable for the cost of electricity drawn from the dwelling in the sum of €420.

Reasons:

1. The Appellant Landlords agreed that the shed drew electricity from the dwelling and this cost €35 per month.
2. The Tribunal notes that certain electricity charges seem to have been dealt with by a previous agreement between the parties to cover to June 2012. It therefore calculates the monthly sum for electricity charges from June 2012.

Finding Four:

The Appellant Landlords failed to allow the Respondent Tenant peaceful and exclusive occupation of the dwelling and awards her damages of €1,500 for this breach.

Reasons

1. The primary obligation of a landlord is to allow a tenant peaceful and exclusive occupation of a dwelling: section 12(a) of the Act.
2. The Tribunal accepts the Respondent Tenant's evidence that animals were permitted to enter into the curtilage of the dwelling which, on the balance of probabilities were the Appellant Landlord's animals at all material times, and the quantity and frequency of these incursions caused disturbance and damage to the Respondent Tenant's car.
3. The Tribunal further notes that the Appellant Landlords clearly stated that they had blocked the Respondent Tenant's entrance and egress from the dwelling and interfered with her vehicles.
4. The Tribunal awards damages on the basis of the damage done to the car and also the stress and inconvenience caused by the Respondent Tenant being deprived of full, secure enjoyment of the dwelling.

Finding Five:

The Appellant Landlords unlawfully terminated the tenancy and the Tribunal awards €12,500 in damages to the Respondent Tenant for the consequences of the unlawful termination of the tenancy.

Reasons:

1. A tenancy may only be terminated by means of the procedures set out in Part V of the Act. This part was not complied with and it cannot be read in any circumstances to allow the blocking of entrances to a dwelling in which a person resides, the termination of the tenancy was unlawful.
2. In particular the Tribunal notes that the Notice of Termination the First Named Appellant Landlord purported to rely on gave two week's notice rather than the statutory

28 days under section 67(3) of the Act, and there was no convincing evidence that the further statutory obligations under section 34 and 67 (in respect of warnings and warning letters on rent arrears) had been complied with.

3. The Tribunal rejects the contention that a deemed termination of the tenancy under section 37 of the Act can have occurred where the tenant was forcibly ejected from the dwelling. The section of the Act is clearly intended to regularise situations whereby a tenant has voluntarily left a dwelling: it cannot be used such that a landlord can circumvent his or her obligation not to terminate the tenancy other than in accordance with the provisions of the Act (section 58).

4. The Tribunal accepts that the Respondent Tenant was greatly disturbed by the unlawful termination of the tenancy which in effect required her to move to a dwelling she was not entirely happy with, and caused her great inconvenience and distress in depriving her of her home full of her possessions in a blunt and harsh manner.

5. The Tribunal notes that the Respondent Tenant was not rendered homeless but that she was understandably reluctant to retrieve possessions, the use of which she was deprived of for a lengthy period. She will entail costs in retrieving those possessions. In the circumstances, the Tribunal awards damages of €12,500 to compensate for this level loss, inconvenience and distress.

Finding Six

The Appellant Landlords remain in unlawful possession of the Respondent Tenant's belongings and both parties are ordered to facilitate the return of said belongings.

Reasons:

1. The Appellant Landlords have indicated that they have not removed any of the Respondent Tenant's belongings from the dwelling and that she may remove them.

2. While, given the circumstances of the termination of the tenancy, it is understandable that the Respondent Tenant does not want to return to the dwelling, it is found that the removal of the correct items cannot be effected without her presence.

3. The Tribunal therefore holds that the Respondent Tenant shall liaise with the Appellant Landlords or their representative to fix a mutually agreeable date for her attendance with a person of her choosing to retrieve her possessions.

8. Determination:

Tribunal Reference TR1113-000501

In the matter of Ita O'Malley, Sean O'Malley (Landlord) and Katty Aerts (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Appellant Landlords shall pay the total sum of €9,545.15 to the Respondent Tenant in 6 payments of €1,500 per calendar month on the 28th day of each month, followed by one final payment of €545.15 in the immediately succeeding month commencing the next month after the issue of the Order. This sum represents damages of €12,500 for the unlawful termination of the tenancy, damages of €1,500 for the failure to give the Respondent Tenant peaceful and exclusive occupation of the dwelling, and €420 in electricity charges attributable to the Appellant Landlords, having

taken into account €4,874.85 in rent arrears in respect of the dwelling at Boleyglass, Bofeenau, Ballina, County Mayo.


2. The enforcement of the Order for such payment will be deferred and the total sum owing will be reduced by the quantum of instalments paid to the Respondent on each due date until the sum of €9,545.15 has been paid in full;

3. For the avoidance of doubt any default in the payment of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Respondent Tenant.

4. The Respondent Tenant shall at any time but no later than 28 days after receiving the first instalment of the sums set out above furnish the Appellant Landlords or their representative a list of three suitable dates for the collection of her possessions. The Appellant Landlord shall select one such date to facilitate the collection of possessions within a further 10 days. Each party shall be entitled to have no more than one representative present (unless they agree in writing otherwise) at the collection of the possessions from the dwelling by the Respondent Tenant.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 15/07/2014.

Signed:



Patricia Sheehy Skeffington Chairperson

For and on behalf of the Tribunal.