**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR1114-000914 / Case Ref No: 0714-13315**

**Appellant Tenant:** Alice Baranauskiene, Raimundas Baranauskas

**Respondent Landlord:** Sonia Kiernan

**Address of Rented Dwelling:** 17 Warren Avenue, Carpenterstown , Dublin 15, D15R5YW

**Tribunal:** Orla Coyne (Chairperson), Rosemary Healy Rae,

Finian Matthews

**Venue:** Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2

**Date & time of Hearing:** 14 September 2015 at 10:30

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| **Attendees:** | Raimundas Baranauskas (Appellant Tenant)  Alice Baranauskiene (Appellant Tenant)  Douvdas Baranauskas (Witness for Appellant Tenant)  Nicola Mantero Belard (Witness for the Respondent) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 22 July 2014 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 Mediation which took place on 05 September 2014, however no agreement could be reached.

Subsequently the following appeal was received from the tenant on 05 November 2014. The grounds of the appeal were Deposit retention and Invalid Notice of termination. The appeal was approved by the Board on 14 November 2014.

The PRTB constituted a Tenancy Tribunal and appointed Rosemary Healy Rae, Orla Coyne, Finian Matthews as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Orla Coyne to be the chairperson of the Tribunal (“the Chairperson”).

On 20 August 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 14 September 2015 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, 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:**

NONE

**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 persons who appealed (the Appellant Tenants) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant Tenants.

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 or affirmation 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 [reference section 123(3) of the 2004 Act].

**5. Submissions of the Parties:**

Appellant Tenants’ Case:

The Tenants stated that they had lived in the dwelling for 5 years. On the day that they vacated the dwelling, 28th May 2014, the Landlord was not present. However, the sister of the Landlord attended the dwelling and accepted a key from them. The first-named Appellant Tenant subsequently returned to the dwelling the next day, 29th May 2014, where she met with the Landlord’s sister again and requested the return of her deposit. The Landlord’s sister said that she would talk to the Landlord but that she had been told by the Landlord not to return the full deposit and to only refund €500 to the Tenants. She said the reason she met with the Landlord’s sister the next day after vacating was to obtain the return of the deposit.

The Tenant further stated that the Landlord had wished to increase the rent of the dwelling as a result of which they could no longer afford to stay there. She had received a series of emails from the landlord commencing on the 10th April 2014, but prior to this the Tenant was approached by the Landlord and they had been discussing leaving the dwelling two months prior to the 10th April. However, in the email of the 10th April the Landlord was only giving her one months’ notice to leave the dwelling as she the Landlord was going to move back into the dwelling herself. The Tenant stated that she also called Threshold in or around 10th April 2014 and they advised her that she was entitled to more time to vacate the dwelling

On the 11th April 2014 the Tenants subsequently wrote to the Landlord and stated that they needed more time to move out as they were having great difficulty in finding a new dwelling. On the 20th April 2014 the Landlord’s sister emailed the Tenants and said that the Landlord was willing to extend her date for moving out from the dwelling to the 12th July 2014.

The Tenant stated that they did find a suitable dwelling and moved out on the 28th May. She notifed the Landlord on the 10th May by email that she was able to move on the 28th May into their new dwelling.

The Tenant said that they did not accept the claim being made by the Landlord as to why portion of the deposit was retained by her. She did not accept that there was damage done to the dwelling above normal wear and tear and stated that they had taken photos as evidence. She justified this by stating that as they were living in the dwelling for four years there would be some normal wear and tear to the dwelling. She said the carpet was a light colour and showed any dirt easily. She said that she had kept a dog in the dwelling. She had told the landlord in 2010 about the dog and the agent also stated it was okay to keep the dog in the dwelling.

She referred to the photograph of the couch where it was allegedly torn at the rear . She stated that the couch had been moved from where it was when she had left the dwelling into another room and the tear was not there when she left the dwelling.

There were other photos produced by the landlord in respect of alleged damage. One photograph showed dirt on the skylight window. The Tenant stated in relation to this that it was impossible to reach up and clean it because it was up such a height that would necessitate the use of a long ladder to clean same. The Tenant accepted that they had painted two rooms in the dwelling. She did not ask for the Landlord’s consent but her husband was a professional painter and he had carried out a professional job in the painting of the rooms. She also stated that the reason the rooms were painted was there was a problem with mould in the dwelling and the paint kept the mould down in the rooms.

When asked by the Tribunal how often did the Landlord or her agent inspect the dwelling, she said approximately every year. She said that if there was ever a difficulty within the dwelling that she spoke to the Landlord who was living abroad and usually everything was fixed by her agent or sister. She stated that if the Landlord had not decided to increase the rent she would have stayed on in the dwelling. She also claimed the Landlord did not move back into the dwelling after they had vacated it.

She stated that she was looking for the return of the balance of her deposit in the sum of €600. She said that they only received the list of the Landlord’s reasons for withholding the deposit by letter dated the 3rd June 2014, and this was after they had vacated the dwelling. She said that she is now paying €1,500 in rent in her new dwelling, plus she had to pay another €1,500 deposit. She added that as they had not envisioned that they were going to leave the dwelling so soon she had to gather new rent and a deposit and the return of her full deposit would have been of great assistance to her .She had also submitted a quote for the painting that was carried out to the dwelling of €350.00. The Tenant stated that this quote was from her husband; as already stated he is a professional painter and she was looking for the payment of same.

Respondent Landlord’s Case

The Landlord’s representative Ms. Belard said that the carpet was brand new when the Tenants moved into the dwelling. She agreed with the Tenants that the Landlord had not moved back into the dwelling. She stated that the reason for this was because after the Tenants had left, the Landlord had put so much money into the dwelling to bring it back up to a liveable standard she could not afford to move back into the dwelling. She also stated that the Landlord had to take a loan out for the said works to the dwelling.

She went on to give further evidence that in relation to the skylight and the dirt on it which she claimed was evident from the photographs produced to the Tribunal, she stated that there was a pole to open up the sky light which enabled it to be cleaned when it is opened. She said the pole was never used as it was in the same position when the Tenants went into the dwelling as to when they left the dwelling.

She further stated that the whole dwelling not only had to be repainted but because the walls were covered first with a lining paper and then painted over, some of the lining paper which was torn had to be replaced and this necessitated the painting of the wall as a whole .

She accepted that the Landlord and agent were aware that there was a dog in the dwelling and they did not formally ask the Tenants to have the dog removed. While she was not at the dwelling when the Tenants vacated on either the 28th or 29th May 2014 she believed that the Tenants were never asked to make good any alleged damage to the dwelling after they left. She did say she was the person who had cleaned the Dwelling before the Tenants had taken up occupancy and the tear on the couch was not there as she had lifted out the couch to clean under it. She also gave evidence that the hoover did not work when the Tenants had vacated but she could not say how old it was. She said all the curtains were destroyed in the dwelling with stains. She also made a claim for chairs in the kitchen which had to be reupholstered. However, there were no photos of the damage pre or post the alleged re-upholstering. She said that the €600 from the deposit was retained initially for the cleaning of the dwelling and the carpets but that in fact with the total repainting of the dwelling and the replacement and fixing of items had cost an awful lot more than the €600.00 they had decided to retain from the deposit.

She also stated that the Landlord felt aggrieved that while the Tenants were given extra time up until the 12th July 2014 to move out of the dwelling they left early after giving the Landlord 2 weeks notice. The Landlord believed that she ought to have been entitled to a month’s notice from the Tenants before they left. In this regard Ms Belard referred in particular to Section 5(d) of the lease the Tenants had signed but which had expired on the 12th February 2014 which stated:

If the Tenancy hereby created should continue beyond the date hereinbefore stipulated it shall in the absence of a new Agreement be deemed to be tenancy determinable by a months’ notice in writing by either party.

She relied on this section of the tenancy agreement to claim that the Tenants did not give the Landlord proper notice. She believed that it was illegal for the Tenants to leave as they did. She also claimed that not all keys were handed back by the Tenants to the Landlord either on the 28th or the 29th May 2014 after the Tenants had vacated the dwelling, as a result of which the Landlord had to change all the locks in the dwelling.

**6. Matters Agreed Between the Parties**

1. The tenancy commenced on the 12th August 2009 and ceased on the 28th May 2014.

2. The Dwelling is known as 17 Warren Avenue, Carpenterstown, Dublin 15

3. A deposit of €1,100 was paid by the Tenants to the Landlord.

4. On vacating the dwelling the Tenants received the sum of €500 from her deposit of €1,100.00

5. The landlord still retains the sum of €600 from the deposit of the Tenants.

**7. Findings and Reasons:**

Findings and Reasons:

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

7.1 Finding: The email from the Landlord to the first-named Appellant Tenant of the 10th April 2014 giving the Tenants one months notice to vacate the dwelling is not a proper or valid notice of termination under the act and was invalid. The Tribunal awards damages in the sum of €500.00 to the Tenants for the Landlord’s failure to validly terminate the tenancy of the dwelling

Reasons:

The notice of termination referred to is not in accordance with the provisions of Section 66 of the Act. In this case the tenancy was approximately 4 years and 8 months duration from 12th August 2009 and only one months’ notice was afforded to the Tenants. This is not a valid notice period to give the Appellant Tenants. In the case of this tenancy of the dwelling which was of more than four years duration, the proper notice period is 112 days. Furthermore, the notice did not comply with the provisions of sub-sections 62(f)(ii) and (g) of the Act in that it did not indicate that the Tenants had the whole of the 24 hours of the termination date to vacate possession of the dwelling, nor did it state that any issue as to the validity of the notice or the right of the landlord to serve it must be referred to the PRTB, within 28 days from the date of receipt of the notice. The notice furthermore being served by e-mail did not meet the requirement that such notice must be in writing.

The reason given for terminating the tenancy was that the Landlord required the dwelling for her own use. Such notice must also contain a statement pursuant to Section 35 of the Act that, subject to the Tenant providing contact details within 28 days of the termination of the tenancy or dispute resolution in respect of if the person residing in the dwelling left pursuant to the Notice of Termination, a new tenancy would be offered to the Tenant. The notice did not meet this requirement. While the Tenants agreed to leave based on the emails that were sent to them by the Landlord and accepted the purported notice of termination that was given to them in the emails of the 10th April and the 20th April, the notification was not correct and was in contravention of the proper procedure under the Act.

7.2 Finding

The Tribunal also finds that the Tenants were not given any notice of or time within which to remedy any of the alleged damage to the dwelling above normal wear and tear that the Landlord claimed had occurred during the tenancy of the Tenants.

Reasons

Under Section 16(g) of the Act the Tenant is entitled to make good any damage he or she may have caused during the tenancy once notified by the Landlord of the damage. In this instance Ms Belard told the Tribunal in her evidence no such notification was given to the Tenant either before or after they had vacated the dwelling.

7.3 Finding:

The Tribunal finds that the Tenants were in breach of Section 16(f) of the Act with regard to their obligations not to cause damage to the dwelling over and above normal wear and tear. In this case the Tribunal finds that damage was carried out to the couch during the course of the tenancy by the Tenants over and above normal wear and tear and awards the sum of €100.00 to the Landlord in damages in respect thereof. The Tribunal also finds based on the evidence before it that the Tenants caused damage to the carpets and awards the sum of €200.00 for the cleaning of the carpets. The Landlord must accordingly return €300.00 of the unlawfully retained portion of the deposit of €600.00

Reasons:

The sum of €100.00 was awarded for damage to the couch, as the Tribunal accepted the evidence of the Landlord’s representative Ms Belard that she had cleaned the dwelling for the Landlord and the tear was not in the rear of the couch before the Tenants had taken up occupancy of the dwelling. The Tribunal also accepts the evidence of Ms Belard together with the photographs produced in evidence that the carpets were new when the Tenants took up occupancy of the dwelling. The Tribunal further accepts the evidence of Ms. Belard that because of the dog, damage was caused to the carpets.

The Tribunal does not award any further damages to the Landlord in respect of other alleged damage to the dwelling over and above normal wear and tear by the Tenants as alleged by Ms. Belard. While the Landlord claimed that the costs she had to expend on the dwelling after the Tenants had vacated far exceeded the €600.00 retained by her for damage done to the dwelling, which included repainting the dwelling and replacing certain items contained in the dwelling and the refurbishment of chairs in the kitchen, no conclusive evidence was produced before the Tribunal in respect of same.

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**8. Determination:**

**Tribunal Reference TR1114-000914**

**In the matter of Alice Baranauskiene, Raimundas Baranauskas (Tenant) and Sonia Kiernan (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Notices of Terminations served on the 10th April and 20th April 2014 by the Respondent Landlord on the Appellant Tenants in respect of the tenancy of the dwelling at 17 Warren Avenue, Carpenterstown, Dublin 15 are invalid. The Respondent Landlord shall pay the sum of €800.00 to the Tenants being the return of €300.00 of the unlawfully held portion of the deposit in the sum of €600.00 together with the sum of €500.00 in damages for breach of the Landlord’s obligations under the Act, the balance of the unlawfully held deposit of €300.00 having being retained by the Landlord in respect of damages caused by the Tenants to the dwelling over and above normal wear and tear.

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

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| **Signed:** | Orla Coyne |

**Orla Coyne Chairperson**

For and on behalf of the Tribunal.