

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1213-000549 / Case Ref No: 0513-06116

Appellant Landlord:	Noreen Maher
Respondent Tenant:	Shane Corr
Address of Rented Dwelling:	177 Winter Gardens, Pearse Street, Dublin 2
Tribunal:	Thomas Reilly (Chairperson) Orla Coyne, Vincent P. Martin
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	23 April 2014 at 10:30
Attendees:	Shane Corr, Tribunal Respondent, Tenant Noreen Maher, Tribunal Appellant, Landlord Barbara Reardon, Tribunal Representative, Landlord
In Attendance:	Gwen Malone Stenographers

1. Background:

On 30/05/2013 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 22/11/2013. The Adjudicator determined that:

1. The Applicant Tenant's application, regarding deposit retention in respect of the tenancy of the dwelling at 177 Winter Gardens, Pearse Street, Dublin 2 is not upheld.
2. The Respondent Landlord shall pay the total sum of €500 to the Applicant Tenant within 56 days of the date of issue of the Order, being €500 damages for breach of her landlord obligations in failing to carry out necessary repairs and replacements, in respect of the tenancy of the dwelling at 177 Winter Gardens, Pearse Street, Dublin 2.

Subsequently the following appeals were received:

Landlord: received on 30/12/2013. The grounds of the appeal: Other; Approved by the Board on 10/01/2014

The PRTB constituted a Tenancy Tribunal and appointed Orla Coyne, Vincent P. Martin, Thomas Reilly as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Thomas Reilly to be the chairperson of the Tribunal ("the Chairperson").

On 20/02/2014 the Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing.

On 23/04/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Landlord against a determination made following an adjudication held on the 22nd November, 2013 in the case of a dispute between the Appellant Landlord and the Respondent Tenant in respect of a tenancy at 177 Winter Gardens, Pearse Street, Dublin 2. He introduced the members of the Tribunal to the parties.

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. He 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 Parties confirmed that they had done so.

The Chairman said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing. The Chairperson explained the procedure which would be followed; that while the Tribunal Hearing was a formal procedure the Tribunal would seek to be as informal as was possible; that the person who appealed (the Appellant Landlord) would be invited to present her case first including the evidence of any witnesses; 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, including the evidence of any witness, and that there would be an opportunity for cross-examination by the Appellant Landlord. He said that members of the Tribunal might ask questions of both Parties from time to time.

The Chairperson explained that following this, the Appellant Landlord and the Respondent Tenant would be given an opportunity to make a final submission.

He stressed that all evidence would be taken on oath or affirmation and would be recorded by the official stenographer present, he reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 and up to 6 months imprisonment or both. The Chairperson drew the Parties attention to Section 7 of the Tribunal Procedures. He asked the Parties if they had any queries about the procedure, there were no queries.

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:

Evidence of Barbara Reardon. (Landlords representative)

The Appellant Landlords representative (referred to hereafter as Appellant Landlord) stated that she visited the dwelling about three or four times a year in order to inspect it. Arrangements for such visits were conducted via text messages and up to the latter part of 2012 the inspections carried out resulted in the dwelling being deemed in a satisfactory state of upkeep. The issues that were first identified related to the appearance of mould in the bathroom. This occurred in 2011 and involved the ceiling of the bathroom. Arrangements were made to have the matter addressed by cleaning the affected area and painting it. In 2012 the Appellant Landlord was informed of problems with lack of heating, no water, or if such was available very little flowing from the taps, this problem was exacerbated by the periodic absence of hot water and the presence of a broken shower hose.

The Tribunal was informed that the lack of heating was first raised in June of 2012 when the Appellant Landlord was informed by the Respondent Tenant that the only rooms with heat was his bedroom and bathroom there being no heat in the hall or living room .She stated that no immediate urgency was focused on the alleged defective heating at this time as the requirement for supplementary heat was not an issue at this time of year. The Appellant Landlord submitted to having knowledge of the shower hose being damaged and stated that she had a replacement hose in her car for some time, however she had not carried out the repair resulting in a delay of six months before the task was dealt with. When the Respondent Tenant indicated his dissatisfaction with the delay in rectifying the defects and that he was contemplating leaving the dwelling. The Appellant Landlord suggested a reduction in the rent of €50 per month. This offer was not availed of and the keys of the dwelling were returned to the Appellant on 31 December 2012. On inspection of the dwelling the Appellant Landlord stated that she decided to retain the Deposit for the following reasons. The dwelling she alleged was filthy, particularly the bathroom, toilet, fridge and oven, and damage had occurred to a bed head, curtain rails and the door of the washing machine. A sum of €820 was required by the Appellant Landlord she alleged to make good the foregoing defects.

Respondent Tenants Case:

The Respondent Tenant confirmed his residency in the apartment from 1 November 2009 until 31 December 2012. For the first two years in occupation no issues arose which impacted on his peaceful enjoyment of the dwelling .He became aware of mould in the bathroom in late 2011, around November or December. This matter was dealt with by the Appellant Landlord promptly and to his satisfaction. However in November 2012 he stated that he suffered a chest infection and was advised by his doctor that it was as a result of mould. On returning to the dwelling he sought to identify the presence or otherwise of mould especially in the bathroom .The Respondent Tenant stated that he did find some mould in the bathroom, however in order to identify the presence of the mould he had to mount a chair to notice it. The Respondent Tenant stated that he would not have known there was mould present but for the fact that he deliberately looked for it. He added that concurrent with the mould growth, the water supply in the dwelling was a major issue. The Respondent Tenant found that the supply was intermittent with no water available at times. Of particular inconvenience was the absence of hot water which first became apparent in November 2012 and continued into December 2012. Having drawn those defects to the attention of the Appellant Landlord in November 2012 it was confirmed that

action would be taken to deal with the problems .However no repairs were carried out to the defective items. He submitted that the lack of an adequate water supply, both hot and cold caused a further element of inconvenience in that the shower unit was dysfunctional and had a damaged shower hose pipe which the Tenant temporarily fixed pending the replacement by the Appellant Landlord. It was adduced in evidence that the Respondent Tenant had no hot water from October 2012 however he did not draw the Appellant Landlords attention to it until 25 or 28 November 2012 at which point he had decided to vacate the dwelling. On questioning by the Tribunal the Respondent Tenant stated that he had not informed the Appellant Landlord of the problems he was experiencing in writing and that he had no point of contact for her except via the mobile phone. He stated that significant discomfort was endured by him in the latter part of his occupation of the dwelling due to lack of heating. He affirmed the absence of functioning heating appliances in the Living room and the Hall causing him discomfort and lack of enjoyment of the dwelling. The heating issue was advised to the Appellant Landlord in June 2012 and again in October 2012 and made no further reference to it thereafter as it did not get too cold until November 2012. The Respondent Tenant refuted the allegation by the Appellant Landlord that the dwelling was left in a filthy state; however he did say that it was not as clean as he would like it to be resulting from the lack of hot and cold water for cleaning before he departed. He stated that a text message was issued to the Appellant Landlord on 4 December 2012 stating that he was vacating the dwelling by 31 December 2012. This was followed up with a further text where arrangements were made for the handover of the keys on 31 December. The dwelling was vacated on 5 December 2012. The Respondent sought the return of his deposit and the last months rent.

6. Matters Agreed Between the Parties

1. Rent €850.00 per month.
2. A Deposit of €500.00 was paid and is retained by the Appellant Landlord
3. Tenancy commencement date 1/11/2009.
4. Tenancy Termination date 31/12/2012.
- 5 Rent and Utilities paid in full to date

7. Findings and Reasons:

7.1 FINDING: A valid Notice of Termination was not served on the Appellant Landlord by the Respondent Tenant

REASON: The Respondent Tenant advised the Appellant Landlord by text message dated 4 December 2012 that he was leaving the dwelling and did not comply with the requirements of Section 62 of the Act as outlined below.

For a Notice of Termination to be valid it must meet the requirements of Section 62 of the Act.

Section 62 (1) A notice of termination to be valid shall ---

- (a) be in writing,
- (b) be signed by the Landlord or his or her authorised agent or, as appropriate, the Tenant,

- (c) specify the date of service of it,
- (d) be in such form (if any) as may be prescribed,
- (e) if the duration of the tenancy is a period of more than six months, state (where the termination is by the landlord) the reason for the termination,
- (f) specify the termination date, that is to say, the day (stating the month and year in which it falls) --
 - (1) on which the tenancy will terminate, and
 - (2) on or before which (in the case of a termination by the landlord) the tenant must vacate possession of the dwelling concerned, (and indicating that the tenant has the whole of the 24 hours of the termination date to vacate possession),

and

(g) state that any issue as to the validity of the notice or the right of the landlord or tenant, as appropriate, to serve it must be referred to the Board under Part 6 within 28 days from the date of receipt of it.

7.2 FINDING The Tribunal finds that the deposit paid by the Respondent Tenant to the Appellant Landlord has been justifiably retained by the Landlord in circumstances where a valid Notice of Termination as required under Section 62 of the Act was not served upon the Appellant Landlord by the Respondent Tenant..

REASON: In circumstances where an invalid or no notice of termination is served a landlord may retain a portion, or all of a deposit as will compensate in respect of outstanding rent appropriate to the notice period to which she would have been entitled. The Appellant Landlord in this instance had a legal entitlement to a 28 day Notice of Termination. No Notice was served by the Respondent Tenant upon the Appellant Landlord and therefore the Respondent Tenant is in breach of Section 62 of the Act. The Tribunal awards the sum of €500 to the Appellant Landlord by forfeiture of the deposit already paid.

7.3: FINDING: The Appellant Landlord was in breach of her obligations under section 12 of the Act to maintain the dwelling in a satisfactory state of repair.

REASON: The Landlord failed in her obligation to repair the problems with the shower hose, in addition to the availability of hot and cold water to the dwelling, the heating in the hall and living room and the mould growth in the bathroom. The Tribunal on the balance of probabilities accepts the Tenants evidence of the length of time that he did not have proper running water in the dwelling. The Tenant was not afforded peaceful and exclusive enjoyment of the dwelling resulting from these deficiencies.

Under section 12 (1) (b) of the Act the Landlord is obliged to carry out to the structure of the dwelling all such repairs as are from time to time, necessary and ensure that the structure complies with any standards for houses for the time being prescribed under section 18 of the Housing (miscellaneous Provisions) Act 1992, and the interior of the dwelling all such repairs and replacement of fittings as are, from time to time, necessary so that the interior and those fittings are maintained in, at least, the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed. The Tribunal accepts the direct evidence of the Respondent Tenant as to the breaches of the Landlords obligations and the delay in responding to them. The Tribunal in accordance with section 115(2)(d) awards €900

damages in respect of the distress, anxiety and inconvenience incurred by the Respondent Tenant as a result of the breaches by the Appellant Landlord of her obligations under the Act.

7.4: FINDING: The Respondent Tenant was not in breach of his obligations to maintain the dwelling in a satisfactory state.

REASON: No photographic evidence or vouched expenditure documentation was presented by the Appellant Landlord to support her claim for damages. The evidence given referred to the alleged "filthy condition" of the dwelling and some minor damage to fixtures and fittings therein. Because there was no evidence to support the allegations made by the Landlord the Tribunal cannot assess the matters alleged as being above normal wear and tear.

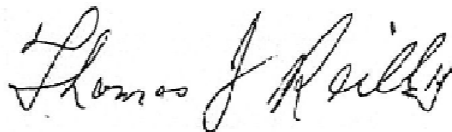
8. Determination:

Tribunal Reference TR1213-000549

In the matter of Noreen Maher (Landlord) and Shane Corr (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord shall pay the sum of €400.00 to the Respondent Tenant within 28 days of the date of issue of the Order made by the Board, having awarded damages against the Appellant Landlord for breaches of Section 12 (1) (a) (b) in the sum of €900 and having allowed for the deposit of €500 being lawfully retained by the Appellant Landlord in respect of the tenancy at 177 Winter Gardens, Pearse Street, Dublin 2.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 25/05/2014.



Signed:

Thomas Reilly Chairperson

For and on behalf of the Tribunal.