

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR1213-000552 / Case Ref No: 1013-08478**

**Appellant/Respondent Landlord:** Patricia Moore

**Respondent/Appellant Tenant:** Peter Evans

**Address of Rented Dwelling:** 35 Hollybrook, Brighton Road, Foxrock , Dublin 18

**Tribunal:** Finian Matthews (Chairperson)  
Thomas Reilly, Orla Coyne

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

**Date & time of Hearing:** 08 May 2014 at 2:30

**Attendees:** Peter Evans, Tribunal Respondent, Tenant,  
Simon O'Connor, Landlord's representative,  
Karen Gaynor, Landlord's representative,  
Cara Stewart, Landlord's witness,  
Aidan Kelly, Tenant's witness.

**In Attendance:** Gwen Malone, Stenographers

**1. Background:**

On 21/10/2013 the Landlord 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 16/12/2013. The Adjudicator determined that:

1. The Notice of Termination served on the 31/7/13 is not valid.
2. The Respondent Tenant shall pay the total sum of €5,229.04 to the Applicant Landlord within 60 days of the date of issue of the Order, being rent arrears in respect of the tenancy of the dwelling at 35 Hollybrook, Brighton Road, Foxrock, Dublin 18;
3. The Respondent Tenant shall also pay any further rent outstanding from 16th December 2013 (date of hearing), at the rate of €62.46 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month/week or part thereof, until such time as he vacates and gives up possession the above dwelling;
4. The Applicant Landlord shall refund the entire of the security deposit of €1,900 to the Respondent Tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeals were received:

Landlord : received on 31/12/2013. The grounds of the appeal: Other ; Approved by the Board on 10/01/2014

Tenant : received on 09/01/2014. The grounds of the appeal: Breach of landlord obligations, Unlawful termination of tenancy (Illegal eviction), Other ; Approved by the Board on 17/01/2014

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

On 25/02/2014 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 08/05/2014 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:**

With the agreement of the agent for the Appellant/Respondent Landlord a copy of a letter from a company named Action Security was shown to the Tribunal by the Respondent/Appellant Tenant.

## **4. Procedure:**

Opening the Tribunal the Chairperson stated that it had been established to hear two appeals. One of those appeals dated 31 December, 2013 is by the Appellant/Respondent Landlord, Patricia Moore. The other appeal dated 8 January, 2014 is by the Respondent/Appellant Tenant, Peter Evans. Both appeals are against a determination made following an adjudication held on 16 December, 2013 in the case of a dispute between the Landlord and the Tenant in respect of a tenancy at 35 Hollybrook, Brighton Road, Foxrock, Dublin 18. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. 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 and understood the PRTB document entitled "Tribunal Procedures". Both 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 then explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the stenographer present, and that based on that recording a transcript could be made available to the Tribunal if necessary, to assist it in preparing its report on the dispute. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for anyone giving

evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the PRTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant/Respondent Landlord would be invited first to present his case, including the evidence of any Witness; this would be followed by an opportunity for cross-examination by the Respondent/Appellant Tenant; that the Respondent/Appellant Tenant would then be invited to present his case in response to that of the Appellant/Respondent Landlord and in support of his own appeal, followed by an opportunity for cross-examination by the Appellant/Respondent Landlord. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

He also said that at the end of the hearing, both the Appellant/Respondent Landlord and the Respondent/Appellant Tenant would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the PRTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

The Respondent/Appellant Tenant, his witness and the first-named Landlord's representative were then sworn in. During the course of the hearing the first-named Landlord's representative, indicated that the second-named Landlord's representative and the Landlord's witness wished to give evidence to the Tribunal and requested that they be sworn. The Respondent/Appellant Tenant objected on the grounds that these persons should have been sworn in at the commencement of the hearing. The Tribunal considered this objection and agreed that the second-named Landlord's representative and the Landlord's witness should be sworn in on the basis that if it emerges over the course of a Tribunal hearing that a party wishes to have additional persons sworn in to give relevant evidence it has been the practice at Tribunal hearings to allow this. He pointed out that the Respondent/Appellant Tenant would be given adequate opportunity to cross-examine any such witness.

## **5. Submissions of the Parties:**

**Appellant/Respondent Landlords Case:**

The first-named Landlord's representative said that although it was stated in the Adjudicator's determination order that the tenant's rent was up-to-date at the time he was issued with notice of termination in July, 2013 this was not the case; his arrears at that time were €2,000 for the period 24 June to 23 July, 2013. He also stated that the Tenant had agreed to move out and formally requested references which were provided to a number of other agencies. He added that no arrears payment has been made and that the Tenant had not been responding to any of his agency's requests for payment. He also said that the Landlord is an elderly lady who requires the dwelling for her own use.

The Landlord's representative said that arising from the Respondent/Appellant Tenants failure to pay rent, the rent arrears to date now amount to €13,146.64. He added that at the request of the Landlord he asked on 6 January for access for the Landlord to the dwelling to inspect her own dwelling, but that this request had been ignored by the tenant. He also said that he communicates with the tenant by way of letter and e-mail. He added that the dwelling was located within a private development with a concierge, who collects the post and distributes it to the various tenants and owners in the development.

The Landlord's representative stated that his agency issued a 14 day warning notice to the tenant on 28 February, 2014 stating that the arrears by then were €11,000. He said that this was issued by registered post with the post office confirming delivery. On the basis that there was no response to the warning notice he said that the agency issued a valid Notice of Termination for the non-payment of rent on 20 March, 2014, and that there was proof of delivery of this also from the post office. At that point the Tribunal Chairperson advised the Tenant that the warning notice and termination notice referred to were before the Tribunal and would be considered by the Tribunal. The Chairperson also noted that the Tenant had not challenged the validity of the notice of termination, that there was no separate dispute in that regard before the PRTB, but that it would be a matter for the Tribunal to determine whether the notice was valid or not, taking account of any submissions he might wish to make in relation to it.

The Landlord's representative said that the agency subsequently wrote to the tenant requesting access to the dwelling to carry out an inspection and to take back the keys on 18 April 2014, but this letter was ignored and the tenant remains in occupation, with arrears of €13,146. He said that the non-receipt of rent was a significant financial burden for the Landlord, who remained responsible for high concierge and management fees for heating, refuse collection, water treatment and garden maintenance, which the tenant was benefitting from without paying any rent. He felt this was grossly unfair.

The second-named Landlord's representative clarified that the amount of rent arrears as at 18 April, 2014 was €13,146.67, the 18th April being the expiry date of the notice of termination. She said that the rent arrears have increased further since then.

In response to questions from the Tribunal, the first-named Landlord's representative confirmed that the parties had entered into an initial fixed term letting agreement of 12 months duration; that this was extended to 24 months, with a document agreeing to this signed by both parties; and that the tenant was given a further document, extending the tenancy to 36 months, which would have brought it up to 23 June, 2014. The tenant had signed this further document but the landlord had not. The Landlord's representative said that he was not disputing that the tenant, on behalf of the Landlord, had been offered and accepted an extension of the tenancy up to 23 June, 2014. He added, however, that the notice of termination of 20 March, 2014 had been issued on the basis that the tenant was not paying rent and that this was the notice that the landlord was relying on.

The Landlord's witness said that the Landlord's agent accepted that the tenant had been given a further fixed term tenancy extending up to June of 2014 but that she was of the view that under the provisions of the Act, the Landlord was entitled to issue an earlier notice of termination dated 31 July, 2013 on the basis that the Landlord required the dwelling for her own use.

In response to questions from the tenant, the first-named Landlord's agent agreed that the notice of termination of 31 July, 2013 stated that the Landlord required the dwelling

for her own use; that she currently lives in a house on the same road as the dwelling, but wishes to move into the dwelling for reasons of security; he said that it was not a matter for the Landlord to prove how many houses she had, the dwelling was hers and she wished to take possession of it; when asked if he had told the tenant in February 2013 that he could hold the dwelling on a long-term basis, the agent said that he had told the tenant that he would have to ask the Landlord about the proposed extension of the term of the tenancy up to June, 2014. The agent denied that in late December, 2013 he had a conversation with the tenant in the course of which the tenant had offered to set up a new standing order to pay the arrears and the agent had said that this was not relevant because he had advised the Landlord not to accept the findings at adjudication and to appeal them. The agent said that if the tenant had offered money at any stage he would gladly have accepted it.

In summarising the case for the Appellant/Respondent Landlord, his agents said that they were of the view that the tenant should stop over-holding and pay the rent due to the landlord; they also said that the termination notice was valid and that the tenant should have vacated on 18 April, 2014.

#### Respondent/Appellant Tenants case

In his evidence to the Tribunal, the Tenant stated that he is an EU registered architect and member of the Royal Institute of Architects in Ireland, with areas of expertise in Historic Buildings Conservation, Litigation and Contract Resolution and was highly regarded in the field of building conservation. He said that his credibility in the area he lives in had been seriously damaged by innuendo and gossip and that he was deeply distressed at having to attend the Tribunal hearing.

The tenant stated that on 23 May, 2013 there was an aggravated burglary at the dwelling, which he felt was relevant, because he had to report to the Landlord's agent that there had been some damage to the dwelling and the keys had been stolen. He said that the investigating Gardai had recommended that the locks be changed and he felt that he should report this to the agent. He said that a couple of weeks later the agent had called him to his office and said that he was astonished to be told that the Board of Management for the apartment complex had written to the landlord saying they were going to sue the tenant for theft. He said that roughly a week later he received the notice of termination (of 31 July, 2013) and he was of the view that there was a connection between these events. He added that he had accepted that notice at face value but had found it impossible to find a suitable place to rent in the short time available. He also said that he had asked the agent to arrange a meeting with the landlord's family to see if they could come to some mutual arrangement and that he subsequently had a very acrimonious meeting with the Landlord's son, who said that there was no prospect of a mutual arrangement and that he wanted the tenant out tomorrow. The tenant added that he had made an arrangement for the landlord, her son and her agent to inspect the dwelling on 15 October, 2013.

The tenant also said that on 28 October, 2013 he was approached by another resident of the apartment complex who told him that he had been advised by the Landlord's agent that the dwelling would be coming vacant and would probably suit that other resident. He was surprised by this because he had been led to believe that the Landlord wanted the dwelling for her own use.

In relation to his own appeal the tenant said that he retained the rent because he saw this as his only surety to protect his tenancy and to be taken seriously. He said that he was

aware of the requirement under the Act for tenants to pay rent on the date due for payment. He added he saw it as relatively harmless to with-hold rent from an obviously very wealthy person. The tenant also said that he stood by a statement that the Landlord's side were willing to break the law.

The tenant also said that he had a professional relationship for many years with the Landlord's agency, that there were considerable fees outstanding for work he had done for the agency and this was another reason for his retaining leverage over the agency. Following the tenant's raising of this matter the Tribunal chairperson directed that the matter of outstanding professional fees was entirely irrelevant to the proceedings before the Tribunal and that the Tribunal was not prepared to hear anything in relation to that matter. The Tribunal also pointed out to the tenant that there was another forum available to him if he believes that there are fees due and owing to him in relation to a contract between him and the agency.

The tenant also raised matters in relation to the professional qualifications of the Landlord's agent and the staff of the agency. The Tribunal Chairperson said that this was not relevant to the proceedings before the Tribunal and said that the Tribunal would not allow such matters to be raised at the Tribunal.

The tenant added that the past year had been incredibly stressful; that he had suffered two medical conditions both of which are stress related.

In response to questions from the Tribunal the tenant agreed that his rent was in arrears and that he would not dispute the amount outstanding as of 18 April, 2014 put forward by the Landlord's agent; he also said that he had been advised that he would be entitled to renew the tenancy until June 2015, and said he was aware that this was subject to compliance with the conditions of the tenancy. He also said that he had not activated any arrangement for a legal representative to act as a holding agent for the monies he accepts are due to the landlord, but had some discussions with his solicitor about this in the expectation that his appeal would have been dealt with more quickly.

In response to further questions from the Tribunal the tenant described how he had visited the offices of the Landlord's agent after the burglary at the dwelling and told them that the Gardai had recommended that the locks be changed. He said that the agents had contacted Action Security who subsequently changed the locks and gave him the keys. He said that he had never given a set of those keys to the agent but was willing to do so, should they wish to obtain same.

In response to questions from the Landlord's agents the tenant denied that when he called to the landlord's agents' offices he said that he thought the concierge or someone in the building had gained access to the dwelling and that was why he wanted the locks changed. He repeated that he had called to report the burglary and said that the agents rang Action Security and asked them to go to the dwelling to change the locks. He said that Action Security then sent him the bill which he was furious about. He had not paid that bill and was not aware if the bill had been sent instead to the agents and whether or not the latter had paid this.

At that point the tenant's witness asked to be excused from the hearing. Before leaving he confirmed that he was at a meeting in the Gables restaurant between the tenant and the landlord's son.

In summarising his case the Respondent/Appellant Tenant said that what he was seeking from the PRTB was to verify that he has a fixed term renewal lease until June, 2014, that all harassment would cease forthwith and that he would expect on payment of the arrears of rent an apology from the Landlord's agents. He said that he retained the right to seek compensation and damages and, based on legal advice given to him, that he has a right to seek another fixed term renewal until June, 2015.

The Chair thanked both parties for attending and advised them that following the hearing the Tribunal will prepare a report and make its Determination in relation the dispute and will notify the PRTB of that Determination.

## **6. Matters Agreed Between the Parties**

Before inviting the parties to make their submissions the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

- The tenancy commenced on 25 June, 2011.
- The term of the tenancy specified in the initial letting agreement was 12 months expiring on 23 June, 2012. The initial agreement was extended, through a further written agreement, by a further 12 months expiring on 23 June, 2013.
- The tenant remains in possession of the dwelling
- The rent is €1,900 per month
- The Respondent Tenant paid a deposit of €1900.

Both parties accepted that they were in agreement in relation to the foregoing matters.

## **7. Findings and Reasons:**

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

**Finding:** The Respondent/Appellant Tenant holds a fixed term tenancy in total of 36 months duration due to expire on 23 June, 2014.

**Reason:** The Appellant/Respondent Landlord's agent agreed at the Tribunal hearing that the tenant - having entered into a 12 month fixed term tenancy agreement commencing on 24 June, 2012, the agreement having been extended by a further term of 12 months to 24 June, 2013 - was, on behalf of the Landlord, offered, accepted and commenced payment of rent in respect of a further extension of the tenancy for a term of 12 months up to 23 June, 2014.

The tenant has furthermore been in occupation of the dwelling for a continuous period of 6 months by virtue of which the tenancy became a Part 4 tenancy which shall continue in being for a period of 4 years, subject to the tenant's complying with his obligations in relation to the tenancy.

**Finding:** The Tribunal finds that the notice of termination served by the Appellant/Respondent Landlord's letting agent on the Respondent Tenant on 20 March, 2014 is valid.

**Reasons:** In accordance with the provisions of section 34 of the Act the Landlord's agent notified the tenant on a number of occasions that he was in arrears of rent, allowed the tenant a reasonable time to remedy that breach of his obligations and advised him that the landlord was entitled to terminate the tenancy if he did not remedy that breach within that time. In accordance with sections 67(2)(b)(i) and 67(3) of the Act the Landlord's agent on 28 February, 2014 subsequently served a written notice on the tenant informing him of the amount of rent due and gave the tenant 14 days to pay those rent arrears. When the tenant failed to pay the rent due within 14 days of receipt of the written warning notice the Landlord proceeded to terminate the tenancy by serving on 20 March, 2014 a 28 day notice of termination expiring on 18 April, 2014. The notice of termination met each of the requirements set out in Section 62(1)(a) to (g) of the Act and gave 28 days notice of termination as required under section 67(2)(b) of the Act.

In exercise of its powers under sub-section (2)(f) of section 115 of the Act, the Tribunal declares that the notice of termination of the tenancy served by the Appellant Landlord's agent on the Respondent Tenants on 20 March, 2010 is valid.

**Finding:** The Tribunal finds that the Respondent/Appellant Tenant is in breach of his obligations under section 16 of the Act.

**Reasons:** Under sub-section (a)(i) of section 16 of the Act, a tenant must pay to the landlord the rent provided for under the tenancy concerned on the date it falls due for payment. In failing to pay his rent for each month or part thereof since , while he remains in possession of the dwelling the Respondent/Appellant Tenant was in breach of the foregoing requirement. In failing to pay the rent under his tenancy agreement on 24 September 2013 and on the 24th of each month since then the tenant is in breach of this requirement.

**Finding:** The total rent arrears due and owing from the Respondent Tenant as at 7 May, 2014 (the day before the Tribunal hearing) amounts to €14,333.41.

**Reasons:** The Appellant/Respondent Landlord's agent provided evidence that the rent arrears owed by the tenant as at 18 April, 2014 amounted to €13,146.64. The tenant told the Tribunal and he did not dispute this figure. Since then the tenant has accumulated further rent arrears in respect of the 19 days between the day after the expiry of the notice of termination and the day before the Tribunal hearing. The amount of rent owing in respect of those 19 days at a rate of €62.46 per day is calculated at €1186.74. The total rent arrears accumulated by the Respondent/Appellant Tenant up to and including the day before the Tribunal hearing amounts to €14,333.41.

**Finding:** The Appellant/Respondent Tenant is over-holding in the dwelling.

**Reasons:** The tenant remains in possession of the dwelling following the expiry of a valid notice of termination. He continues until the date he gives up vacant possession of the dwelling, to be liable for rent at a rate of €1900 per month, or at rate of €62.46 per day for any part thereof, until and unless the rent is lawfully varied.



## 8. Determination:

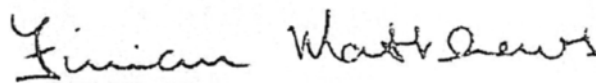
**Tribunal Reference TR1213-000552**

**In the matter of Patricia Moore (Landlord) and Peter Evans (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 20 March, 2014, by the Appellant/Respondent Landlord on the Respondent/Appellant Tenant, is valid, in respect of the tenancy of the dwelling at 35 Hollybrook, Brighton Road, Foxrock, Dublin 18.
2. The Respondent Tenant and all persons residing in the above dwelling, shall vacate the dwelling within 28 days of the date of issue of this order.
3. The Respondent/Appellant Tenant shall pay the sum of €14,333.41 to the Appellant/Respondent Landlord within 28 days of the date of the issue of this order, being rent arrears up to and including 7 May 2014 in respect of the tenancy of the above dwelling,
4. The Respondent/Appellant Tenant shall also pay any further rent outstanding from 8 May, 2014, at the rate of €1,900 per month, or €62.46 per day as appropriate, unless lawfully varied, and any other charge as set out in the terms of the tenancy agreement for each month or part thereof, until such time as he vacates the above dwelling.
5. The Appellant/Respondent Landlord shall refund the entire of the security deposit of €1,900 to the Respondent/Appellant Tenant, on gaining vacant possession of the above dwelling, less any amount properly withheld in accordance with the provisions of the Act.

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

**Signed:**



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**Finian Matthews Chairperson**

For and on behalf of the Tribunal.