**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0915-001364 / Case Ref No: 0715-19413**

**Appellant Landlord:** Eve Leonard

**Respondent Tenant:** Sandra Batt

**Address of Rented Dwelling:** 206 Killester Avenue, Killester , Dublin 5, D05WK79

**Tribunal:** Ciara Doyle (Chairperson)

John Tiernan, Brian Murray

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

**Date & time of Hearing:** 02 November 2015 at 10:30

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| **Attendees:** | Eve Leonard (Appellant Landlord)  Anna Leonard (Representative of the Appellant Landlord) |
| **In Attendance:** | Gwen Malone Sternographers |

**1. Background:**

On 06 July 2015 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 27 July 2015. The Adjudicator determined that:

The Applicant Landlord's application, regarding breach of tenant obligations, rent arrears and overholding on the part of the Respondent Tenant, in respect of the tenancy of the dwelling at 206 Killester Avenue, Killester, Dublin 5, is deemed abandoned.

Subsequently an appeal was received from the Landlord on 11 September 2015. The grounds of the appeal were a Breach of tenant obligations, Rent arrears and overholding. This appeal was approved by the Board on 02 October 2015.

The PRTB constituted a Tenancy Tribunal and appointed John Tiernan, Ciara Doyle, Brian Murray as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Ciara Doyle to be the chairperson of the Tribunal (“the Chairperson”).

On 07 October 2015 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 02 November 2015 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:**

PRTB File

**3. Documents Submitted at the Hearing Included:**

None

**4. Procedure:**

Tribunal Procedures

At the appointed hearing time there was no appearance either by or on behalf of the Respondent Tenant. Having waited for a period, and being satisfied that the Respondent Tenant had been properly notified of the date, time and venue for the Tribunal hearing, the hearing proceeded in her absence.

The Chairperson confirmed with the Appellant Landlord that she had received the relevant papers from the PRTB in relation to the case and that she had received the PRTB document entitled “Tribunal Procedures”. She explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be conducted in a manner that would be as informal as was possible. She said that members of the Tribunal might ask questions from time to time. She stressed that all evidence would be taken on oath and be recorded by the official stenographer present and she reminded the Appellant Landlord 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.

She also reminded the Appellant Landlord 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 enforced by either of the parties or in some cases by the Board of the PRTB at its discretion. He also advised that the Tribunal process was the final step in the dispute resolution process unless appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

She asked the Appellant Landlord if she had any queries about the procedure. There were none.

The Appellant Landlord and her mother were duly sworn in.

**5. Submissions of the Parties:**

Appellant Landlord’s submissions:

The Appellant Landlord confirmed to the Tribunal that the dwelling was jointly owned by both herself and Geoff Byrne and that she represented them both in respect of the dispute.

She told the Tribunal that the current monthly rent in respect of the dwelling was €950 per month. She confirmed they held a security deposit of €1,000 and that they had entered a fixed term letting agreement with the Respondent Tenant on 20 August 2012 for a term of 12 months. She said they had received no rent from the Respondent Tenant since July 2015. She advised that they were in receipt of Social Welfare payments in respect of the tenancy up to June 2015 in the sum of €681.30 per month but there had been a shortfall of €268.70 on the monthly rent from January 2013.

She claimed the total rent arrears due and owing by the Respondent Tenant to date was €16,542.20. She confirmed to the Tribunal that the Respondent Tenant was still in occupation of the dwelling.

The Appellant Landlord’s mother gave evidence that she had called to the dwelling to meet the Respondent Tenant on two occasions in recent weeks but was told she was not available. The Appellant Landlord gave evidence that she had made phone calls and sent text messages to the Respondent Tenant in respect of rent arrears and her intention to terminate the tenancy.

The Appellant Landlord gave evidence that she had served a Notice of Termination on the Respondent Tenant dated 17 February 2015 by registered post. She said this was preceded by a 14 day warning letter in respect of rent arrears which she said was sent on 14 February 2015. Both documents were exhibited in the PRTB casefile. She gave further evidence of phone call and text message communications to the Respondent Tenant seeking payment and warning of the consequences for her.

The Appellant Landlord told the Tribunal that she needed the dwelling back for her own personal use. She said the Respondent Tenant had told her that it would take three years to get her out.

The Appellant Landlord told the Tribunal that she had been approached by a neighbour about a verbal disagreement she told her she had with the Respondent Tenant but that she had no recent reports from her neighbour about the tenant.

The Appellant Landlord expressed her frustration at not being able to secure the dwelling for her own use.

Respondent Tenant’s submissions:

There was no appearance by or on behalf of the Respondent Tenant.

**6. Matters Agreed Between the Parties**

None

**7. Findings and Reasons:**

Findings:

1. The Notice of Termination dated the 17th February 2015 is valid and the Tenant is overholding in the dwelling.

Reason: The Notice of Termination is in compliance with the requirements of Section 67 of the Act.

2. The Respondent Tenant is in arrears of rent in breach of Section 16 (a) of the Act in the sum of €7,005.42 since 29 April 2014.

Reason: While the Tribunal accepts the evidence of the Appellant Landlord that rent is due and owing by the Respondent Tenant since January 2013, the Tribunal notes the existence of a separate enforceable Determination Order wherein the Respondent Tenant was ordered to pay rent arrears of €8,099.20 up to 28th April 2014. The Tribunal therefore determines that the following additional rent is outstanding since that date:

- April 29th , 2014 €31.23

- April 30th , 2014 €31.23

- May 2014 - June 2015 (14 months @ 268.70) €3,761.80

- July 2015 €950

- August 2015 €950

- September 2015 €950

- October 2015 €950

- 1 November 2015 €31.23

- 2 November 2015 €31.23

Total €7,686.72

The Tribunal finds that the Respondent Tenant is in breach of her obligation to vacate the tenancy on foot of a valid Notice of Termination.

Reason: The Appellant Landlord gave evidence of distress and inconvenience suffered due to the non-availability of the dwelling to her as a result of the overholding on the part of the Respondent Tenant. The Tribunal accepts this evidence and awards the sum of €500 in respect of the consequences she has endured.

The Tribunal finds that the Respondent Tenant shall pay damages to the Appellant Landlord in respect of the consequences of her breach of Tenant obligation under s.16(a) of the Act to pay rent provided for under the tenancy on the day it falls due.

Reason: The Appellant Landlord gave evidence of distress and inconvenience suffered due to the non-payment of rent to her. The Tribunal accepts this evidence and awards the sum of €500 in respect of the consequences she has endured.

**8. Determination:**

**Tribunal Reference TR0915-001364**

**In the matter of Eve Leonard (Landlord) and Sandra Batt (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination dated 17 February 2015 and served by the Appellant Landlord on the Respondent Tenant in respect of the tenancy of the dwelling at 206 Killester Avenue, Killester, Dublin 5 is valid.

2. The Respondent Tenant and all persons residing in the dwelling shall vacate and give up possession of the dwelling within 14 days of the date of issue of the Determination Order.

3. The Respondent Tenant shall pay the sum of €8,686.72 to the Appellant Landlord in 12 consecutive monthly payments of €720, followed by one final payment of €46.72, on the 28th day of each month commencing on the 28th day of the month immediately following the date of issue of the Order being rent arrears arising since 29 April 2015 of €7,686.72 and damages of €500 for breach of obligations by the Respondent Tenant under Section 16 (a) of the Act and damages of €500 for over holding in respect of the tenancy of the above dwelling.

4. The enforcement of the Order for such payment of €8,686.72 will be deferred and the total sum owing reduced by the accumulative sum paid in the monthly instalments by the Respondent Tenant to the Appellant Landlord on each due date until such time as the total sum of €8,686.72 has been paid in full.

5. For the avoidance of doubt any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due at the date of the default of any such monthly payment shall immediately become due and owing to the Appellant Landlord.

6. The Respondent Tenant shall also pay any further rent outstanding from the 3rd November 2015 at a rate of €950 per month, or proportionate part thereof at the daily rate of €31.23, unless lawfully varied and any other charges as set out in the terms of the tenancy agreement until such time as she vacates the above dwelling.

7. The Appellant Landlord shall refund the entire of the security deposit of €1,000 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.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 17/11/2015.

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| **Signed:** | \\v-1-hq-fs-01\HOME\Common\Signatures\TribunalMembers\Ciara Doyle.png |

**Ciara Doyle Chairperson**

For and on behalf of the Tribunal.