1. Background:

On the 31st October 2019 the Tenant made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 78 of the Act. The matter was referred to Mediation which took place on the 28th November 2019. No agreement was reached.

Subsequently the following appeal was received:

The RTB constituted a Tenancy Tribunal and appointed Dairine Mac Fadden, Eoin Byrne and Nesta Kelly as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Dairine Mac Fadden to be the Chairperson of the Tribunal ("the Chairperson").

On 27/01/2020 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 the 20th February 2020 the Tribunal convened a hearing at Ante Chamber Room, Westmeath County Council, Athlone Civic Centre, Church Street, Athlone.
2. Documents Submitted Prior to the Hearing Included:
   RTB 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 persons present (the Tenant and Tenant's son) confirmed to the Chairperson that they had each completed the required attendance sheets, giving their current contact details and the correct spelling of their names.

   The Chairperson confirmed with the Tenant that he had received the relevant papers from the RTB in relation to the case, Tribunal Case File 1, 7 pages, Tribunal Case File 2, 33 pages, Tribunal Case File 3, 33 pages, and the RTB document entitled “Tribunal Procedures”.

   The Chairperson explained that the Landlord had advised they could not attend and stated that the hearing would proceed in the absence of the Landlord as it was the Tenant's application. The Tenant would be given the opportunity to present his case and the Tribunal would ask questions.

   She stressed that all evidence would be taken on oath or affirmation and be recorded by the recording technician present and she reminded the Parties present that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or up to 6 months imprisonment or both. She informed the Parties present that the hearing was a public hearing and that members of the public could attend if they wished.

   She said that following the hearing, the Board would make a Determination Order which would be issued to the Parties. She explained that the hearing before the Tribunal was a final hearing as to matters of fact and that a Determination Order made by the RTB could be appealed to the High Court on a point of law only.

   The Parties giving evidence were sworn/affirmed.

5. Submissions of the Parties:
   APPLICANT TENANT'S SUBMISSIONS
   The Tenant's son acted as his representative and also acted as interpreter for his father.

   In response to questions from the Tribunal, the Tenant confirmed the following:
   1. The address of the dwelling is 128 Abbeylands, Mullingar, Westmeath (“the dwelling”);
   2. The tenancy commencement date was the 1st January 2012;
   3. The rent currently being paid by the Tenant is €575 per month payable in advance;
   4. A deposit of €500 was paid;
   5. The Tenant is in occupation of the dwelling.
The Tenant was asked whether he had any written tenancy agreement and responded that he did not think that there was any in place but was not entirely sure of this. He was asked when the last rent review had occurred and responded that as far as he could recall, the rent had never been increased since the commencement of the tenancy in 2012.

The dwelling is a semi-detached property with 3 bedrooms one of which has a shower, an upstairs bathroom, a kitchen/dining room, a sitting room and a downstairs toilet. The son said that it was probably built in the 1970's and is located on the Longford side of Mullingar. He said that it is approximately a 20- minute walk from the dwelling to the train station.

The Tenant, through his son, listed items which he said he had bought for the dwelling since the commencement date, including a corner sofa, coffee/TV table, side-board and mirrors. He said that the Landlord had done no work to the dwelling since the commencement date and that everything in it was quite old. The Tenant had also fixed a heater and painted the dwelling himself. He said the Landlord had said that he would not fix anything as the rent was so low. He referred to a conversation which he said his daughter had with the O'Dwyer Agency in 2018/2019 when the Landlord acquired the dwelling and when matters requiring attention were discussed.

He referred to his email on page 16 of Tribunal Case File 2, dated 31st October 2019, which he had sent to Chartered Assets on behalf of the Landlord and in which he listed the problems in the dwelling which he said had to be fixed, as follows:

"Electricity installation in the kitchen needs to be fixed few sockets, light, and steam extractor are not working. Kitchen sliding doors are falling out when trying to open. Mould is growing on the kitchen ceiling and around both doors, also on the bathroom ceiling. The extractor fans in both toilets are not working. The sink is clogged in the toilet. The radiator in the living room is leaking and the laminate flooring is damaged by this leak. No smoke and carbon monoxide alarms installed, also no fire blanket"

He referred to the reply dated 31st of October he received from Chartered Assets (page 17 of Tribunal Case File 2) acknowledging his email and requesting that in order to be able to assist him further on the issues, photos of the kitchen door, moulds in kitchen and bathroom ceiling, and damaged floor be forwarded to them together with his mobile number. A further email dated 1st November 2019 from Chartered Assets was referred to and produced, (page 18 of Tribunal Case 3) acknowledging that they had received his daughter's mobile number, stating that they had passed on the issue to the property manager as well as the contact details he had provided and assuring him that the maintenance team would contact him.

He included in his Tribunal Case File 2, photographs showing some of the issues in relation to the dwelling which he had complained of. He said that to date none of the work which he had outlined had been attended to. Only the hob part of the oven was working. The dwelling is very difficult to heat and over this winter he has already bought 2000 litres of oil at a cost of €1400 in total (€700 per 1,000 litres). No inspection had been carried out except at the time the current Landlord had bought the dwelling from the Bank.

He referred to further documentation which he had submitted to the Tribunal as part of Tribunal Case File 2 as follows:

An extract from the Letting Agreement on page 3 relating to 218 Abbeylands, which was being rented by his daughter and the rent agreed for this was €800 per month commencing
on the 28th January 2019 for a term of 24 months. That house was in the same estate as the dwelling and was exactly the same size as the dwelling.

An extract from the Letting Agreement on page 5 relating to 68 Abbeylands, which was being rented by his sister and the rent agreed for this was €850 per month commencing on the 16th September 2019 for a term of 12 months. This house had been fully renovated when his sister moved in in 2019 and was also located in the same estate as the dwelling.

A copy of an email from Property Partners Mc Donnell 2019-12-10 which estimated that the rent for a 3- bedroomed semi- property in Abbeylands should be between €950 and €1,100 per month.

A copy of an email from CML Auctioneers 2019-12-10 which estimated that the rent for a 3- bedroomed semi- property in Abbeylands should be between €900 and €1,000 per month.

Copy of an ad for a 4 bedroomed unfurnished house in Mullingar for €1,200 per month. Date of ad unknown.

Copy of an ad for a 3 bedroomed unfurnished house in Petitswood Manor, Mullingar for €1,100 per month. He said that this was built in the last 5 years and was in a much better location being on the Dublin side of the town, close to the M4. Date of ad unknown.

Copy of an ad for a 3 bedroomed furnished or unfurnished house in Carra Vale, Mullingar for €1,100 per month. He said that this was in a newer and much better estate. Date of ad entered/renewed 10/1/2020.

Copy of an ad for a 3 bedroomed furnished or unfurnished house in Millmount, Mullingar for €1,050 per month. This had a garage and was in a much better location. Date of ad unknown.

Copy of an ad for a 4 bedroomed furnished or unfurnished house in Millmount, Mullingar for €1,000 per month. This had a garage and was in a much better location. Date ad entered/renewed 29th November 2019.

Copy of an ad for a 3 bedroomed furnished house in O Growney Drive, Mullingar for €900 per month. It was put to him that this was a terraced house commanding a rent of €900 per month. He said that he was not familiar with this particular property. Date of ad unknown.

Copy of an ad for a 3 bedroomed furnished house in Ushnagh Court, Mullingar for €900 per month. He said that this had a private drive and was a better property. Date of ad unknown.

Copy of an ad for a 4 bedroomed semi with a 5th bedroom downstairs with its own en suite, in Ashfield Mullingar. He said that this was in much better estate than the dwelling and was also larger than the dwelling. Date of ad unknown.

Copy of an ad for a 4 bedroomed furnished house in College Vale, Mullingar for €1,000 per month. He said that this was in a good estate. Date of ad unknown but move in date 14th February 2020.

Copy of an ad for a 3 bedroomed furnished house in Sherwood Park, Mullingar for €1,000 per month. He said that this was a better house, in a better location, beside Petitswood. Date of ad unknown but move in date 15th February 2020.
He submitted that the rent for the dwelling should not be increased from the current level given the condition of the dwelling. He would be prepared to pay €900 per month if it was renovated and the issues he had complained of all attended to.

RESPONDENT LANDLORD'S SUBMISSIONS

On the 12th February 2020 Magda Bugajska of Chartered Assets on behalf of the Landlord emailed the RTB ( Tribunal Case File 3, page 2) enclosing the rent increase notice which had been issued to the Tenant and in which she stated that "In our opinion, new rent amount is in line with current market rent for similar property in same area as per comparable provided in the rent increase notice". She also stated that "Please note, Chartered Assets representative won't be in a position to attend to the hearing on 20/02/2020".

The only documentation received from the Landlord was the Rent Review Notice dated 2nd October 2019, which was signed by a representative of Chartered Assets, who were stated in the said Notice to be an authorised agent of the Landlord. In this Notice it was stated that a review of the rent of the dwelling had been carried out and that a new rent had been set in the sum of €1100 per month, to take effect from the 2nd January 2020. The Landlord stated in this Notice that in their opinion the new rent was not greater than the market rent, having regard to the other terms of the tenancy, and the letting values of dwellings of a similar size, type and character to the dwelling, and situated in a comparable area. The rent sought for 3 dwellings of similar size, type and character to the dwelling and situate in a comparable area were given as follows:

Dwelling 1 - Ballynacarrigy, Ballynacarrigy, Co. Westmeath, 3-bedroom house - €850 per month.
Dwelling 2 - 63 The Glen, Coosan Road, Athlone, Co. Westmeath €1,250 per month.
Dwelling 3 - St. Etchen's Ct., Kinnegad, Co. Westmeath, 3-bedroom house - 3-bedroom house - €1100 per month.

6. Matters Agreed Between the Parties

None. The Respondent Landlord was not in attendance.

7. Findings and Reasons:

1. The Notice of Rent Increase dated 2nd October 2019 served by the Respondent Landlord on the Applicant Tenant in respect of the tenancy of the dwelling at 128 Abbeylands, Mullingar, Co. Westmeath, is valid.

Reasons:

The Notice was in the prescribed form as required by section 22(2) of the Residential Tenancies Act, 2004 as amended ("the Act"). The Tribunal is satisfied, as required by section 20 of the Act, that the rent had not been reviewed in the preceding 24 months. The Tenant accepted that he had received the Notice by post and while he could not recall the exact date of receipt, he did not argue that he had not been given the required 90 days' notice. The Tribunal is satisfied that the Tenant was given the required 90-day notice period.

2. The Tribunal finds that the monthly rent set by the Notice of Rent Increase fails to comply with section 19(1) of the Act. The Tribunal finds that the correct market rent of the
dwelling should be €800 per month with effect from the 2nd January 2020. Pursuant to section 115 (2) (a) of the Act, the Tribunal sets €800 as the monthly rent for the dwelling with effect from the 2nd January 2020.

Reasons:

The dwelling is not located within what is known as rent pressure zone within the meaning of the Act. Nevertheless, the general prohibition set out in section 19(1) of the Act is applicable to the dwelling. This provides that in setting the rent for a dwelling, an amount of rent shall not be provided for that is greater than the amount of the market rent for that tenancy. “Market rent” is defined in section 24(1) of the Act as the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling, in each case on the basis of vacant possession being given, and having regard to (a) the other terms of the tenancy, and (b) the letting values of dwellings of a similar size, type and character to the dwelling and situated in a comparable area.

The Landlord did not submit any documentation whatsoever to the Tribunal except for the Rent Increase Notice. The Landlord did specify in that Notice the three comparator properties but copies of the relevant advertisements, details of the properties or photographs of same, were not furnished. None of these comparator properties are located in the same estate as the dwelling; indeed, none are located in Mullingar.

The Landlord was aware of the complaints made by the Tenant regarding the condition of the dwelling and did not furnish any contradictory evidence to refute this or to satisfy the Tribunal that the issues complained of had been dealt with. The Tribunal accepts the Tenant’s evidence that the dwelling has not benefited from maintenance and re-decoration. The dwelling must be considered as it is in this present condition, rather than with any improvements which may be made to it. The Tribunal notes that the tenancy commenced in 2012 and that considerable wear and tear could be expected over a period of 8 years to date.

The Tribunal finds that the most useful comparators for market rent are those furnished by the Tenant and is particularly persuaded by (1) the evidence of the lettings in the estate in which the dwelling is located (218 Abbeylands, €800 per month, set on 28th January 2019 and 68 Abbeylands, €850 per month, set on 16th September 2019) and (2) the evidence by way of emails from two estate agents stating rents in a range of €900 - €1,100.

In all of these circumstances, the Tribunal finds that the market rent of the dwelling at the date of the Notice of Rent Increase was €800 per month and pursuant to section 115 (2) (a) of the Act, sets that as the monthly rent for the dwelling with effect from the 2nd January 2020. The reason the Tribunal is not satisfied that the rent is as high as outlined by the emails from the estate agent, submitted by the Tenant, is because of the condition of the dwelling in this case and the fact it does appear to require a degree of renovation, plus the fact that it is difficult and expensive to heat. The emails from the estate agents are general opinions only, not based on detailed consideration of the specific dwelling. The dwelling in this case, being in need of some modernisation, cannot be expected to command what would appear to be the market rent for dwellings presented in better condition. It is for that reason that the Tribunal is satisfied that the market rent is no more than €800 per month, in respect of the dwelling in this case.

3. The Tenant shall pay the total sum of €370 to the Respondent Landlord, within 90 days of the date of issue of the Order, being the difference between the rent of €575 per month prior to the review and the market rent set by the Tribunal herein, in respect of the period
from the 2nd January 2020 (the date the market rent set by the Tribunal is to take effect) to the 20th February 2020 (the date of the hearing before the Tribunal).

This is calculated on the basis of a monthly difference of €225, at a daily rate of €7.40 (€225 \( \times \) 12 \( \div \) 365) for 50 days (from 2nd January 2020 to the 20th February 2020 the date of the hearing)

\[ = €370. \]

8. **Determination:**

In the matter of Kestutis Andriuska, Applicant Tenant and Xerico Limited, Respondent Landlord, the Tribunal, in accordance with s. 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Rent Increase dated 2nd October 2019 served by the Respondent Landlord on the Applicant Tenant in respect of the tenancy of the dwelling at 128 Abbeylands, Mullingar, Co. Westmeath, is valid.

2. The monthly rent set by the said Notice fails to comply with section 19(1) of the Residential Tenancies Act, 2004 as amended.

3. The market rent of the dwelling is €800 per month with effect from the 2nd January 2020. The Applicant Tenant shall pay the sum of €800 per month to the Respondent Landlord with effect from the 2nd January 2020 unless lawfully varied and any other charges set out in the tenancy agreement.

4. The Applicant Tenant shall pay the total sum of €370 to the Respondent Landlord, within 90 days of the date of issue of this Order, in respect of the period from the 2nd January 2020 (the date the market rent set by the Tribunal is to take effect) to the 20th February 2020 (the date of the hearing before the Tribunal) and being the difference between the rent prior to the review of €575 per month and the market rent set by the Tribunal of €800 per month, in respect of the tenancy of the above dwelling.

5. The Applicant Tenant shall also pay any further rent outstanding from the 20th February 2020 being the date of the Tribunal hearing, at the rate of €800 per month, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 23/02/2020.

Signed: Dairine Mac Fadden Chairperson
For and on behalf of the Tribunal