

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0121-004625 / Case Ref No: 0820-63748

Appellant Landlord: Eileen Chaudhry

Respondent Tenant: Gwen Rowan

Address of Rented Dwelling: Harbour Field House, Barry More, Kiltoom, County Roscommon, N37XD96

Tribunal: Andrew Nugent (Chairperson)
Elizabeth Maguire, Healy Hynes

Venue: Tribunal Room, RTB, O'Connell Bridge House,
D'Olier Street, Dublin 2

Date & time of Hearing: 30 April 2021 at 10:30am

Attendees: For the Appellant:
Eileen Chaudhry (Appellant Landlord)
Carol Daly (Appellant Landlord's Solicitor)
Anne-Marie Hynes (Appellant Landlord's Witness)

For the Respondent:
Gwen Rowan (Respondent Tenant)
Graham Martin (Respondent Tenant's Representative)
Michelle Fletcher (Respondent Tenant's Witness)

In attendance: DTI Wordwave International Stenographers

1. Background:

On 10 August 2020 the Applicant Tenant made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 76 of the Residential Tenancies Act, 2004 (as amended)("the Act"). The matter was referred to an Adjudication which took place on 30 October 2020. The Adjudicator determined that:

1. The Notices of Termination served by the Respondent Landlord on the Applicant Tenant on the 13th and 15th of August 2020 in respect of the tenancy of the dwelling at Harbour Field House, Barry More, Kiltoom, Co. Roscommon, N37 XD96 are invalid.
2. The Respondent Landlord shall pay the Applicant Tenant the sum of €5,551.75 within 28 days of the date of issue of this order being damages for an illegal eviction with respect of the aforesaid tenancy.

Subsequently and appeal was received from the Appellant Landlord on 20 January 2021. The appeal was approved by the Board on 12 February 2021.

The RTB constituted a Tenancy Tribunal and appointed Andrew Nugent, Elizabeth Maguire and Healy Hynes as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Andrew Nugent to be the chairperson of the Tribunal ("the Chairperson").

On 6 April 2021 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 30 April 2021 the Tribunal convened a hearing by way of Video Conference Tribunal.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case files.

3. Documents Submitted at the Hearing Included:

Not applicable.

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 RTB in relation to the case and that they had received the RTB 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 person who appealed (the Appellant) would be invited to present her case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant. 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 affirmation and would be recorded by the official stenographer present and 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 or imprisonment for up to six months 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.

The Chairperson asked were there any queries on the procedures, there were no queries.

The Chairperson afforded the Parties an opportunity to attempt to compromise the issues between themselves. However, no agreement was forthcoming and the Parties intending to give evidence took an Affirmation.

5. Submissions of the Parties:

Appellant Landlord's Case:

Evidence of Ms. Eileen Chaudhry

Ms. Chaudhry, the Appellant Landlord, gave evidence that she had placed an ad for the dwelling on the website Daft and that the dwelling had been advertised for let at a monthly rent of €720. She stated that when she had first met the Respondent Tenant she had liked her and decided to reduce the rent to €670 per month and that thereafter, on becoming friendly with the Respondent Tenant, she had reduced the rent further to €600 per month to include utilities. The Appellant Landlord gave evidence that she discussed with the Respondent Tenant that a 'Part 4' tenancy would not arise in the respect of the dwelling. However, she confirmed that she hadn't served the necessary documentation in this regard as required pursuant to section 25 of the Act.

The Appellant Landlord gave evidence that she began to become increasingly concerned about the Respondent Tenant's living arrangements and she stated that she had raised her concerns with the Respondent Tenant. The Appellant Landlord gave evidence that she had carried out an inspection of the dwelling in January 2020 and that the dwelling appeared to be in good condition although it was dark. She confirmed that a further inspection had taken place on 2 July 2020 and that as a result of this inspection she stated that she was very concerned about the state of the dwelling. Specifically, the Appellant Landlord gave evidence that the dwelling was dirty and unhygienic and that it had been hard to move around.

The Appellant Landlord stated that she had concerns about the Respondent Tenant's well-being and that she felt that the Respondent Tenant's mental health was deteriorating during the summer of 2020. As a result, the Appellant Landlord gave evidence that she didn't know what to do and that she felt under pressure and was anxious and as result she was unable to sleep.

The Appellant Landlord gave evidence that an issue had arisen with regards to workmen who had been engaged to install solar panels on the roof of the Appellant Landlord's house and which were to be connected to the dwelling. In this regard, she stated that the Respondent Tenant had been given advance notice of the need for the workmen to enter the dwelling. She stated that on the day in question, 5 August 2020, an issue had arisen with the Respondent Tenant in relation to allowing the workmen access to the dwelling and she confirmed that this issue, coupled with her being what she described as "burnt-out", had led to the Appellant Landlord losing her temper. She stated that she had served a Notice of Termination on 5 August 2020 on the Respondent Tenant and that she had served a further Notice of Termination on the Respondent Tenant on 14 August 2020 (it was originally served on 13 August 2020 but was amended and was re-served on 14 August 2020). The Appellant Landlord confirmed that neither Notices had been preceded by a warning letter although she stated that she had expressed concerns to the Respondent Tenant in conversation and in emails about waste disposal.

The Appellant Landlord gave evidence that, having received no further communications from the Respondent Tenant, a removal van had been present at the dwelling on 28 September 2020 and was filled on two occasions with the Respondent Tenant's belongings. She stated that on 29 September 2020 a cleaner had attended at the dwelling. The Appellant Landlord gave evidence that she had taken the keys to the dwelling from the cleaner when he had finished and had left the door to the dwelling opened. She stated that

she had sent a text message to the Respondent Tenant in respect of collecting her remaining items to which she stated she had received a hostile response. The Appellant Landlord gave evidence that she had taken a small number of the Respondent Tenant's items out of the dwelling and had placed them in the garage and she had informed the Respondent Tenant that the said items could be collected from the garage. She stated that the items that the Respondent Tenant had left in the dwelling were items such as masks, plants and seeds and she referred the Tribunal to a photograph (page 86, Casefile 1) which she indicated showed the totality of the Respondent Tenant's possessions remaining at the dwelling.

On questioning by the Respondent Tenant's representative, the Appellant Landlord again confirmed that she hadn't given a notification to the Respondent Tenant pursuant to Section 25 of the Act and she indicated that, at the time, she wasn't aware of the need to do so. She also confirmed that no warning letters regarding the waste disposal situation had been sent to the Respondent Tenant as she stated that she didn't want to ignite issues with the Respondent Tenant. On further questioning, the Appellant Landlord confirmed that she had taken the keys from the cleaner on 29 September 2020 as she didn't know what to do at the time.

Evidence of Ms. Anne-Marie Hynes

Ms. Hynes gave evidence that she had previously resided in the dwelling for a period of three years. She stated that there was no issue with mould in the dwelling and that an issue with a leak in the roof over the bay window had been fixed. Ms. Hynes gave her opinion of the Appellant Landlord as being a kind-hearted and generous woman who was always available. On questioning by the Respondent Tenant's representative, she confirmed she had moved out of the dwelling in November 2013 some six years before the Respondent Tenant had moved in.

Closing Submission

It was submitted on the Appellant Landlord's behalf that it was accepted that the Notices of Termination had been served without warning letters. However, it was submitted that the Appellant Landlord was rightfully concerned and had acted in the best interests of all parties concerned. It was further submitted that the Respondent Tenant's claim for the loss of her goods was questionable and that she had exaggerated the situation. By way of concluding remark, the Appellant Landlord's representative stated that any damages awarded should be proportionate to what had happened.

Respondent Tenant's case:

Evidence of Ms. Gwen Rowan

Ms. Rowan, the Respondent Tenant, gave evidence that she was "blindsided" by the events of 5 August 2020 which led to the serving of the Notice of Termination. She stated that she had made it clear to the Appellant Landlord that she wouldn't be present in the dwelling during a portion of the day and had been asked that the workman, engaged by the Appellant Landlord, would not enter the dwelling whilst she wasn't there. The Respondent Tenant gave further evidence that, during the course of the day, the Appellant Landlord had indicated that she was going to let the workmen enter the dwelling whilst she was away. As a result, she stated that she had cancelled her meeting in order to be present in the dwelling at the time. However, she stated that, despite cancelling her meeting, the workmen did not attend the dwelling.

The Respondent Tenant gave evidence that the Notice of Termination had been sent by the Appellant Landlord via a text message during the course of the events of 5 August 2020. She stated that, having received the said notice, she felt under pressure to leave the dwelling and feared being evicted and as a result she detailed that she had hastily organised a new tenancy which was a fixed term 12 month tenancy with rent, to include utilities, at €900 per month. The Respondent Tenant gave evidence that on 29 September 2020 she had arranged for a cleaner to attend at the dwelling and that she had left to allow him carry out a thorough cleaning of the dwelling. She stated that she had instructed the cleaner to leave the keys in a safe place in the dwelling and she stated that she intended to return in order to complete any further cleaning that may have been required. The Respondent Tenant gave evidence that she had received a text message from the Appellant Landlord on the afternoon of 29 September 2020 where she confirmed that she had taken possession of the Respondent Tenant's keys. She confirmed that she hadn't given the Appellant Landlord permission to enter the dwelling and she stated that, having received a further message from the Appellant Landlord, she believed it would not be possible for her to re-enter the dwelling. The Respondent Tenant also gave evidence that she hadn't recovered some of her possessions as she didn't feel safe re-attending at the dwelling.

On questioning by the Appellant Landlord's solicitor, the Respondent Tenant confirmed that she was preparing to leave the dwelling on 29 September 2020 if the cleaner's work had been sufficient and she also confirmed that she had moved into her new dwelling on this date. On further questioning, the Respondent Tenant gave evidence that she hadn't attempted to recover her possessions which remained in the dwelling as she was told by the Appellant Landlord that she wasn't welcome. She also described the photograph referred to by the Appellant Landlord as not presenting a complete view of all of her possessions and she stated that she also had a car roof panel at the dwelling which wasn't included in the photograph. The Respondent Tenant also confirmed that she hadn't told the Appellant Landlord that she was moving out as she'd been advised not to.

Evidence of Ms. Michelle Fletcher

Ms. Fletcher gave evidence that she attended at the dwelling on 18 August 2020 as part of the service she was providing to the Respondent Tenant as an occupational therapist. She stated that she had carried out a thorough inspection of the dwelling including looking into the cupboards in the dwelling and she confirmed that she had not seen any damage.

Closing Submission

It was submitted on the Respondent Tenant's behalf that the Notices of Termination served were invalid and that the Appellant Landlord had breached the Landlord and Tenant relationship. It was further submitted that by taking the keys on 29 September 2020 the Appellant Landlord had denied the Respondent Tenant access to the dwelling. The Respondent Tenant's representative also submitted that the Respondent Tenant had incurred costs arising from the matters complained of and that she had been greatly affected by having to find alternative accommodation. Finally, it was submitted that the Respondent Tenant believed that the Appellant Landlord had not provided her with an opportunity to recover her possessions.

6. Matters Agreed Between the Parties

- (i) The tenancy commenced on 1 July 2019.
- (ii) The rent for the dwelling was €600 per month.
- (iii) No security deposit was paid by the Respondent Tenant at the commencement of the tenancy.

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 thereof, are set out hereunder.

7.1 Finding: The Tribunal finds that the Notice of Termination served on the 5 August 2020 and the Notice of Termination served on the 14 August 2020 in respect of the tenancy at Harbour Field House, Barry More, Kiltoom, Co. Roscommon, were invalid. Accordingly, arising from the unlawful termination of the Respondent Tenant's tenancy, the Appellant Landlord shall pay the total sum of €2,500 to the Respondent Tenant.

Reasons:

1. Part 4 of the Act sets out a scheme by which certain Tenants of residential premises enjoy the benefit of a degree of statutory security of tenure. In accordance with Chapter 2 of that Part, a Tenant who has been in occupation of a residential dwelling for a continuous period of 6 months enjoys, primarily, the right to continue in possession as a Tenant for the period of six years from the commencement of the tenancy, or until the expiration of a period of notice, whichever is the later. This is known as a 'Part 4 tenancy'.
2. It is common case that the Respondent Tenant commenced a tenancy of the dwelling on 1 July 2019. It was also accepted by the Appellant Landlord that no notice in writing was served on the Respondent Tenant before the commencement of the tenancy pursuant to the provisions of Section 25 of the Act. Therefore, in respect of the case before it, the Tribunal finds the Respondent Tenant enjoyed a 'Part 4 tenancy'.
3. A 'Part 4 tenancy' may be terminated by a Landlord in accordance with the provisions of Section 34 of the Act on one or more of the grounds specified in the Table to the said Section. Paragraph 1 of the Table to Section 34 states that a valid ground for termination arises if a Tenant has failed to comply with any of her obligations, in relation to the tenancy, and the Tenant has been notified in writing of the failure by the Landlord and that notification states that the Landlord is entitled to terminate the tenancy if the failure is not remedied within a reasonable time specified in that notification and the Tenant does not remedy the failure within that specified time.
4. Section 62 of the Act sets out the information that must be contained in a Notice of Termination for it to be valid. Pursuant to Section 62, a valid Notice of Termination must: be in writing; be signed by the Landlord or her authorised agent; specify the date of service of it; state the reasons for the termination; specify the termination date, and; 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 Board under Part 6 within 28 days from the date of receipt of it. Section 6(1) of the Act states that a notice required to be served under the Act shall be addressed to the person concerned by name and may be served on or given to the person by, inter alia, leaving it at the address at which the person ordinarily resides.

5. The Appellant Landlord in this case sought to terminate the tenancy on the basis that the Respondent Tenant was in breach her obligations as a Tenant by: (i) blocking the Appellant Landlord and her workmen from having access to the dwelling on 5 August 2020; (ii) failing to comply with a system of waste disposal; (iii) failing to maintain a basic standard of cleanliness within the dwelling, and; (iv) failing to communicate her intentions to the Appellant Landlord in respect of vacating the dwelling. Accordingly, in order to terminate the tenancy, the Appellant Landlord was required to serve a warning letter notifying the Respondent Tenant of her alleged breaches and giving her a reasonable period of time to remedy the failure. It was accepted by the Appellant Landlord that no such warning letters were served in advance of the said Notices of Termination.

6. Furthermore, the Notice of Termination served on 5 August 2020 was sent via a Whatsapp text message. The said Notice was therefore not in writing as required pursuant to Section 62 nor was it validly served in accordance with Section 6 of the Act.

7. Taking into account the matters referred to hereinabove, the Tribunal finds that the Notice of Termination served on the Respondent Tenant on 5 August 2020 and the Notice of Termination served on the Respondent Tenant on 14 August 2020 are both invalid.

8. As a result of the serving of the invalid Notices of Termination, the Tribunal finds that the Respondent Tenant left the dwelling. Accordingly, the Tribunal finds that the Respondent Tenant is entitled to damages arising from same and in this regard the Tribunal finds that the appropriate level of damages in the circumstances is €2,500. The Tribunal makes this award being satisfied that the Respondent Tenant suffered from inconvenience and stress associated with finding new accommodation and arising from moving out of the dwelling. In making this award, the Tribunal also takes into account the fact that the Appellant Landlord took possession of the Respondent Tenant's keys to the dwelling on 29 September 2020. In this regard, the Tribunal is satisfied that the Respondent Tenant intended to leave the dwelling either on the said date or on the following day. Therefore, the Tribunal finds that the Respondent Tenant was denied access to the dwelling for a period of, at most, one day and the award made reflects this finding. The Tribunal also notes that the Respondent Tenant initially made a claim for €551.75 in respect of personal possessions which she stated she had left in the dwelling and was unable to recover. In this regard, the Tribunal is not satisfied that the Respondent Tenant is entitled to recover this amount as the Tribunal finds that the Respondent Tenant was provided with an opportunity to recover the said possessions but did not avail of this opportunity.

9. Accordingly, the Tribunal finds that the Appellant Landlord shall pay the Respondent Tenant the sum of €2,500.

8. Determination:

In the matter of Eileen Chaudhry, Appellant Landlord, and Gwen Rowan, Respondent Tenant, the Tribunal, in accordance with Section 108(1) of the Residential Tenancies Act, 2004, determines that:

The Appellant Landlord shall pay the total sum of €2,500 to the Respondent Tenant within a period of 56 days of the date of issue of this Determination Order, being damages of €2,500 for the consequences of unlawfully terminating the Respondent Tenant's tenancy of the dwelling at Harbour Field House, Barry More, Kiltoom, County Roscommon, N37XD96.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 11/06/2021.



Signed:

Andrew Nugent, Chairperson

For and on behalf of the Tribunal.