

## **Residential Tenancies Board**

### **RESIDENTIAL TENANCIES ACT 2004**

#### **Report of Tribunal Reference No: TR0121-004631 / Case Ref No: 0820-64046**

<b>Appellant Landlord:</b>	Sansovino Property Company Limited
<b>Respondent Tenants:</b>	Marie Lopez, Daniel Pomares Espadina
<b>Address of Rented Dwelling:</b>	Apartment 1, Glashaus Broadfield House, Belgard Square West, Tallaght, Dublin 24, D24X766
<b>Tribunal:</b>	Helen-Claire O'Hanlon (Chairperson) Niall Buckley, Dairine Mac Fadden
<b>Venue:</b>	Ormond Meeting Rooms  Telephone Conference Tribunal
<b>Date &amp; time of Hearing:</b>	19 May 2021 at 2:30pm
<b>Attendees:</b>	For the Appellant: Richard Fleming (Representative for the Appellant Landlord)  For the Respondent: Daniel Pomares Espadina (Respondent Tenant)
<b>In attendance:</b>	RTB appointed Stenographer / Logger

#### **1. Background:**

On the 17th of August 2020 the Tenants made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 78 of the Act. The matter was referred to an Adjudication which took place on the 28th of October 2020. The Adjudicator determined that:

"In the matter of Daniel Pomares Espanida & Marie Lopez [Applicant Tenants] and Sansovino Property Company [Respondent Landlord], the Residential Tenancies Board, in accordance with Section 97 of the Residential Tenancies Act, 2004, determines that:

The Respondent Landlord shall pay the total sum of €950 to the Applicant Tenants within 14 days of the date of issue of the Determination Order, being damages for breach of landlord obligations under section 12(1)(b) of the 2004 Act, in relation to the tenancy of the dwelling at Apartment 15, Glashaus Broadfield House, Belgard Square West, Tallaght, Dublin 24."

Subsequently an appeal was received from the Landlord on the 20th of January 2021. The grounds of the appeal were stated to be Standard and maintenance of dwelling. The application for an appeal was approved by the Board on the 30th of March 2021.

The RTB constituted a Tenancy Tribunal and appointed Niall Buckley, Helen-Claire O'Hanlon, and Dairine Mac Fadden as Tribunal members pursuant to Section 102 and 103

of the Act and appointed Helen-Claire O'Hanlon to be the chairperson of the Tribunal ("the Chairperson").

On 20th 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 the 19th of May 2021 the Tribunal convened a Telephone Conference Tribunal Hearing at Ormond Meeting Rooms, Ormond Quay, Dublin 7 (External Venue).

**2. Documents Submitted Prior to the Hearing Included:**

RTB Tribunal case files.

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

None.

**4. Procedure:**

At the outset, the Chairperson asked the parties on the telephone conference 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 Residential Tenancies Board (the RTB) in relation to the case and that they had received the RTB document entitled "Tribunal Procedures". The parties confirmed that they had done so and it was confirmed that they had read and understood them. The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be conducted as informally as was possible. The Chairperson said that members of the Tribunal might ask questions of both parties from time to time. She also stated that the parties must follow any instructions given by the Chairperson and directed that neither party should interrupt the other when oral testimony is being given.

The Chairperson explained that the Tribunal had considered all the documentation which had been submitted and that this was a de novo appeal. In terms of running order, it was outlined that, as this was the Appellant Landlord's appeal they would be invited to present their case first and that there would be an opportunity for questions on behalf of the Respondent Tenants. The Tenants would then be invited to present their case, and then there would be an opportunity for cross-examination on behalf of the Landlord. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson indicated that she would be willing to clarify any queries in relation to the procedures either then or at any stage during the course of the Tribunal hearing. The parties were advised that if they wished to enter into confidential, without prejudice negotiations with a view to resolving the dispute between them, that the Tribunal would facilitate those discussions. It was also explained that the decision of the Tribunal would be in the public domain.

The Chairperson stated that all evidence would be taken on Affirmation and be recorded by the official stenographer present and she reminded the parties that knowingly providing false or misleading statements or information to the Tribunal was an offence. It was

explained to the parties that as a result of this Hearing, 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 pursuant to Section 123(3) of the 2004 Act. All persons giving evidence to the Tribunal then gave an affirmation.

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

Submissions on behalf of the Appellant Landlord:

Evidence of Richard Fleming:

The Landlord's representative said that he firstly wished to confirm that the address was correct, and the Tribunal noted that this had been agreed by the parties to be Apartment 1 Glashaus Broadfield House, Belgard Square West, Tallaght, Dublin 24.

In relation to the complaint by the Tenants that they had been raising the issue of a leak and mould in their store room and leaking water into their kitchen, the representative said that the Tenants had been sending emails to the wrong email address for a number of months. He said that the email address for the management agents had been changed and the address the Tenants were using had been deactivated. He said in the circumstances, the Landlord had addressed the issues once the correspondence was sent to the correct address.

The representative also submitted that the level of damages awarded at adjudication was too high. He submitted that at the date of the hearing, most of work had been completed. He said the only works which remained to be done was the re-painting of the storage room and that this just needed to be arranged at a time agreed with the Tenants.

The representative was asked to comment on the documentation which had been submitted by the Tenant, including a "House Rules" document which gave the old email address. He accepted that a sign had been up in the complex and said at some stage all tenants were notified that they should communicate issues to the new email address.

The representative was cross examined by the Tenant and asked about emails he had been sent to his personal email address the week before. He said that he receives hundreds of emails and does not remember them all or whether he replied.

He was asked about when he first received emails about the mould. He said that the Tenants had forwarded him emails from February 2020 onwards but that these had originally been sent to a defunct email address so he had not received them.

In conclusion, the representative said that the Landlord is happy to do the remaining works in the dwelling and submitted that the assessment of damages at adjudication was too high.

Submissions on behalf of the Respondent Tenants:

Mr Espadina confirmed that he was representing both Tenants. He stated that he had submitted all the evidence he had to the RTB and it was contained in the case files. He said that he had a timeline of all the emails they had sent the Landlord about the mould. He listed a number of emails which had been sent in February, March, April and May 2020 and a further email in July 2020. He said that after the email in July he made an application for dispute resolution to the RTB and then the Landlord started taking steps so there were no further emails.

The Tenant submitted that all the emails were sent to the old address, which was on the "House Rules" document posted in the apartment complex. He also said that he received "autoreplies" from the new email address on all the dates when he had sent emails, so it was clear that the emails sent to the old email address were being forwarded to the new email address. He said that he looked up the domain name registry and both "comerproperty.ie" and "comergroupireland.ie" are both registered to the same owner so they are clearly both active and under the organisation's control.

The Tenant referred further to text messages which he had submitted, which he said demonstrated a maintenance worker for the Landlord seeking same-day access to the dwelling and then not responding to a counter-suggestion of several days the following week. He stated that they have never prevented access to the dwelling for the works to be completed. However, the Tenants are both working and want to be there if there are people coming into their home to do works. He said that a similar incident had occurred the week of the Tribunal hearing, that a representative of Comer Group came to the dwelling with no notice and insisted on coming in to do a check of the property, even though he told him his partner had symptoms of Covid 19 and asked him to come another day. Despite this, the person came in and started taking pictures. The Tenant said that this was unprofessional and he was disgusted by it.

The Tenant said they are paying their rent and complying with their obligations and are respectful of the owner and the agency but he is unhappy with how they have been dealt with. He said that he wanted the Landlord's agents to agree times in advance when they would attend to do repairs and he wants them to comply with their obligations to carry out necessary works.

The Tenant was cross-examined by Mr Fleming. He was asked would the Tenants be happy for the Landlord to do the necessary mould treatment and painting if a date and time could be agreed in advance. The Tenant confirmed that he would be.

He said he felt there was a communication breakdown between the maintenance workers and the Landlord's agency. He said that the leak had been fixed, and the mould had been treated. Then after that was done, some more mould appeared and the workmen came back and scraped off the mould. This was in the storeroom but in a different place. He said they needed to paint that area.

In conclusion, the Tenant said that at the heart of his claim was the issue that they had to wait so long to get something sorted which was urgent. He said that his health and his partner's health and their child's health was at risk due to the mould. He said they had to wait for months for something to be done. He said it takes a lot of time to get anything done and the time has a significant value to him.

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

- The tenancy commenced on the 5th of March 2017
- The tenants remain in occupation of the dwelling
- The rent is €1,455 per month
- The landlord retains a deposit of €2,182.50 in respect of the tenancy.

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

Finding No 1: The Tribunal finds that the Appellant Landlord is in breach of its obligation in failing to properly maintain the dwelling and is liable for damages in the sum of €950.

Reason: Pursuant to section 12(1)(b) of the Act, a landlord is obliged to carry out such repairs to a dwelling as are necessary from time to time. This means that a landlord must ensure that repairs which are required to the exterior and structure of the dwelling are carried out. Further, repairs and replacement of fittings to the interior of the dwelling must be carried out as necessary, to maintain a dwelling in (at least) the standard that it was in at the start of the tenancy, and also in order that it complies with regulations. A tenant is required, pursuant to s.16(d) of the Act, to notify a landlord of any defect which arises in the dwelling, to enable them to comply with their obligations.

Minimum standards for rented dwellings are set out in the Housing (Standards for Rented Houses) Regulations 2019 and include inter alia the requirement that a building in which a dwelling is contained must be free from damp and in good structural repair. The Regulations require the landlord to maintain the property in a sound state, inside and out, including the roof, windows, floors, ceilings, walls, stairs, doors, skirting boards etc, all of which must be maintained in good condition and repair and must not be defective due to dampness or otherwise.

Having regard to the evidence set out heretofore, the Landlord was on notice of an issue in relation to minimum standards from February 2020 onwards. The Landlord's claim that the emails sent by the Tenants between February 2020 and July 2020 were sent to the wrong address and therefore not received, is not accepted.

The Tenants submitted numerous emails which they had sent to the Landlord during and after that period, which were sent to the old email address and to which they received replies. In particular, in August 2020, the Tenants sent an email to the old email address seeking the removal of a bed so that they could set up a home office due to Covid 19 restrictions. The Landlord's agent replied promptly seeking payment of a furniture removal fee.

The Tribunal also noted that in the first named Tenant's email of the 2nd of July 2020 (page 16 CF1) she referenced multiple previous notifications and stated "I don't know how many of your maintenance crew already took a look at the mold [sic]...6 may be 8 different ones?". It is clear therefrom that the Landlord was fully on notice of the issue for several months and failed to take appropriate steps to resolve it.

The Tribunal notes that it was not until late 2020 when the leak was finally fixed, and the mould treated. By the date of the Tribunal some painting work remained to be done. There was nothing in the documentation submitted by the parties to suggest that the Tenants had prevented access to the dwelling for the purpose of completing the works.

Section 16(e) of the Act requires a tenant to allow a landlord, or a person acting on the landlord's behalf, reasonable access to the dwelling for the purposes of allowing works to be carried out. Reasonable access does not mean that a Tenant must allow maintenance workers enter their home who turn up without notice or give less than one day's notice. The Tribunal notes that the Landlord's representative indicated the Landlord is anxious to carry out any outstanding repairs and finalise the works and accordingly will agree a time in the near future with the Tenants when this can be done.

In all the circumstances, the failure to address the issues in the dwelling for a period of several months caused a reduction in the quality of the Tenants' living environment.

Noting that the maximum damages for a breach of landlord obligations which the Tribunal may award is €20,000, the Tribunal assesses this case to be at the lower end of the scale in terms of the gravity of loss and inconvenience suffered by the Tenants. However, the Tribunal is satisfied that the Tenants endured ongoing inconvenience, loss of amenity and a legitimate health concern for several months as a consequence of the Landlord's failure to comply with its obligations under the Act. As such, the Tribunal finds the sum of €950 as being appropriate damages for this prolonged discomfort, inconvenience and distress.

#### **8. Determination:**

In the matter of Sansovino Property Company, Appellant Landlord, and Marie Lopez and Daniel Pomares Espadina, Respondent Tenants, the Tribunal in accordance with Section 108(1) of the Act determines that:

The Appellant Landlord shall pay the total sum of €950 to the Respondent Tenants, within 21 days of the date of issue of the Order, being damages for breach of landlord obligations under section 12(1)(b) of the Residential Tenancies Act 2004 in failing to carry out necessary repairs, in respect of the tenancy of the dwelling at Apartment 1 Glashaugh Broadfield House, Belgard Square West, Tallaght, Dublin 24, D24X766.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 20/05/2021.

**Signed:**



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**Helen-Claire O'Hanlon Chairperson**

For and on behalf of the Tribunal.