

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0121-004642 / Case Ref No: 1020-65613

Appellant Tenant:	Said El Mouden
Respondent Landlord:	Brenda Mackin Millar
Address of Rented Dwelling:	Studio 4 An Dun, 13a Camac Park, Bluebell, Dublin 12, D12PT73
Tribunal:	Finian Matthews (Chairperson) James Egan, Anne Leech
Venue:	Telephone Conference Tribunal - Ormond Rooms
Date & time of Hearing:	19 May 2021 at 2:30
Attendees:	For the Appellant Tenant: Said El Mouden, Appellant Tenant For the Respondent Landlord: Brenda Mackin Millar, Respondent Landlord
In Attendance:	RTB appointed stenographer/logger

1. Background:

On 15/10/2020 the Tenant made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 76 of the Act. The matter was referred to an Adjudication which took place on 09/11/2020. The Adjudicator determined that In the matter of Said El Mouden [Applicant Tenant] and Brenda Mackin Millar [Respondent Landlord], the Residential Tenancies Board, in accordance with Section 97 of the Residential Tenancies Act, 2004, determines that:

The Applicant Tenant's application, regarding alleged unlawful termination of tenancy in respect of the tenancy of the dwelling at Studio 4, An Dun, 13a Camac Park , Bluebell, Dublin 12 is not upheld.

Subsequently the following appeal was received:

Tenant : received on 28/01/2021. The grounds of the appeal: Unlawful termination of tenancy (Illegal eviction) ; Approved by the Board on 22/02/2021

The RTB constituted a Tenancy Tribunal and appointed James Egan, Finian Matthews and Anne Leech 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 27/04/2021 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 19/05/2021 the Tribunal convened a hearing at Telephone Conference Tribunal - Ormond Meeting Rooms, Dublin.

2. Documents Submitted Prior to the Hearing Included:

RTB File.

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

Opening the hearing the Chairperson stated that it had been established to hear an appeal by the Appellant Tenant, Said El Mouden, against a determination made following an adjudication held on 9 November, 2020 in the case of a dispute between the tenant and the Respondent Landlord, Brenda Mackin Millar, in respect of the tenancy of a dwelling at Studio 4, An Dun, 13a Camac Park, Bluebell, Dublin 12. He introduced the members of the Tribunal to the parties.

He asked the Parties to identify themselves and to state the capacity in which they were participating in the hearing. He confirmed with the Parties that they had received the relevant papers from the RTB in relation to the case and that they had received and understood the RTB document entitled "Tribunal Procedures". The Chairman said that he would be happy to clarify any queries in relation to the procedures at any stage over the course of the Tribunal hearing.

The Chairperson 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 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 Chairperson also stated that it was against the law for anyone giving evidence 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 RTB 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 Tenant would be invited first to present his case; this would be followed by an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present her case, followed by an opportunity for cross-examination by the Appellant Tenant. 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.

The Chairperson said that at the end of the hearing, both the Appellant Tenant and the Respondent Tenant would be given the opportunity to make a final submission should they so wish.

The Chairperson reminded the Parties that the Determination Order of the RTB, 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 Chairperson stated that the Tribunal would be willing to consider a short adjournment for the purpose of allowing the parties, should they so wish, to enter without prejudice negotiations to try to reach a consent settlement of their dispute.

All persons giving evidence to the Tribunal made an affirmation.

5. Submissions of the Parties:

Appellant Tenant's Case:

The Appellant Tenant told the Tribunal that he had left the dwelling on 6 October, 2020 to stay with a friend who lives in Blanchardstown because another tenant in the same building had assaulted him and told him he was 'going to make his life hell'. However, he said all his belongings were still in the dwelling including his passport and work permit documentation. He said that he was evicted on 12 October and received an e-mail from his landlord asking for the keys back. He added that he had not moved out as had been suggested and that after he was evicted he became homeless and had to move into emergency accommodation.

The tenant said that he needs to get his documents back to help him to secure alternative accommodation. He said that when he attended at the dwelling for this purpose the landlord wanted him to sign a document accepting that he had not been evicted but he refused to do so. The Gardai had also attended at the time, but said that the dispute between him and his landlord was a civil matter.

The tenant said that at an earlier stage, one of the other tenants had thrown his clothes in a bin, where he found them later. He said he told the landlord's husband about this, but was told that he had to leave the dwelling because of an RTB determination order that had been served on him and the landlord. He said that 28 days after the determination order was served the landlord asked for the keys back; however he said he told the landlord's husband he was not leaving and that the landlord had no right to evict him. Nevertheless he said that was what the landlord had done and he was now homeless.

In other evidence the tenant said the Gardai had contacted the landlord as a result of which a meeting was set up at the dwelling on 16 October. However, at that meeting he said the landlord wanted him to sign a document which he believed required him to agree that his eviction was in order. Instead of doing that, he said he went to the RTB and also got Threshold involved. He also said that he cannot afford to pay the storage costs for his belongings, but he wants his important documents back. He submitted that it is illegal for landlord to hold these documents.

In a closing submission the tenant said that he has been living in very difficult circumstances for the last 6 months, that something needs to be done about his belongings and that it is not reasonable for him to have to pay the costs of storing these.

Respondent Landlord's case

The Respondent Landlord, Ms. Mackin Millar said that after she received RTB Determination Order, DR0220-60772, relating to a previous dispute application, on 11 September, 2020 she e-mailed the tenant with a copy of the order and a statement of his

rental account showing that he owed rent arrears of almost €6000 as at 2 October, 2020. She said she advised him that he had 28 days from the date he had received the Determination Order to vacate the dwelling and return the keys. On that basis she advised the tenant that it was her expectation that he would vacate the dwelling and remove all his belonging by not later than 12 October, 2020.

The landlord said that there had been no sightings of the tenant at the building where the dwelling is located over July and August, 2020 and based on inspections of CCTV and other investigations she carried out she came to the conclusion that he was living elsewhere. She also said that on 6 September, 2020 she could confirm from CCTV that the tenant removed a lot of his belongings from the dwelling in black plastic bags. On that day also she said her husband gave him a hard copy of the RTB's determination order requiring him to vacate.

The landlord said that on 9 and 12 October, 2020 she again checked the CCTV and confirmed that the tenant had not returned to the dwelling since 6 October. She said she also tried to phone the tenant several times on the morning of 12 October, but got no reply. At around 1.00 p.m. that day she said she entered the dwelling with a locksmith, and found that there was no food or bedding present, but there were some clothes, shoes and electrical appliances there. She said photographs were taken of the dwelling and what was still in the dwelling and the locks were changed.

The landlord said that on the following morning, 13 October, 2020 she e-mailed the tenant advising him that since the time period for complying with the RTB's determination order requiring him to vacate had expired she had changed the locks and codes for the dwelling and had informed Clondalkin Garda Station. She said that the tenant replied and said he wanted to collect his belongings on 15 October. However, she said the tenant came back on 14 October and broke into the building by climbing through window. She said that she contacted the Gardai and they removed the tenant from the premises.

Ms. Mackin Millar said that on 15 October, 2020 she e-mailed the tenant about making arrangements for him to collect his dwellings on the following day, 16 October. She told the tenant she had been advised by the Gardai, that he did not wish to take a bed, carpet and electrical appliances he had left behind and that he only required his clothes, passport, other documentation and a suitcase left in the dwelling and said she would be asking him to sign a document confirming this. She said that the tenant attended at the dwelling on 16 October, that the Gardai also attended, but the tenant refused to sign the document relating to the belongings he wished to take and those he wished to leave behind. She said he left without his belongings.

The landlord also said that a number of repairs had to be carried out in the dwelling and these were done on 19 October, 2020 at a cost of €539.

The landlord said she heard nothing further from the tenant until she was contacted by Threshold on 19 January, 2021. She said she advised Threshold that the tenant's belongings were stored in a secure 10 foot container at a cost of €25 per week and that he could get these back, subject to his paying the storage costs. She added that she had not prepared a detailed inventory of the tenant's possessions.

In response to questions from the Appellant Tenant, the landlord submitted that it was reasonable for her to have assumed that he had vacated the dwelling; she agreed that on previous occasions he had informed her he was going on holidays, but she said she considered the situation that arose in the summer of 2020 was different. She agreed also

that she doesn't know specifically what was in the black bags the tenant removed from the dwelling. Asked if she got permission to change the locks, the landlord said she had checked with the RTB who she said had informed her that she could take possession if she was satisfied that the tenant had vacated.

Asked by the Tribunal how she knew the tenant was living elsewhere the landlord said that investigations she had carried out led her to an address in Ballybrack and that other tenants had also told her that was where the Appellant Tenant was living.

In closing her case, the Respondent Landlord said she needs some guidance on what should happen in relation to the tenant's belongings that are held in storage. She believes however that the tenant should pay for the storage costs involved.

The Chair thanked both parties and advised them that following the hearing the Tribunal will prepare a report and make its Determination in relation to the dispute and will notify the RTB 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 26 April, 2016
- The rent initially was €550 per month
- The rent was subsequently increased to €580.25 per month
- The Appellant Tenant paid a deposit of €1100
- The deposit has been retained by the Respondent Landlord.

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 1: The Tribunal finds that the tenancy was unlawfully terminated by the Respondent Landlord.

Reasons: Under sub-section (1) of section 58 of the Act, a tenancy may not be terminated by a landlord or a tenant by means of a notice of forfeiture, a re-entry or any other process or procedure not provided for under the Act.

The Tribunal finds on the evidence that the Respondent Landlord re-entered the dwelling on 12 October, 2020 for the purposes of taking possession of the dwelling in circumstances where the Appellant Tenant could not be deemed to have abandoned the tenancy.

Having regard to the manner in which the termination of the tenancy was effected the Tribunal is satisfied that, in contravention of the provisions of sub-section (1) of section 58

of the Act, the tenancy was terminated by means of a process other than one provided for under the Act.

Finding 2: The Tribunal finds that the Appellant Tenant is entitled to damages in the amount of €2000 in respect of the unlawful termination of the tenancy.

Reasons: The Tribunal accepts, on the evidence, that the Appellant Tenant suffered loss and inconvenience as a result of the unlawful termination of the tenancy by the Appellant Landlord.

The Tribunal in accordance with its powers under section 115 of the Act directs that damages in respect of the unlawful termination of the tenancy in the amount of €2000 shall be paid by the Respondent Landlord to the Appellant Tenant.

In determining the appropriate quantum of damages to be awarded to the Appellant Tenant, the Tribunal has taken the following into consideration:

(a) The tenant had to move into emergency accommodation following the termination of the tenancy.

(b) While the Tribunal has held that the landlord was not entitled to enter on 12 October, 2020, for the purposes of taking possession of the dwelling, the landlord is considered, on the basis of the information available to her at the time, to have had reasonable grounds for her belief that the tenant had vacated on the basis of a determination order of the RTB dated 26 August, 2020 served on the tenant on 11 September, 2020 under reference DR0220-60772.

(c) The landlord in entering the dwelling for the purposes of securing it was seeking to fulfil her obligations to safeguard the health and safety of other residents who had tenancies in the same building as the Appellant Tenant, over a period when significant Government restrictions on movement were in place to cope with the Covid-19 global pandemic.

(d) At the time of the unlawful termination the tenant was subject to 3 separate notices of termination, with dates of service respectively of 9 January, 2020, 15 January, 2020 and 21 February, 2020, each of which had been found to be valid under the determination order of the RTB dated 26 August, 2020 made on foot of separate proceedings and served on the tenant and the landlord on 11 September, 2020. That determination order required the Appellant Tenant to vacate and give up possession of the dwelling within 28 days of the expiration of the emergency period as defined in section 3 of the Emergency measures in the public interest (Covid-19) Act, 2020.

(e) The determination order dated 26 August, 2020 reference above also required the tenant to pay rent arrears and utility payments in the amount of €2,938.46 owed by him as at 8 June, 2020 the date of the adjudication hearing on foot of which the determination was made. The unchallenged evidence furnished to the Tribunal showed that the tenant paid no further rent or utility payments after that date, with the result that he had accumulated arrears of €5,791.99 by 26 September, 2020. The Tribunal notes the amount of these arrears but makes no order in relation to them, since the issue before this Tribunal is the tenant's appeal against the adjudicator's determination made as a result of the adjudication held on 9 November, 2020 in relation to the alleged unlawful termination of the tenancy. The Tribunal also notes that the last rent payment of any amount shown to have been made by the tenant was in January, 2019.

Finding 3: The Tribunal makes no determination in relation to the Appellant Tenant's belongings remaining in the dwelling after the termination of the tenancy.

Reasons: The Residential Tenancies Acts make no provision in relation to the issue of a tenant's belongings remaining in the dwelling after a tenancy has ended. The position under common law is that those belongings remain the tenant's property and do not become the landlord's property. The landlord in making arrangements for storage of those possessions became a bailiff for the possessions, with the return of those possessions to their owner being a matter for arrangement between the landlord and the tenant. In the absence of any provision in relation to tenant goods in the tenancy agreement, it would appear that any liability in relation to a tenant's possessions remaining in the dwelling may arise as a Tort i.e. an alleged wrongdoing whereby a person causes damage or injury to another and can be sued for their actions. The pursuit of any legal remedy in relation to any such alleged wrongdoing would be outside the jurisdiction of the RTB.

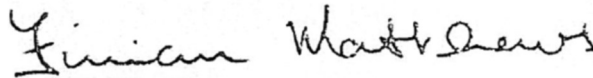
8. Determination:

In the matter of Said El Mouden, Appellant Tenant and Brenda Mackin Millar, Respondent Landlord, the Tribunal in accordance with section 108(1) of the Act, determines that:

The Respondent Landlord shall pay the sum of €2,000 to the Appellant Tenant, within 14 days of the date of issue of this Order, being damages for the unlawful termination of the tenancy, in respect of the tenancy of the dwelling at Studio 4, An Dun, 13a Camac Park, Bluebell, Dublin 12.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 27 June, 2021.

Signed:



Finian Matthews Chairperson

For and on behalf of the Tribunal.