

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0122-005277 / Case Ref No: 0821-71744

Appellant Landlord:	NRPG Limited
Respondent Tenant:	Ghulam Jaral
Address of Rented Dwelling:	49 Dún Darrach, Dublin Road, Longford, N39C2R6
Tribunal:	Dervla Quinn (Chairperson) Eoin Byrne, John Keaney
Venue:	Virtual hearing
Date & time of Hearing:	09 May 2022 at 11:00 a.m.
Attendees:	Tom O'Gorman of NRPG Limited, Appellant Landlord Ghulam Jaral, Respondent Tenant Conor Lynch, Tenant's representative
In attendance:	Recording technician

1. Background:

On 13/08/2021 the Tenant 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 12/11/2021. The Adjudicator determined that: "In the matter of Ghulam Jaral (Applicant Tenant) and NRPG Limited (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 €5,000.00 to the Applicant Tenant within 30 days of the date of issue of the Determination Order, being damages of €5,000.00 for the consequences of unlawfully terminating the Applicant Tenant's tenancy of the dwelling at 49 Dun Darach, Dublin Road, Longford, Ireland."

Subsequently the following appeal was received by the RTB from the landlord on 23/01/2022. The appeal was approved by the Board on 31/01/2022.

The RTB constituted a Tenancy Tribunal and appointed Dervla Quinn, John Keaney and Eoin Byrne as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Dervla Quinn to be the chairperson of the Tribunal ("the Chairperson").

On 14/04/2022 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 09/05/2022 the Tribunal convened a Virtual Tribunal hearing.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case files.

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

The Chairperson began the hearing by introducing herself and the Tribunal members to the parties and asked the parties present to identify themselves. Mr O'Gorman stated that he was duly authorised to represent the Landlord's appeal to the Tribunal. The parties were informed that the proceedings were being recorded by a recording technician appointed by the RTB.

The Chairperson confirmed with the parties that they had received from the RTB the case file and that they had read and understood the Tribunal procedures. The Chairperson explained the procedure which would be followed, that the party who appealed the adjudicator's decision (the Appellant) would be invited to present its case first and that there would be an opportunity for cross-examination by the Respondent. The procedure would then be reversed, and the Respondent would present his case, followed by cross-examination, and that the Tribunal would question the parties on their evidence. The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official recording technician present. She reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal is an offence punishable by a fine of up to €4,000 and/or up to 6 months imprisonment or both.

The Chairperson also stated 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 [reference section 123(3) of the 2004 Act].

The parties stated their affirmation before beginning their evidence to the Tribunal.

5. Submissions of the Parties:

Landlord's evidence:

Mr O'Gorman referred to the previous determination by an earlier tribunal. The Chairperson noted that the matters considered at that tribunal could not be revisited on the grounds of Res Judicata. She stated that the issue before this Tribunal was the illegal eviction and that this was the matter that was considered by the adjudicator in November of 2021. Mr O'Gorman stated that the result from the previous determination shows that the notice that was submitted to the Tenant around November 2019 was a valid notice of termination. He stated that the actions taken around August 2021, when taking the result of the previous adjudication as being fact, when the locks were changed, that there wasn't a valid tenancy. He stated that while there were rent payments made, there had been no payments in the ten weeks leading up to the events of 13 August 2021. He stated that there were personal belongings in the house but that there was no one living there. He stated that he had wanted the Tenant to caretake the house but that he had not been there for two years. He stated that he had to deal with the Tenant somehow, that he was an unwanted occupier from 2019

onwards. He stated that the Tenant had abandoned the house for ten weeks and that he had gained access via a colleague across the road. He stated that the house was in bad shape, that the Tenant hadn't been around and had not been fulfilling his end of the agreement. He stated that he was working in the estate in houses across the road and that he saw the activity day in and day out. He stated that he fully accepts if there are mistakes made. He stated that rent was not paid during the ten weeks before he changed the locks when the Tenant was absent and that it could be seen from the submissions that the Tenant was in arrears. The Tribunal asked had there been any communications with the Tenant via WhatsApp or otherwise before the locks were changed, and Mr O'Gorman replied no. He stated that the Tenant's furniture was still stored in number 39. He stated that the rent payments were in reaction to Mr O'Gorman going in and inspecting the house and that even on the lesser rental amount due, the Tenant wasn't up to date on rent payments at the time the locks were changed.

The Tenant questioned Mr O'Gorman how had he got access to the Dwelling before he changed the locks and Mr O'Gorman confirmed that he had with the help of a friend of the Tenant. The Tenant questioned Mr O'Gorman and he confirmed that it was the Landlord's case that the Tenant was paying the lesser amount of rent of €550. The Tenant referred to a number of conversations on the phone, that Mr O'Gorman had said that he is only interested in buying and selling property. The Tenant asked Mr O'Gorman had the Tenant at any point told him to keep the furniture and Mr O'Gorman replied that the Tenant had told him he could do what he liked with it. The Tenant asked if Mr O'Gorman had given the Tenant the key or access to the property. Mr O'Gorman replied that he had given the Tenant the keys to number 39, but that the Tenant had refused as it was not new furniture, a lot of it was broken, and that the Tenant was not interested in shifting it to a new house or back to the UK. The Tenant asked was this discussed by Whatsapp and Mr O'Gorman replied that it was verbally discussed when they were in front of the house.

Tenant's evidence:

The Tenant stated that on the day that the locks were changed, the Tenant had called the police. He also stated that the rent was paid up to date and that he had had a conversation with Mr O'Gorman 2 days before. The Tribunal questioned how the conversation took place and it was confirmed by the Tenant that he had spoken with Mr O'Gorman a number of times over the phone. The Tribunal questioned the Tenant about the conversation. The Tenant replied that it was regarding gaining access to see if works could be done. He stated that a friend of his had the keys and that he had spoken to Mr O'Gorman when he was in the property. He repeated that all rent was paid but that Mr O'Gorman went in and changed the locks illegally. He stated that Mr O'Gorman does whatever he wants if the law allows it or not and that he knew that the Tenant was living there.

The Tribunal questioned the Tenant about his plans to return to Ireland and the Tenant replied that he was abroad because of the coronavirus restrictions at that point but that it was his plan was to come back in a week's time. The Tenant confirmed that he was planning on returning around 20 August 2021, that he had come back a day or two after the locks were changed but that he had left when he found out what had happened there regarding the change of the locks. He also stated that as a result of being locked out he had stayed with a friend for a few nights and then had stayed in his car, that he had not been able to find himself permanent accommodation in Ireland, that he had packed up some of his stuff in his car and that this was the reason why he had to leave Ireland as he had no references to allow him to gain a rented property.

The Tenant stated that he knew nothing about being a caretaker, that he was a tenant paying rent, that the day he was evicted he had paid rent for that month. He stated that the way he had been treated in Ireland is going to stick with him in his life, that he wanted to stay in Ireland and that he saw his future there but that after that incident he had had to leave everything he had planned in his life. The Tribunal asked the Tenant about his belongings. He replied that he had not got back any of his appliances, fridge, fridge freezer, dining tables, chairs and sofas, and that all he could bring were clothes, that his furniture could not fit in his car, and that he was only able to bring 25% of his belongings from there.

Mr O’Gorman asked the Tenant whether he was saying that he was up to date with his rent during the ten weeks and the Tenant replied that the rent was up to date. Mr O’Gorman asked if rent was due from the previous November and the Tenant replied that he was surprised that Mr O’Gorman was saying that he did not pay rent, and that he was a caretaker. Mr O’Gorman asked if the Tenant was saying that he left approximately 75% of his furniture and goods, and if he recalled the Tenant shaking his hand on the day he was leaving and that he told him that the furniture was of no value to him. Mr O’Gorman stated that he has been storing the furniture ever since and the Tenant stated that he had never told him it had no value, if it had no value, it would have been in the skip. Mr O’Gorman asked, that if that was the case, why did he instruct his friend to come and take some of his white goods and the Tenant replied that this was the first he was hearing about it, that his belongings were taken and put somewhere else without his permission or knowledge and that he didn’t even have keys for the area. Mr O’Gorman replied that the items were stored in No. 39 and that he had offered the Tenant a key. The Tenant replied that it was always valuable to have furniture in a house. Mr O’Gorman queried why the Tenant had still not made any attempt to recover the furniture. The Tenant replied that it was everything he had brought to make a house, even one little spoon. Mr O’Gorman queried where the Tenant had stayed on returning to Ireland. The Tenant replied that he had stayed with a friend named Usman at first but that Usman’s wife was heavily pregnant and she got into so much stress that he left the house and was in his car. Mr O’Gorman asked the Tenant the reason the payments were set at €550 not €750 and the Tenant replied that it was the figure Mr O’Gorman had given him sitting outside the house. Mr O’Gorman queried why the figure for everyone else was €750. The Tenant replied that Mr O’Gorman had taken him to the RTB saying he was illegally staying in property but that when the Tenant submitted the contract, he told him he was the landlord now. The Tenant replied that all he wanted was to stay away from courts and hearings and everything like that.

Closing submissions:

Landlord’s closing submissions:

Mr O’Gorman stated that the focus of the hearing was the alleged illegal eviction, that it was his point that the property appeared to have been abandoned, that he was an inadvertent landlord, that the Tenant was a squatter who had no invite, that he had made concessions along the way, but that eventually, when the property was being abandoned, that he had to deal with that.

Tenant’s closing submissions:

Mr Lynch on behalf of the Tenant stated that the Landlord did not follow the process that he was supposed to follow, that the Landlord has not proved that the property was abandoned, that the previous Tribunal report had said that there were no arrears of rent,

that a payment of rent was made on 6 August, that the Tenant has outlined the effect on him, including leaving Ireland and that the adjudicator's findings should be upheld.

6. Matters Agreed Between the Parties:

The address of the Dwelling is 49 Dun Darrach, Dublin Road, Longford, N39C2R6. The parties are correctly named in the proceedings and their contact details are with the RTB. The Landlord changed the locks to the Dwelling on 13 August 2021.

7. Findings and Reasons:

An unlawful eviction occurs where a landlord denies a tenant access to their rented dwelling and by changing the locks on 13 August 2021, the Landlord had carried out an unlawful eviction. The Tenant has suffered as a result of this. The Tenant is entitled to damages of €5,000.00 which sum will be paid by the Landlord to the Tenant within 35 days of the date of issue of the determination order.

Reasons: The events that took place on 13 August 2021 were not disputed by either party in so far as the locks were changed by the Landlord and the Tenant could not access the Dwelling other than with the consent of the Landlord. Where a landlord is found to have carried out an unlawful eviction, he/she may be ordered by the Board to allow the tenant re-entry into the dwelling and or required to pay damages up to and including €20,000. The Tribunal notes that the Tenant had been abroad for a number of weeks before the locks were changed by the Landlord and that he left the country shortly after the locks were changed and further that no application was made by either the Tenant or his representative from Threshold for the Tenant to be allowed re-entry into the Dwelling.

In accordance with Section 58 of the Act, a tenancy may only be terminated in accordance with Part Five of the Act. If there is a failure of a party to comply with a notice of termination, the remedy for a landlord is to bring a complaint to the RTB and seek enforcement of the notice through the courts if the tenant continues to fail to vacate. It is not their right to take the law into their own hands and change the locks, summarily terminating a tenancy and, often, making a tenant homeless. The actions of the Landlord in this case constitutes a serious breach of its obligations under the Act. In light of the loss suffered by the Tenant as a result, and with particular regard to the distress caused by having to source alternative accommodation for his stay in Ireland, and that the Tenant was forced to stay with friends during a time when the country was still experiencing covid outbreaks and had to sleep in his own car a number of nights, the Tribunal finds that the sum of €5,000 is an appropriate sum for damages in these circumstances. The time frame for payment of this amount of 35 days from date of issue of the determination order is reasonable in light of the duration of the case which was first lodged by the Tenant in August of 2021 and in light of the Tenant's right to a prompt remedy.

As noted during the hearing, the existence of a tenancy was determined during a previous Tribunal hearing. That Tribunal hearing also determined that there were no rent arrears in respect of the tenancy; that hearing occurred after the date of the incident in this case. As such, those matters were clearly res judicata and the Tribunal in the present case was not entitled to revisit those findings.

The Tribunal is also satisfied that the Tenant left a number of belongings in the dwelling. The Tribunal is not satisfied that the tenancy had been abandoned prior to the events of 13

August 2021. While the Tenant may not have been in the dwelling for a period of time prior to that, there were no rent arrears, as previously found. He had not vacated the dwelling; his belongings remained in the dwelling. He was simply absent, in the United Kingdom, as a result of personal circumstances. The tenancy could not be seen as having been abandoned.

8. Determination:

In the matter of NRPG Limited (Appellant Landlord) and Ghulam Jaral (Respondent Tenant), the Tribunal, in accordance with Section 108 (1) of the Residential Tenancies Act, 2004, determines that the Appellant Landlord shall pay to the Respondent Tenant the sum of €5,000, being damages for the consequences of unlawfully terminating the Respondent Tenant's tenancy of the dwelling at 49 Dun Darach, Dublin Road, Longford, N39C2R6, within 35 days of the date of issue of the determination order of the Board.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 11/05/2022.



Signed:

Dervla Quinn, Chairperson

For and on behalf of the Tribunal.