

## **Residential Tenancies Board**

### **RESIDENTIAL TENANCIES ACT 2004**

#### **Report of Tribunal Reference No: TR0123-005909 / Case Ref No: 0922-80160**

<b>Appellant Landlord:</b>	Gerry Reilly
<b>Respondent Tenant:</b>	Florin Adrian Bibart
<b>Address of Rented Dwelling:</b>	3 Greenlough Park, Ballinagh Road, Cavan, H12KH27
<b>Tribunal:</b>	Roderick Maguire (Chairperson) Ciara Doyle, Louise Moloney
<b>Venue:</b>	Virtual
<b>Date &amp; time of Hearing:</b>	17 May 2023 at 2:30 p.m.
<b>Attendees:</b>	For the Appellant Landlord: Cliadhna Sheridan, solicitor (Landlord representative) For the Respondent Tenant: Florin Adrian Bibart Shauna Smith, Threshold Representative
<b>In attendance:</b>	DTI Wordwave Stenographer

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

On 28/09/2022 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 28/11/2022. The Adjudicator determined that:

1. The Notice of Termination given orally by the Respondent Landlord to the Applicant Tenant, on the 1st of December 2021, in respect of the tenancy of the dwelling at, 3 Greenlough Park, Ballinagh Road, Cavan, H12KH27, is invalid.
2. The Respondent Landlord shall pay the total sum of €4,500 to the Applicant Tenant within 28 days of the date of issue of the Determination Order, being damages of €4,500 for the consequences of unlawfully terminating the applicant tenant's tenancy of the above dwelling.

Subsequently an appeal was received.

The RTB constituted a Tenancy Tribunal and appointed Ciara Doyle, Roderick Maguire, Louise Moloney as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Roderick Maguire to be the chairperson of the Tribunal ("the Chairperson").

On 17/04/2023 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 17/05/2023 the Tribunal convened a virtual hearing.

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

RTB Tribunal case file.

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

None.

## **4. Procedure:**

The Chairperson began the hearing by introducing himself and the Tribunal members to the parties and asked the parties present to identify themselves. 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 his case first, and that there would be an opportunity for cross-examination by the Respondent. The procedure would then be reversed, and the Respondent's representative would present their 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. He 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. The parties were afforded an opportunity to attempt to resolve matters between themselves but this was not successful. The parties intending to give evidence then stated their affirmation.

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

The Appellant Landlord's submission:

The Landlord's representative stated that two documents had been submitted she was instructed but they were not on the file. The first was a letter from an auctioneer Mr. Eamonn Gaffney which she stated was dated 28 November 2021 and which stated that he had been retained to sell the dwelling but it had been decided in April 2022 that this was too difficult due to right of way matters. A second document was from 27 March 2023, she said, and was a sales advice notice that the property was now sale agreed. She submitted that she had been instructed in the sale at this time but that she did not have the deeds from the financial institution so could not indicate what issues there had been with rights of way. She also confirmed she had not received instructions in respect of the sale prior to this.

On behalf of the Landlord it was stated that he couldn't dispute that notice had not been given in writing but that there had been notice given orally she was instructed. She was instructed that the new rent was €800 a month from the tenants that had moved in. New tenants moved in a number of weeks after the old tenants moved out.

It was submitted on behalf of the Landlord that the tenant had moved nearer work and had a better house and that the fact that the property was now being sold indicated that this was the intention of the Landlord. The Tribunal did not have the benefit of sworn oral evidence on behalf of the Landlord.

Respondent Tenant's evidence:

Mr. Bibart stated that after he and his family had been told that the house was going to be sold, he had looked for somewhere for about two months. His uncle who lived with him said he would contribute and that price was not important as the house was going to be sold so they needed to move. They left the dwelling on 14 February 2022 and moved into a bigger house in Mullingar (4 bedroom semi-detached instead of a 3 bedroom terrace) on 15 February 2022. His partner, 7 year-old daughter and uncle moved with him, but his aunt stayed in Cavan as she didn't speak good English and this resulted in the family splitting. His daughter had to change school and he had to change various utilities and his credit union loan. His new rent was €1,600 per month instead of €750. He had looked for a house anywhere within an hour and a half commute to Dublin. His commute was now a bit less than it had been.

The tenant stated that he was told by a neighbour that the house was re-rented to a new family at most 2 weeks later. He was never offered the house back. He had collected post from the new tenants a number of times. He was told by the new tenants that they paid €1,200 a month.

It was submitted by Ms. Smith that the Tenant's family had been uprooted, that his daughter had to change school, that there was doubling of rent even though it was for a larger house.

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

The address of the Dwelling is 3 Greenlough Park, Ballinagh Road, Cavan, H12KH27. The rent was €750 a month. No notice of termination was served but verbal notice was given to the tenant stating that the Landlord was going to sell the dwelling. The tenancy commenced on 20 November 2018 and ended on 15 February 2022. The Tenant was not offered the house to re-let. No rent or deposit is owed.

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

Finding 1: The Landlord breached his obligations under section 58 of the Residential Tenancies Act 2004 in failing to serve a valid notice of termination on the Tenant.

Reasons for Finding.

Section 58 of the Act provides as follows at the relevant subsections:

"58.—(1) From the relevant date, a tenancy of a dwelling may not be terminated by the landlord or the tenant by means of a notice of forfeiture, a re-entry or any other process or procedure not provided by this Part.

(2) Accordingly, the termination by the landlord or the tenant of—

(a) more beneficial rights referred to in section 26 that the tenant enjoys under a tenancy than those created by Part 4,

(b) a tenancy to which section 25 applies, or

(c) a tenancy of a dwelling referred to in subsection (1A) of section 3.

must be effected by means of a notice of termination that complies with this Part.”

In this case, as the tenancy had subsisted for more than one year, the tenant would have been entitled to 180 days’ notice under the Table to s. 66. and was deprived of this notice period and the correct statutory form of notice of termination.

Finding 2: The Tribunal awards damages in the amount of €7,000 to the Respondent Tenant for the consequences of having his tenancy of the dwelling terminated contrary to the provisions of section 58 of the Act.

Reasons for Finding.

Even if the Landlord had served a Notice of Termination for sale, that notice would have included an obligation to offer the tenancy back to the tenant under s. 35 and the Table to s. 34 of the 2004 Act:

“35(8) The statutory declaration that is to accompany a notice of termination in respect of a termination referred to in paragraph 3 of the Table shall include—

(a) a declaration that the landlord intends to enter into an enforceable agreement to transfer to another, for full consideration, of the whole of his or her interest in the dwelling or the property containing the dwelling,

(aa) a declaration that the landlord, by virtue of the notice, is required to offer to the tenant a tenancy of the dwelling if the following conditions are satisfied:

...

(ii) the landlord does not enter into an enforceable agreement of the type referred to in paragraph 3 of the Table within the period specified in that paragraph commencing—

(I) on the expiration of the period of notice required to be given under subparagraph (i) of paragraph (a) of section 34, or

(II) in circumstances where a dispute in relation to the validity of the notice is referred to the Board under Part 6 for resolution, on the final determination of that dispute;

and

(iii) the tenancy to which the notice relates has not otherwise been validly terminated by virtue of the citation in the notice of the ground specified in paragraph 1, 1A, 2 or 6 of the Table,

(b) where section 35A(3)(a) applies, a declaration that section 35A(2) does not apply to the said notice of termination as the price to be obtained by selling at market value the dwelling that is the subject of an existing tenancy to which Part 4 applies is more than 20 per cent below the market value that could be obtained for the dwelling with vacant possession, and that the application of that subsection would, having regard to all the circumstances of that case be unduly onerous on, or would cause undue hardship on, that landlord.”

As such, even if the Tribunal had the documentary evidence referred to by the Landlord’s agent before it, it would not have had any evidence as to, first, the state of mind of the Landlord at the time of the oral termination and secondly, supporting the landlord in any contention that he should not have offered the dwelling to the tenant to stay in.

It is clear that, even taking the Landlord’s case at its height, there were new tenants in the dwelling at some stage in March 2022. This was not denied by the Landlord’s

representative. The auctioneer was retained in April and the sale was decided not to go ahead with. It is clear that either inadequate enquiries had been made by the Landlord in advance of terminating the tenancy of the tenant illegally, or in fact he never intended to sell the dwelling at that stage. Either way, the tenant could and should have been able to stay in the dwelling for approximately 15 months more. This is significant for the level of discommoding that the termination had on the tenant and his family - he himself had significant alteration of utilities and credit union arrangements, his daughter had to change school and his aunt could not move with the family. In addition, he was obliged to pay higher rent, albeit for a bigger house that was marginally nearer his work in Dublin.

The tenant was never offered the dwelling back.

The Tribunal accepts the evidence of the Tenant and finds on the balance of probability that the new tenants in the dwelling paid a rent of €1,200 per month.

The Tribunal therefore finds that the tenant paid €850 more per month for approximately 15 months more than he had to, albeit that he had a bigger house closer to work. This is a sum of €12,750. In addition, he and his family had to uproot their lives and move to a new town, with his daughter changing school and administration in relation to utilities and banking, and his aunt did not move so the family was split up.

During this time, the Landlord received €1,200 in rent instead of €750 each month, being a total of €6,300 in additional rent for the same dwelling from mid-March 2022 to the date of the hearing.

In all of the circumstances, the Tribunal awards the Tenant damages in the amount of €7,000.

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

In the matter of Gerry Reilly (Appellant Landlord) and Florin Adrian Bibart (Respondent Tenant), in relation to the tenancy at 3 Greenlough Park, Ballinagh Road, Cavan, H12KH27 Ireland ("the dwelling"), the Tribunal, in accordance with Section 108 (1) of the Residential Tenancies Act, 2004, determines that:

1. The Appellant Landlord shall pay the Respondent Tenant the sum of €7,000, being damages in respect of the consequences for the Respondent Tenant of having his tenancy of the dwelling terminated contrary to the provisions of section 58 of the Act, within 28 days of the date of issue of the Determination Order.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 17/05/2023.

**Signed:**



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**Roderick Maguire Chairperson**

For and on behalf of the Tribunal.