

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0218-002829 / Case Ref No: 1017-38445

Appellant Landlord:	Helen McKay
Respondent Tenant:	Emese Naughton, Sarah Michaud, Meghan Brennan
Address of Rented Dwelling:	192 Howth Road, Killester, Dublin 3
Tribunal:	John Keaney (Chairperson) Maureen Cronin, Donald Menzies
Venue:	Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	23 May 2018 at 2:30
Attendees:	Helen McKay, Appellant Landlord Emese Naughton, Respondent Tenant Sarah Michaud, Respondent Tenant Meghan Brennan, Respondent Tenant
In Attendance:	Stenographer

1. Background:

On 31 October 2017 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 09 January 2018. The Adjudicator determined that In the matter of Emese Naughton & Meghan Brennan [Applicant Tenants] and Helen McKay [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 €6,435 to the Applicant Tenants within 42 days of the date of issue of the Order, being damages of €6,270 for the consequences of unlawfully terminating the Applicant Tenants' tenancy of the dwelling at 192 Howth Road, Killester, Dublin 3, and of breaching their entitlement to peaceful occupation thereof, together with the sum of €165, being the unjustifiably retained portion of the security deposit.

Subsequently an appeal was received from the Landlord and the grounds of the appeal were: Unlawful termination of tenancy (Illegal eviction)

The RTB constituted a Tenancy Tribunal and appointed Maureen Cronin, Donald Menzies, John Keaney as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Keaney to be the chairperson of the Tribunal ("the Chairperson").

The Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing.

The Tribunal convened a hearing at Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2, , Dublin.

2. Documents Submitted Prior to the Hearing Included:

1. RTB File

3. Documents Submitted at the Hearing Included:

None

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 their 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 indicated that the Tribunal 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. It was also indicated that the Tribunal would be willing to consider an application made at any stage during the Hearing for a short adjournment for the purpose of allowing the parties to try to negotiate, on a without prejudice basis, a consent settlement of the dispute.

The Chairperson stressed that all evidence would be taken on oath and 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 €4,000 or up to 6 months imprisonment 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 [reference section 123(3) of the 2004 Act].

All those giving evidence were then sworn or affirmed.

5. Submissions of the Parties:

Appellant Landlord's Case

Through her solicitor the Appellant Landlord said that she broadly accepted the findings of the adjudicator. She expressed deep regret that matters had come this far. She acknowledged that the Respondent Tenants were model tenants. She said that it was at all times her understanding that the Respondent Tenants would vacate the property after one year. She said that one of the original tenants had vacated the property as expected. She said she received a number of emails indicating that the Respondent Tenants would leave at the end of the tenancy which is why she had not served a Notice of Termination. She said she agreed to extend the tenancy by one month and that during this time discussions took place regarding the possibility of a new tenancy. She said that a potential new tenant was introduced to replace the tenant that had vacated but the Appellant Landlord was not happy with the reference. She said that when negotiations broke down regarding the new tenancy she thought the Respondent Tenants would vacate the dwelling as originally intended and that is why she had not served a notice of termination. She said that she regretted the events that took place on the evening of the 31st of October 2017. She said that she accepted that her brother's behaviour was entirely unacceptable; she apologised to the Respondent Tenants and acknowledged their upset. She made an offer of settlement which the Respondent Tenants after consideration decided to reject.

Respondent Tenants' Case

Sarah Michaud spoke on behalf of the three respondents. She said that she had moved into the dwelling on the 27th of October 2017 and that she had at all times been a licensee of the dwelling and never a tenant. She said that in September 2017 there was an understanding with the Appellant Landlord that they would stay on in the dwelling after the end of October 2017. She said that on the 16th of October 2017 the Appellant Landlord told them that she wanted them to vacate but that they could stay if they were willing to pay a much increased rent. She said that during the following two weeks attempts were made to negotiate with the Appellant Landlord regarding the new rent and that during this time they were also advised that she, Sarah Michaud, would not be allowed to remain as a tenant. She said that the Appellant Landlord made threats to evict her. She said that on the 27th of October they made an application to the RTB and paid the rent for November. The Appellant Landlord was advised that an application had been made to the RTB. She said that on 31st of October the Appellant Landlord's brother attended at the dwelling. She said they spoke to him through the window of the dwelling. She said that one of the Respondent Tenants took a video of his abusive behaviour. She said they decided to vacate the dwelling on the 1st of November 2017 because they were so upset and distressed at the behaviour of the Appellant Landlord's brother. She said they returned the keys on the 2nd of November 2017. She said that the three of them stayed in a B & B for three nights. She said they were not given any reason for the deduction of €165 from the deposit. On cross-examination she confirmed that the Respondent Tenants had been looking for a new place in the run-up to the end of the tenancy because of the Appellant Landlords unreasonable attitude. She said that they found and took a new property within three days of moving out of the dwelling.

Appellant Landlord's summary

Through her solicitor the Appellant Landlord said that in relation to the rent pressure zone, the legislation was new at the time and she was not aware of it but once she became aware of its effect the new rent proposed was within the guidelines. The Appellant Landlord said she had not seen the Respondent Tenants' email regarding the

application to the RTB at the time that she sent her brother to the dwelling. She said she has been a landlord for 30 years without any difficulties and had no issues with the new tenants who were in the dwelling. The Appellant Landlord said that she regretted what happened.

Respondent Tenant's summary

Sarah Michaud spoke on behalf of the Respondent Tenants. She said that they appreciated the Appellant Landlord's apology and offer of compensation. However, she said that had wanted to proceed with action so that there would be a record of the Appellant Landlord's behaviour and that that is all that they wanted from the proceedings right now.

6. Matters Agreed Between the Parties

The parties agreed:

- (1) The tenancy commenced on the 1st of September 2016.
- (2) The agreed rent was €2000 per month payable in advance.
- (3) There were no arrears at the time the Respondent Tenants vacated the dwelling.
- (4) The Respondent Tenants paid a deposit of 2,000.00 all of which had been repaid by the Appellant Landlord with the exception of €165.
- (5) There was a written tenancy agreement dated the 1st of September 2016.

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 for these findings, are set out hereunder.

Finding 1: The Respondent Sarah Michaud was a licensee of the dwelling and therefore any redress in respect of her claims is outside the remit of the Tribunal

Reasons:

1. She was not a party to the original tenancy agreement dated the 1st of September 2016. She commenced occupation of the dwelling in September 2017. The tenancy agreement provided at clause 3 (B) that the Respondent Tenants could not sub-let the dwelling without the landlord's written consent. The Appellant Landlord had not given a written consent to the dwelling being sub-let.

2. In addition Sarah Michaud and the two Respondent Tenants acknowledged that Sarah Michaud was a licensee of the dwelling.

Finding 2: The Respondent Tenants, Emese Naughton and Meghan Brennan, were unlawfully evicted from the dwelling.

Reasons:

1. The Appellant Landlord accepted the Respondent Tenants' version of the incident that took place on the evening of the 31st of October 2017. The Respondent Tenants vacated the dwelling the following day as a direct result of that behaviour. The Appellant Landlord is responsible for the actions of her agent, in this case her brother, even though she had

no prior knowledge of and had not sanctioned his behaviour. It is the Tribunal's view that the behaviour was sufficiently threatening and abusive so as to cause the Respondent Tenants to vacate the dwelling. The termination of the Respondent Tenants' occupation of the dwelling by this action is a breach of section 58 of the Act. As a direct consequence of this the Respondent Tenants were obliged to find temporary alternative accommodation. The Respondent Tenants were obliged to stay for three nights in a bed-and-breakfast at a cost of €45 per night. The Respondent Tenants produced evidence of the expense in the form of a receipt and so are entitled to be reimbursed this cost, being €270.00. It was fortunate for the Respondent Tenants and the Appellant Landlord that they had already begun a search for alternative accommodation because they feared that they would have to vacate the dwelling and so they were able to enter into a new tenancy agreement within three days of having to leave the dwelling.

Finding 3: The Appellant Landlord has unlawfully withheld €165 of the Respondent Tenants' deposit.

Reasons

Pursuant to clause 12(1)(d) of the Act a landlord is obliged to return promptly to the tenants all of the deposit paid by the tenants subject only to deductions for arrears of rent or damage in excess of normal wear and tear. It was agreed that the landlord had withheld €165 from the Respondent Tenants' deposit. No explanation was forthcoming in relation to this. It was agreed there were no arrears of rent and no receipt was produced for any expenditure incurred as a result of rectifying damage in excess of wear and tear. The Respondent Tenants are entitled to the return of this money.

8. Determination:

Tribunal Reference TR0218-002829

In the matter of Helen McKay (Landlord) and Emese Naughton, Sarah Michaud, Meghan Brennan (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The claim by Sarah Michaud for unlawful eviction is not upheld.
2. The Appellant Landlord shall pay the total sum of €3,435 to the Respondent Tenants Emese Naughton and Meghan Brennan within 28 days of the date of issue of the Order, being damages of €3,270 for the consequences of unlawfully terminating the Respondent Tenants' tenancy and for breaching their entitlement to peaceful occupation thereof, together with the sum of €165, being the unjustifiably retained portion of the security deposit, in respect of the tenancy of the dwelling at 192 Howth Road, Killester, Dublin 3.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 07 June 2018.



Signed:

John Keaney Chairperson

For and on behalf of the Tribunal.