

**Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0219-003526 / Case Ref No: 0818-47204**

<b>Appellant Landlord:</b>	Cuisle Properties Ltd
<b>Respondent Tenants:</b>	John Norton, Ami Norton
<b>Address of Rented Dwelling:</b>	Flat 3, 97 Capel Street, Dublin 1, D01Y864
<b>Tribunal:</b>	Finian Matthews (Chairperson) Claire Millrine, Kevin Baneham
<b>Venue:</b>	Tribunal Room, RTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	11 April 2019 at 2:30pm
<b>Attendees:</b>	For Appellant Landlord: Carl Gibney, Home Estates & Letting Agents, Landlord's Representative For Respondent Tenants: John Norton, Tenant Ami Norton, Tenant
<b>In Attendance:</b>	Stenographer

**1. Background:**

On 17/08/2018 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 22/11/2018. The Adjudicator determined that:

1. The Notice of Termination served on the 10th day of April 2017 by the Respondent Landlord on the Applicant Tenants in respect of the tenancy of the dwelling at Flat 3, 97 Capel Street, Dublin 1 is invalid.
2. The Respondent Landlord shall pay the total sum of €10,000 to the Applicant Tenants in 10 equal consecutive instalments at the rate of €1,000 per calendar month, on the 28th day of each month, commencing the next month after the issue of the Order. This sum represents damages of €10,000 for the service of an invalid Notice of Termination in respect of the tenancy of the above dwelling.
3. The enforcement of this Order for such payment of €10,000 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments made by the Respondent Landlord to the Applicant Tenants on each due date until such time as the total sum of €10,000 has been paid in full.
4. For the avoidance of doubt, any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due at the date of

default of any such monthly payment shall immediately become due and owing to the Applicant Tenants.

Subsequently an appeal was received from the Landlord..

The RTB constituted a Tenancy Tribunal and appointed Kevin Baneham, Claire Millrine, Finian Matthews 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").

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 11/04/2019 the Tribunal convened a hearing at Tribunal Room, RTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.

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

1. RTB File

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

None

## **4. Procedure:**

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Landlord, Cuisle Properties Ltd., against a determination made following an adjudication held on 22 November, 2018 in the case of a dispute between the Landlord and the Tenants, John Norton and Ami Norton, in respect of the tenancy of a dwelling at Flat 3, 97 Capel Street, Dublin 1. He introduced the members of the Tribunal to the Parties.

He asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal 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". Both Parties confirmed that they had done so. 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 Oath or 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 take the Oath or Affirmation, 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 Landlord would be invited first to present his case, including the evidence of any Witness; this would be followed by an opportunity for cross-examination by the Respondent Tenants; that the Respondent Tenants would then be invited to present their case, followed by an opportunity for cross-examination by the Appellant Landlord. 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 Landlord and the Respondent Tenants would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that 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. Following such an adjournment the parties advised the Tribunal that it had not been possible for them to reach a settlement.

All persons giving evidence to the Tribunal were sworn in.

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

Appellant Landlord's Case:

Mr. Gibney stated that he worked with Home Estates and Lettings, Agents for the Appellant Landlord, and confirmed that he was authorised to represent the Appellant Landlord at the hearing.

He said that the Appellant Landlord bought the property containing the dwelling in 2017, following which he was instructed to issue what he termed 'renovation letters' to the all of the tenants in the building. He clarified that what he meant by renovation letters was Notices of Termination to enable the dwellings in the building to be renovated. He said that such a Notice was hand delivered to the Respondent Tenants on 10 April, 2017, stating that their tenancy would terminate on 1 September of that year. He said that subsequent to that the Tenants sought an extension of the termination date originally until around November/December, 2017 and then to March, 2018 when they vacated the dwelling. He said that the Appellant Landlord had agreed to this.

Mr. Gibney said that at that stage he was no longer acting for Cuisle Properties but he said that the latter had placed new tenants in the dwelling 2 or 3 weeks after the Respondent Tenants had vacated. He added that no renovation or refurbishment was carried out apart from some minor works. He also confirmed that the dwelling was never offered back to the Respondent Tenants.

When the possible options under section 56(3) of the Act i.e. an award of damages to the tenants for deprivation of possession, a direction that the tenants be permitted to resume possession of the dwelling or a combination of the two were put to Mr. Gibney, he stated that it was his understanding that the tenants currently in occupation will be vacating the dwelling in the near future.

In response to a question from the Respondent Tenants, Mr. Gibney agreed that they had no plans to move out before they received the Termination Notice. He also agreed that photographs furnished by the Appellant Landlord showing the condition of a dwelling at the end of a tenancy were of another dwelling, and did not relate to the tenancy of the dwelling under dispute in this case.

Respondent Tenants' case:

Ms. Norton stated that the Respondents Tenants had lived in the dwelling for six years and confirmed that they had received the Notice of Termination on 10 April, 2017 as had been stated by the Appellant Landlord's Representative. She said that all of the other tenants in the building had received similar notices and as those tenants left, the Respondent Tenants noted that other tenants moved in to the vacated apartments soon afterwards. She added that all of their dealings in relation to their tenancy had been with the Appellant Landlord's Agent, Mr. Gibney, and that, apart from one occasion they had no direct dealings with the Appellant Landlord.

Mr. Norton stated that after the Respondent Tenants moved out on 15 March, 2018 he visited the apartment some weeks later to find, on being invited in by new tenants, that the dwelling was unchanged with no sign of any substantial renovation having taken place. He said that he understood that the dwelling, a one-bedroom apartment, was now occupied by 6 people each of whom was paying €400 per month in revenue. He stated that the effect of this was that the monthly rent being paid to the Appellant Landlord for the dwelling had increased by 160% from €925 to €2,400 per month.

Mr. Norton also said that before they received the Notice of Termination the Respondent Tenants had no intention of moving out of the dwelling and after they received that Notice they made various efforts to resolve matters. In relation to an allegation by the Appellant Landlord that the tenants had referred an earlier dispute to the RTB in September, 2017 to delay their departure, Mr. Norton said this was not the case. He added that they had withdrawn that dispute application because the Appellant Landlord's Agent had suggested that they would be given more time to find new accommodation. He also said that they only submitted the current dispute application after they had vacated the dwelling and subsequently discovered that no substantial renovations had been carried out.

In relation to the consequences for the Respondent Tenants of having to move out of the dwelling, Mr. Norton stated that the dwelling was very convenient for where both Respondent Tenants worked at the time, but they were unable to find anywhere else suitable in the area of a comparable nature and price they could afford. They had spoken to Cuisle Properties about other options the company might be able to provide but none of these proved suitable. He said that in the end they decided to purchase a house outside Dublin, with their families providing assistance towards the deposit. They moved into the house on vacating the dwelling in March, 2018. Mr. Norton said that as result the move he now had a long commute by train, while Ms. Norton now had to drive to work. They had not needed a car when they lived in the dwelling. Mr. Norton also said that while the Respondent Tenants had no argument with the Appellant Landlord's Agent, the issue of their trying to source alternative accommodation had gone on for around a year and had proved very stressful on both Respondent Tenants.

Referring to a new lease for the period 13 October, 2017 to 28 February, 2018 which had been provided to the Respondnt Tenants, Mr. Norton said that they had never signed this

because it had contained a number of unfair conditions which would have denied the Respondent Tenants their rights. He also said that the Respondent Tenants would not, in view of their changed circumstances, be interested in resuming possession of the dwelling at this stage.

The Chairperson 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 terminated on 15 March, 2018.
- The rent was €925 per month.
- There were no rent arrears.
- The Respondent Tenants paid a deposit of €850.
- The deposit has been repaid to the Respondent Tenants.

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:

The Tribunal upholds the Respondent Tenants complaint under section 56 of the Act that they were unjustly deprived of possession of the dwelling at Flat 3, 97 Capel Street, Dublin 2 and are entitled to damages in the amount of €12,000.

Reasons:

The relevant parts of section 56 of the Act provide, as follows:-

“(1) This section applies where—

- (a) a tenant under a Part 4 tenancy, or under a further Part 4 tenancy, has vacated possession of the dwelling concerned on foot of a notice of termination served under section 34(a),
- (b) that notice of termination cited as the reason for the termination one or more of the grounds specified in paragraphs 3 to 6 of the Table to section 34, and
- (c) (iii) in case the ground cited is that specified in paragraph 5 of that Table, the thing mentioned is not done within a reasonable time after the service of the notice of termination or, in circumstances where such a requirement arises, the landlord does not comply with the requirement to make the offer referred to in that paragraph.

(2) Where this section applies, the tenant may make a complaint to the Board under Part 6 that, by reason of the matters mentioned in subsection (1), he or she has been unjustly deprived of possession of the dwelling concerned by the landlord.

(3) An adjudicator or the Tribunal, on the hearing of such a complaint, may, if he or she or it considers it proper to do so, make—

(a) a determination comprising a direction that the landlord shall pay to the complainant an amount by way of damages for that deprivation of possession,

(b) subject to section 118, a determination comprising a direction that the complainant be permitted to resume possession of the dwelling concerned, or

(c) subject to section 118, a determination comprising both of the foregoing directions.”

Paragraph 5 of the table to Section 34 provides that a Part 4 or Further Part 4 tenancy may be terminated on the basis that a landlord intends to substantially refurbish or renovate the dwelling or the property containing the dwelling in a way which requires the dwelling to be vacated for that purpose (and where planning permission is required for the carrying out of that refurbishment or renovation, that permission has been obtained).

If a landlord, as in this case, relies on Paragraph 5 to terminate a Part 4 tenancy the Notice of Termination must contain or be accompanied by a statement in writing:

1. Specifying the nature of the intended works,
2. Attaching a copy of any planning permission obtained, or
3. Where planning permission is not required, the statement must state (i) the name of the contractor, if any, employed to carry out the intended works, and (ii) the dates on which the intended works are to be carried out and the proposed duration of the period in which those works are to be carried out.
4. Stating the landlord by virtue of the notice is required to offer the tenant a tenancy of the dwelling if contact details have been provided and the dwelling becomes available for re-letting, or the tenancy to which the notice related had not otherwise been terminated by of the citation of certain of the other grounds specified in the Table to section 34 of the Act.

The Tribunal is satisfied on the evidence that the Respondent Tenants had been in occupation of the dwelling for a period of approximately 6 years when the Notice of Termination was served on them. A Further Part 4 tenancy was therefore in place, in circumstances where the Appellant Landlord purported to terminate the tenancy pursuant to paragraph 5 of the table to Section 34 and Part 5 of the Residential Tenancies Act 2004 as amended.

Section 62 of the Act sets out the formal requirements that a notice of termination must meet in order to comply with the Act. In this case the notice of termination was on its face compliant with Section 34 and Part 5 of the Residential Tenancies Act 2004.

The Respondent Tenants submitted that the tenancy was invalidly terminated, in that the Appellant Landlord had served Notice of Termination on the ground that the dwelling was to be completely refurbished and the common areas in the building were to be renovated. However, after they moved out, the Appellant Landlord had re-let the dwelling within a short period of the termination of the tenancy without carrying out any refurbishment or renovation works or without offering to re-let it to the Respondent Tenants. They asserted

that in those circumstances they had been unlawfully deprived of possession of the dwelling.

It is noted that the tenancy terminated on 15 March, 2018 and the dwelling was, on the admission of the Appellant Landlord's Agent, re-let within a period of 2 to 3 weeks after that date, without any refurbishment or renovation works having been carried out. In the notice of termination the Landlord stated that it was proposed to commence the proposed works on 4 September, 2017, with a view to having the dwelling ready for re-occupation on 4 December, 2017. It was also stated in the notice that the Respondent Tenants would be given first refusal on moving back into the apartments on completion of the proposed works.

The Tribunal accepts the Respondent Tenants' evidence that the contact details requirement provided for under the Act were complied with by them. The Tribunal further notes that no steps were taken by the Appellant Landlord to contact the Respondent Tenants at any time subsequent to their vacation of the dwelling on 15 March, 2018 to offer them the dwelling back, as is required under the Act. Both the Respondent Tenants and the Appellant Landlord's Agent confirmed this to be the case.

The Tribunal finds on the evidence before it, that the Respondent Tenants intended to continue living in the dwelling and had no intention of moving out of the dwelling but for the notice of termination served on them, which they complied with in good faith.

The Tribunal accepts that the unlawful deprivation of their tenancy had significant financial consequences for the Respondent Tenants in that they were required to incur substantial initial costs and additional on-going costs in providing alternative accommodation, in circumstances where they were entitled to remain in the tenancy of the dwelling for a further period of two years of their Further Part 4 tenancy. The Tribunal also accepts Mr. Norton's evidence that he has had to incur substantial additional costs of commuting to work in circumstances where he previously lived within a few minutes walk of his place of work. In compensation for those additional costs which the tenants would otherwise not have had to incur the Tribunal considers the sum of €8,000 to be a fair and proportionate amount to award in damages.

In addition to that, the Tribunal is satisfied that the Respondent Tenants have suffered, distress, anxiety and inconvenience over a prolonged period since they were they were served with a Notice of Termination which resulted in their being unjustly deprived of possession of the dwelling. The Tribunal considers that the appropriate quantum of damages to award in all the circumstances of this case is €4,000, taking all relevant matters into account.

In exercise of its powers, therefore, under section 56 of the Act the Tribunal directs that damages in the amount of €12,000 shall be paid by the Appellant Landlord to the Respondent Tenants.

In the circumstances, the Tribunal determines that it is appropriate for this amount to be paid by the Appellant Landlord to the Respondent Tenants within 28 days of the date of issue of the Order.

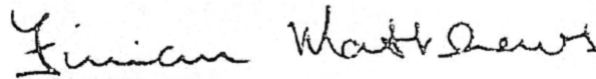
**8. Determination:**

**In the matter of Cuisle Properties Ltd (Appellant Landlord) and John Norton, Ami Norton (Respondent Tenants) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlord shall pay the total sum of €12,000 to the Respondent Tenants within 28 days of the date of issue of the Order being damages of €12,000 in respect of the consequences for the Respondent Tenants of the Appellant Landlord's unlawfully depriving them of the tenancy of the dwelling at Flat 3, 97 Capel Street, Dublin 1.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 20/04/2019.

**Signed:**

A handwritten signature in dark ink, appearing to read 'Finian Matthews', is written over a horizontal line.

**Finian Matthews Chairperson**

For and on behalf of the Tribunal.