

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0221-004669 / Case Ref No: 0920-65205

Appellant Tenant: Conor O'Shaughnessy, Evan Sheehan

Respondent Landlord: Keith Sheehan

Address of Rented Dwelling: 22 Church Avenue, Roman Street, Cork T23H7RX

Tribunal: Kevin Baneham (Chairperson)
Helen-Claire O'Hanlon, John Keane

Venue: Ormond Meeting Rooms
Telephone Conference Tribunal

Date & time of Hearing: 25 May 2021 at 10:30

Attendees:

For the Appellant Tenants:
Evan Sheehan ('appellant tenant')

For the Respondent Landlord:
Keith Sheehan ('respondent landlord')

In Attendance: RTB appointed stenographer

1. Background:

On the 30th September 2020, the Tenants referred a dispute to the Residential Tenancies Board regarding unlawful termination of tenancy, breach of fixed term lease and breach of landlord obligations. A paper based adjudication took place and the Adjudicator found: '1. The Respondent Landlord shall pay the total sum of €50 to the Applicant Tenants within 90 days of the date of issue of the Determination Order, being damages of €50 for the consequences of unlawfully terminating the Applicant Tenant's tenancy of at 22 Church Avenue, Roman Street, Cork, Co Cork.'

On the 3rd February 2021, the Residential Tenancies Board received an appeal from the Tenants and the matter was referred to a Tribunal. The Residential Tenancies Board constituted a Tenancy Tribunal and appointed Helen-Claire O'Hanlon, John Keane and Kevin Baneham as Tribunal members, pursuant to sections 102 and 103 of the Residential Tenancies Acts 2004 - 2021 ("the Act"). Kevin Baneham was appointed to chair the Tribunal ("the Chair").

The parties were provided with details of the date, time and call in details for the hearing, as well as the Tribunal Procedures. On the 25th May 2021 at 10.30am the Tribunal convened a hearing.

2. Documents Submitted Prior to the Hearing Included:

RTB File.

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

The Chair introduced the Tribunal members and asked the parties to identify themselves. The Chair confirmed with the parties that they had received from the Residential Tenancies Board the relevant case files and the Tribunal procedures. The Chair explained the procedure which would be followed; that the party who appealed (the Appellants) would be invited to present their 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 Chair stressed that all evidence would be taken on affirmation and be recorded by the official stenographer present. He reminded the parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 and/or up to 6 months imprisonment or both. The Chair also stated that as a result of the hearing that day, the Residential Tenancies Board would issue to the parties a Determination Order which could only be appealed to the High Court on a point of law.

The parties were affirmed before being invited to begin their evidence.

5. Submissions of the Parties:

Evidence and submissions of the appellant tenant

The appellant tenant outlined that prior to the commencement of this tenancy, they had rented an apartment from the agent and this was adjoining the landlord's apartment. They held a small gathering and the previous landlord was unhappy with the noise. The appellant tenants agreed to move to the dwelling at the agent's suggestion and the agent also served a notice of termination. The appellant tenant said that they left this property on good terms.

The appellant tenant outlined that they signed the lease for the dwelling on the 26th September 2020. They took occupation of the dwelling and noticed issues with a faulty oven and faulty windows. The issues were reported to the respondent landlord, who attended the dwelling on the 29th September 2020. It was during this attendance that the respondent landlord found the notice of termination served in respect of their previous tenancy.

The appellant tenant said that he was working in Cobh when he received a phone call from the respondent landlord. The appellant tenant described the respondent landlord as being in a rage in the phone call and was threatening. The appellant tenant said that the respondent landlord had told him that if he tried to re-enter the dwelling, his head would be kicked in. The appellant tenant also received text messages from the agent. He left work and returned to collect his belongings from the agents' offices.

The appellant tenant outlined that the respondent landlord packed up their possessions into plastic bags. This posed a risk of infection of Covid-19. The respondent landlord took the bags and threw them through the door of the agents' offices.

The appellant tenant said that they had contracted to live in the dwelling for 12 months and now had nowhere to live. He said that the agents had to close their offices because the respondent landlord had thrown in all their possessions. The appellant tenant said that they went through their possessions and could not locate a device holding crypto currency. The agent then offered them alternative accommodation, which they moved to that evening. The appellant tenant said that he stayed in this accommodation until February 2021, when he moved to another tenancy.

In reply to the respondent landlord, the appellant tenant said that he was present in the dwelling when the respondent landlord arrived on the last day of the tenancy. There had been no one sleeping on the couch and the other tenant's girlfriend was having breakfast. The appellant tenant had returned the keys to the agent and there was never smoking in the dwelling.

Evidence and submissions of the respondent landlord

The respondent landlord outlined that he engaged the agent to find suitable tenants. He had sought good, responsible tenants and he was horrified by the events. He outlined that he was informed that the dwelling would be let to two people who worked for a named employer, but this was not the case.

The respondent landlord said that he was asked to attend the dwelling on the 27th September 2020. While the issue of the oven was raised, he said that it worked. He described the dwelling as being quite a mess. There was someone sleeping on the couch. He described that there was a strange smell, rubbish and cigarettes stubbed out on the bathroom floor. There was damage to a new mattress from a cigarette butt. He referred to the exhibited photograph and said that he turned the mattress over and it was still in use.

The respondent landlord said that he found the eviction notice on the floor, under the kitchen table. He said that there were complaints from the neighbours about a party in the dwelling on the Saturday night. The appellant tenants had had people to the dwelling in breach of Covid-19 regulations.

The respondent landlord said that on the day he took possession of the dwelling, he spoke to the agent and also deposited bags at their offices. He said that the appellant tenant phoned him on two occasions. The respondent landlord denied being aggressive or threatening. He denied saying that he would kick the appellant tenant's head in if he returned to the dwelling. He said that he never received the keys back to the dwelling.

The respondent landlord said that the appellant tenant had threatened him about going to court. He outlined that he found the crypto currency device and sent it to the Residential Tenancies Board by registered post as soon as he found it.

6. Matters Agreed Between the Parties

The parties agreed that the rent in the tenancy was €1,276 and that the tenancy had come to an end.

7. Findings and Reasons:

Finding no. 1: The respondent landlord shall pay to the appellant tenants €1,000 for the unlawful termination of their tenancy.

Reasoning: The tenancy in this case only lasted a few days but a lot happened in this time. The appellant tenants secured the tenancy via the agent appointed by the respondent landlord. They signed a lease, received keys and took up occupation. They were, therefore, tenants per the Residential Tenancies Act.

The appellant tenants identified repair issues, which they reported to the respondent landlord, who attended to address them. This is par for the course in a landlord-tenant relationship.

It follows that the appellant tenants were tenants and not trespassers. The tenancy falls within the scope of the Residential Tenancies Act and the Residential Tenancies Board.

The tenancy came to an end when the respondent landlord reclaimed possession of the dwelling on the 29th September 2020. There was dispute whether the respondent landlord threatened to kick the tenants' head in if they returned to the dwelling. Notwithstanding this conflict in evidence, the respondent landlord did make it clear to the appellant tenants and his own appointed agent that the tenancy was over; he left all the appellant tenants' possessions at the offices of the agent. The Tribunal also cannot resolve the conflict whether the appellant tenants returned the keys to the agent; this is immaterial given that it was clear they were not returning to the dwelling.

The Tribunal notes the reasons asserted by the respondent landlord. The reasons that he had never agreed to a tenancy commencing with these particular tenants, was awaiting references and he said he had only permitted them to move their belongings in pending the receipt of references. He said he had never signed the lease. However, on his own account he was present at the dwelling on the 27th September when the appellant tenants were already in occupation and he did not dispute their entitlement to be there at that stage. The respondent landlord then complained of a party held on the Saturday night, issues with the maintenance of the dwelling and how the previous tenancy of the appellant tenants had ended. These may be issues that could ground a notice of termination. They are not, however, issues that allow a landlord go outside of the Residential Tenancies Act and act in contravention of section 58 of the Act. This provision states that a tenancy may only be terminated in accordance with the Act. This did not happen in this case. The respondent landlord reclaimed possession of the dwelling without recourse to the lawful avenues available in the Act.

In assessing the extent of contravention, the Tribunal notes the summary nature of the unlawful termination of tenancy. One appellant tenant had to immediately end work to attend to matters. It notes that all the possessions of the appellant tenants were bagged and deposited with the agent. An important item was missing for several weeks. While the appellant tenants had somewhere to sleep that night, this was a turbulent day of acrimony and uncertainty.

Given these circumstances, the Tribunal awards damages of €1,000 and this amount should be paid by the respondent landlord to the appellant tenants within 28 days of the date of issue of the Determination Order.

The Tribunal finds that there is insufficient evidence of any breach of tenant obligation. In terms of the alleged damage to the mattress, this item remains in use.

8. Determination:

In the matter of Evan Sheehan and Conor O'Shaughnessy, Appellant Tenants, and Keith Sheehan, Respondent Landlord, the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004 - 2021, determines that:

The Respondent Landlord shall pay €1,000 to the Appellant Tenants within 28 days of the date of issue of this Determination Order, being damages of €1,000 for the unlawful termination of the Appellant Tenants' tenancy at 22 Church Avenue, Roman Street, Cork T23 H7RX.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 16/06/2021.

Signed:



Kevin Baneham Chairperson

For and on behalf of the Tribunal