

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0221-004724 / Case Ref No: 1020-65729

Appellant Landlord:	John Shannon
Respondent Tenant:	John Culligan
Address of Rented Dwelling:	Gortnaboul, Kilshanny, Clare, V95R5P1
Tribunal:	Fintan McNamara (Chairperson) Andrew Nugent, Mary Doyle
Venue:	Ormond Meeting Rooms Telephone Conference Tribunal
Date & time of Hearing:	27 July 2021 at 2:30
Attendees:	For the Appellant: John Shannon, Appellant Landlord Laura Stevenson Solr. (of John Casey and Co. Solrs.) For the Respondent: John Culligan, Respondent Tenant
In Attendance:	Recording Technician/Stenographer as arranged by the RTB

1. Background:

1. On 19/10/2020 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 16/11/2020. The Adjudicator determined that In the matter of John Culligan [Applicant Tenant] and John Shannon [Respondent Landlord], the Residential Tenancies Board, in accordance with Section 121 of the Residential Tenancies Act, 2004, determines that:

1. The Respondent Landlord shall pay the total sum of €12,500 to the Applicant Tenant within 28 days of the date of issue of this Order, being damages of €10,000 for the consequences of unlawfully terminating the Applicant Tenants' tenancy, together with damages in the sum of €1,500 for breach of landlord obligations under s. 12(1)(b) of the Residential Tenancies Act 2004 for failure to carry out necessary repairs and damages of €1,000 for breach of landlord obligations under s. 12(1)(a) of the Residential Tenancies Act 2004 by unlawfully interfering with the Applicant Tenant's right to peaceful occupation in respect of the tenancy of the dwelling at Gortnaboul, Kilshanny, Clare, V95R5P1.

Subsequently the following appeal was received:

Landlord : received on 10/02/2021. The grounds of the appeal: Validity of notice of termination (if you are disputing the validity of a termination notice issued), Unlawful termination of tenancy (Illegal eviction), Anti-social behaviour, Breach of landlord obligations.

The RTB constituted a Tenancy Tribunal and appointed Andrew Nugent, Fintan McNamara and Mary Doyle as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Fintan McNamara to be the Chairperson of the Tribunal ("the Chairperson").

On 30/04/2021 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 26/05/2021 the Tribunal convened a hearing at Ormond Meeting Rooms, Dublin. The Landlord's representative Maura Fay requested an adjournment after the hearing commenced. She stated she was not competent to make the landlord's case. The Tribunal adjourned and a new hearing took place on the 27 July 2021 at 2.30.

2. Documents Submitted Prior to the Hearing Included:

RTB File.

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

The Chairperson asked the Parties attending the telephone conference Hearing to identify themselves and to identify in what capacity each was attending the telephone conference 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 asked all persons to speak only when invited to by the Chairperson and emphasised the importance of following her directions in this regard. He asked that each person identify themselves by name before speaking.

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 his case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present his case; that there would be an opportunity for cross-examination by the Appellant and, the Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official stenographer/recording technician present and she 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.

The Parties giving evidence gave their respective affirmations.

5. Submissions of the Parties:

Appellant Landlord's Case:

The Appellant Landlord's solicitor referred to case file one page 12 which contained the allegations against the Landlord by the Respondent Tenant. She and the Landlord acknowledged that the Tenant had been asked to leave the accommodation but the message also contained a valid reason for seeking vacant possession which needed substantial refurbishment. She pointed out that the termination notice contained no time frame / was open ended.

The Appellant Landlord denied sending anyone to carry out surveillance on the Respondent Tenant and said he never interfered with his peaceful enjoyment of the dwelling. He said he never interfered with the Respondent Tenant's van or flattened tyres, a claim made by the Respondent Tenant.

In rebutting the Respondent Tenant's claim that he felt intimidated by the Appellant Landlord, the Solicitor drew attention to case file four which contained a series of text messages sent from the Respondent Tenant to the Appellant Landlord. These messages contained some strong language and she claimed they were not the type of messages an intimidated, fearful tenant would send to a landlord.

The solicitor then referred to case file 12 where the Respondent Tenant claimed the Appellant Landlord had burned his mattress and potentially some of his property. The Appellant Landlord denied interfering with the Respondent Tenant's property and claimed that he burned a mattress and some furniture, all of which was his own.

In relation to the standard and maintenance of the dwelling the Appellant Landlord stated that the chimney which was not functioning properly was a lazy chimney and unless a door was left open smoke would fill the room. He said it needed major structural work and that was why he needed the dwelling vacant.

He denied there was a problem with the heating which he said was a dual system installed 15 years earlier. He claimed that the reason it was not working was because the oil tank was empty. He said the cooker, microwave and shower were working when the Respondent Tenant moved in.

He did acknowledge that the house was built in the 1950s and needed some refurbishment. However he pointed out that as a quid pro quo the Tenant had agreed to do some necessary repairs in lieu of paying the full rent. He said that although the rent was €400 per month, during the four years of his occupancy the Tenant paid rent in dribs and drabs and only about €500 or €600 each year.

He claimed that some damage was done by a dog which the Respondent Tenant kept in the dwelling without permission. He said he owned the land adjacent to the dwelling and on the 17th October 2020 when he was working on the land he noticed that the house seemed empty. He said when he checked the house the car, kitchen utensils, bed linen and dog were gone. He said he believed the Respondent Tenant had vacated and he changed the locks on the door. He pointed out that he left the Respondent Tenant's TV which was not plugged in and microwave in the garden shed for collection.

Respondent Tenant's Case:

The Respondent Tenant who had frequently interrupted the Appellant Landlord's solicitor as she was presenting her client's case declined to either cross-examine the evidence presented or outline his own grievances. Instead he claimed the locks were changed, that he was homeless and he disagreed with everything the Appellant Landlord had said.

6. Matters Agreed Between the Parties

1. The names of the Parties as set out in the title to this Report were confirmed by the Parties.
2. The description of the dwelling the subject of the dispute between the Parties was confirmed as being: Gortnaboul, Kilshanny, Co.Clare.
3. The Respondent Tenant commenced his tenancy in respect of the dwelling on the 1st of August 2016 and the tenancy ended on 17th October 2020

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 thereof, are set out hereunder.

7.1 Finding:

The Tribunal finds that the dwelling needed substantial repairs but that there was an arrangement between the parties that in lieu of paying the full rent due the Respondent Tenant would attend to the upkeep of the dwelling.

Reasons:

The Landlord gave evidence that there was a significant shortfall in the rent payments each year during the tenancy and this evidence was neither contradicted nor disproved by the Respondent. The landlord's claim that he accepted the lower rent in exchange for the Tenant's agreement to carry out repairs is accepted by the Tribunal.

7.2 Finding.

The Respondent Tenant's allegation that the Landlord denied him peaceful enjoyment of the dwelling is not upheld.

Reason:

The Respondent Tenant alleged that the Appellant Landlord sent someone to do surveillance on him, destroyed some of his property and interfered with his van but produced no evidence to substantiate these claims.

7.3 Finding:

The Tribunal accepts the Respondent Tenant's claim that he vacated the dwelling on foot of an invalid Notice of Termination.

Reason:

The Respondent Tenant has been in residence in the property since 01 August 2016 and therefore holds the tenancy pursuant to part 4 of the Residential Tenancies Act 2004.

Where a tenant holds their tenancy under part 4 it may only be terminated in accordance with section 34 and Part 5 of the Residential Tenancies Act, 2004 as amended. Section 34 only allows for a limited number of reasons as to why a tenancy can be terminated. Where a Landlord seeks to terminate a tenancy on any basis a Notice of Termination must be served that complies with part 5 of the Act. Section 62 of the Act lays out the formal requirements that a Notice of Termination must meet in order to comply with the Act, so it shall be in writing, be signed by the Landlord or his or her Agent, specify the date of service, state the reason (if a part 4 tenancy), specify the termination date and state that any issues as to validity must be referred to the Board within 28 days of its receipt and that the Tenant has the entirety of the Termination date to vacate the tenancy.

The Tribunal is satisfied that €2,000.00 is an appropriate amount in damages for the breach of the Appellant Landlord's obligations under the Act in respect of the unlawful termination of the Respondent Tenant's tenancy in the dwelling.

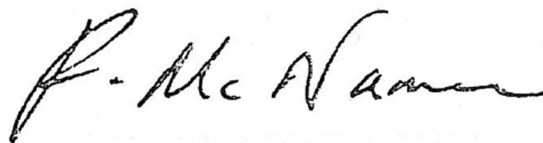
8. Determination:

In the matter of John Shannon (Appellant Landlord) and John Culligan (Respondent Tenant) the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act 2004 determine that:

The Appellant Landlord shall pay €2,000.00 to the Respondent Tenant within 28 days of the date of issue of this Determination Order. This sum represents damages in respect of the unlawful termination of the tenancy in the dwelling at Gortnaboul, Kilshanny, Co. Clare, V95R5P.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 30/07/2021.

Signed:



Fintan McNamara Chairperson

For and on behalf of the Tribunal.