

## **Residential Tenancies Board**

### **RESIDENTIAL TENANCIES ACT 2004**

#### **Report of Tribunal Reference No: TR0221-004773 / Case Ref No: 1020-65344**

<b>Appellant Tenants:</b>	Nina Fedcuka, Igors Skolnikovs
<b>Respondent Landlord:</b>	Pauline Maguire
<b>Address of Rented Dwelling:</b>	Clone Lane, Ferns, Enniscorthy, Co. Wexford
<b>Tribunal:</b>	Ciara Doyle (Chairperson) Anne Leech, Healy Hynes
<b>Venue:</b>	McCarthy Suite, Clayton Whites Hotel, Abbey Street, Wexford
<b>Date &amp; time of Hearing:</b>	24 April 2023 at 11:00 a.m.
<b>Attendees:</b>	Nina Fedcuka & Igors Skolnikovs (Appellant Tenants) Keistino Suaycovo (Appellants' Representative) Iuliia Kulyk (Appellant Tenants' Translator) Pauline Maguire (Respondent Landlord)
<b>In attendance:</b>	RTB appointed digital logger

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

On 06/10/2020 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 10/12/2020. The Adjudicator determined that:

"1. The Respondent landlord shall pay the sum of €1000.00 (damages for the unlawful termination of their tenancy) to the Applicant tenants in respect of their tenancy of the dwelling at Clone Lane, Ferns, Enniscorthy, Co. Wexford, within 21 days of the date of issue of the Order."

Subsequently the following appeal was received from the Tenant on 25/02/2021. 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). The appeal was approved by the Board on 26/04/2021.

The RTB constituted a Tenancy Tribunal and appointed Ciara Doyle, Anne Leech, Healy Hynes as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Ciara Doyle to be the chairperson of the Tribunal ("the Chairperson").

On 03/04/2023 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 24/04/2023 the Tribunal convened a hearing at McCarthy Suite, Clayton Whites Hotel, Abbey Street, Wexford.

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

RTB Tribunal case 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 them 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. In particular, she outlined that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible, that the party who appealed (the Appellant Tenants) would be invited to present their case first. That the Respondent Landlord would then be permitted to cross examine. That the Respondent Landlord would then be invited to present her case and the Appellant Tenants would then be permitted to cross examine. She reminded the parties present that the hearing was a de novo hearing involving a full rehearing of the case on the facts.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official stenographer present, and she reminded the parties present 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.

All parties present then stated an affirmation.

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

Submissions of the Appellant Tenants:

The second named Appellant Tenant stated that certain ground works were carried out at the dwelling by the Respondent Landlord in or around September 2020, and this had been stressful for his wife as she couldn't use the garden.

He said on the 1st October 2020 he found out that his wife had been arrested and afterwards they were not permitted to return to the dwelling to get their belongings.

He said several people associated with the Landlord were in the dwelling throwing things out and he had been refused entry as the Landlord said that she would bring their belongings to his business premises. When their belongings were brought to his business premises their driver's licences, passports and a sum of money which had been in a wallet were missing. He said when they received the wallet, there was no money in it.

He said on the 1st October 2020 he contacted a letting agent, with whom he had previous contact, and explained their situation and he received a key for a house that day which had

not yet been advertised and was not quite ready for letting. They stayed there that night and remained living there for over two and half years at a monthly rent of €900.

He said mid to end of September 2020 he had met the Landlord's partner and told him he had an appointment to view a property on the 2nd October 2020. He had arranged that appointment through an agent after he saw it advertised for rent.

He confirmed he had received a written notice from the Landlord of her intention to move into the dwelling dated the 5th February 2020, as was exhibited in the casefile, but said he did not receive this notice until the first week of March when she called to the house with her partner and they had tea. He said on the 1st October 2020, half his belongings had been packed up as they were looking for a new house and they understood the Landlord wanted to move in. He said they were agreeable to moving out, but it was difficult to find alternative accommodation, particularly as it was at a time when covid 19 restrictions applied.

On the 1st October 2020 he said the Landlord and her partner called to the house. The first named Tenant answered but she had no English, and she felt their behaviour was aggressive and threatening. She asked their 13-year-old son who was present to call the Gardai and this had caused them stress.

Work had been carried out at the property which had resulted in the electricity being turned off in the dwelling for a full day and night on the 29th September. They had called their own electrician who attended and fixed it.

On the 11th November 2020 they had received new Passports for the first named Tenant and second named Tenant and on the 11th July 2021 they received a replacement Passport for their son. They weren't allowed back into the dwelling. They had gone to the Gardai 7 or 8 times following the incident on the 1st October to enquire about their missing documents. They had also contacted their immigration officer as the immigration card was also missing.

#### Submissions of the Respondent Landlord:

The Landlord said she attended at the dwelling on the 5th February 2020 to furnish the Tenants with written notice of her intention to move back into the dwelling. When asked by the Tribunal if she thought the form of notice was compliant, she said she thought it was at the time. She said she intended to move into the dwelling at the end of August 2020. On the 19th July 2020 she said the Tenants had requested a reference and she had dropped out a written reference to them and this was on the casefile.

She said her partner had texted the second named Appellant Tenant and he had indicated they had a difficulty with moving out and they then informed him that she couldn't delay as she was under pressure herself to move out of her rented accommodation where she said she had lived for some years.

On the 26th August 2020 she said she had received a text from the Tenants saying they couldn't move out as they had no alternative place to go. She said the Tenants had been on holiday in Greece for two weeks prior to this message and when she enquired with the letting agent she established the Tenants had not made any contact with the letting agent.

Her partner spoke with the second named Tenant and told him that work would be commencing at the dwelling on the 1st September. She said the work involved breaking an entrance into a field behind the dwelling for construction of a storage unit/shed which was needed to store equipment from her old business. Electric work was also needed to bring

power from the dwelling to the shed. She said neither of the Tenants had contacted her to say that the power was off for the period alleged.

She disputed that the works interfered with the peaceful occupation of the dwelling by the Tenants because the works were in a separate area. She said the foundations and steelwork on the shed were not done until after the Tenants had moved out.

On the 27th September she said she sent a text to the Tenants asking if she could put her belongings in the sunroom in the dwelling and with their consent she attended at the dwelling and left her belongings in the sunroom. The next day she brought more belongings, and she was refused entry. At that point the first named Tenant called the Gardai. She explained the situation to the Gardai, and they were told it was a civil matter.

On the 30th September she tried to phone the second named Tenant to tell him more work would be carried out but he hung up. She then called to the dwelling and didn't get an answer.

On the 1st October 2020, she said the first named Tenant moved her Jeep to block the entrance so the contractor could not get his equipment to the required area to carry out the works. She went to the dwelling and the first named Tenant started to video her. She said the Tenant waved a knife at her and at that point, she phoned the Gardai.

She then explained to the Gardai the Tenant was over holding and that she had given notice. She confirmed she did not contact the RTB at this time. She said the Tenants had not paid any rent in September. Their last rent payment was made on the 20th August 2020 which covered the rent up to 15th September 2020. She said the first named Tenant opened the door to the Gardai. She complained of feeling faint and of having a heart condition. The Gardai called the paramedics, but the Tenant wouldn't sit down and when the Garda went to assist her, she assaulted the Garda.

The first named Tenant was then arrested and brought to the station. She was asked for the key to move the Jeep but refused to give it. When the Landlord went searching for the key in the house, a handgun was found and the Gardai, at that point called for back-up. When the second named Tenant came back to the house, they asked him for the key, but he didn't give it to them. She said several locks in the house were broken and she replaced all locks in the dwelling on the 1st October 2020 so the Tenants never returned. She emptied the house of their belongings and delivered them to the Tenant's place of business. She said she found the Tenant's phone and gave it back to her but didn't find any Passports, driver's licences, or money in the house. She said she had to get a replacement key for the Tenant's Jeep at a cost of €350 to move it and that the Jeep had blocked her contractor from carrying out any work for 12 days and blocked his equipment on site and she had to pay for this. The total cost to her she said was €12,350. She said she was entitled to retain the Tenant's deposit of €775 based on this cost and the rent due and owing from 15 September to 1 October 2020.

She said she had been very upset to find the gun in the house.

Closing Statement of the Appellant Tenants:

They stated that they were dissatisfied with the €1,000 awarded at adjudication. They said they were seeking a sum of €10,000, to reflect the unlawful termination of their tenancy including re-imbursement of their missing money, the loss of use of their car, the lost car key, missing jewellery, passports and drivers' licences and the stress and depression caused by events on 1 October 2020. They said the house they had moved to was not

appropriate as it was far away from their son's school, and they had to stay there for 2.5 years until they bought a new house.

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

1. The tenancy commenced 20th August 2015.
2. The Rent was €800 per month.
3. The security deposit paid by the tenants was €775 and this is retained by the Landlord.
4. The tenancy ended on 1st October 2020.

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

Finding 1:

The Respondent Landlord effected an unlawful termination of the tenancy of the dwelling at Clone Lane, Ferns, Enniscorthy, Co. Wexford.

Reasons:

The Notice of Termination served on the Appellant Tenants was invalid. It did not comply with the requirements of Section 62 of the Act, and it was not accompanied by a valid Statutory Declaration, as is required under Section 34 of the Act.

The Tribunal accepts the Respondent Landlord did notify the Appellant Tenants in writing of her intention to terminate the tenancy on a valid ground, that she intended to occupy the dwelling herself and that she did give the requisite notice period. However she did not serve a valid notice in a form compliant with the act and did not validly terminate the tenancy, in accordance with the requirements of the Act, before taking possession of the dwelling on 1 October 2020.

The Tenants were entitled to receive a valid Notice of Termination, and that Notice would have informed them of their right to dispute the notice of termination to the RTB. The Tenants accepted they had received a written Notice of Termination, albeit invalid, but they did tell the Landlord they had nowhere to go, when she contacted them in late August 2020 and again in September 2020. Notwithstanding same, the Landlord proceeded to attend at the dwelling on 28 September, 30 September and 1 October 2020, despite the Tenant's objections.

If the Landlord was of the opinion that the Tenants were overholding on a valid notice, recourse was available through the RTB dispute resolution service. Emergency measures were in place at the time due to the Covid 19 pandemic. The Tribunal further notes that the removal of the Tenant by the Gardai does not in and of itself serve to terminate a tenancy nor indicate that the Tenants have terminated a tenancy.

The Tribunal accepts the evidence of the Landlord that the Tenants agreed to allow her to carry out certain works to the dwelling and to move in her personal belongings into the dwelling on 27 September 2020. However, it was clear they then changed their mind and after refusing the Landlord entry to the dwelling on 1 October 2020, relations deteriorated between the parties resulting in the involvement of the Gardai and removal of one of the Tenants by the Gardai. While the Tribunal makes no finding in respect of any alleged criminal conduct on that day, it is clear on the evidence of both parties that it was the Gardai

who removed the Tenant on 1 October 2020. After that, the Landlord confirmed she changed the locks and denied the Tenants further entry.

The Tenants confirmed to the Tribunal that they secured a new house that same day on 1 October 2020 and moved in that night. However, they claimed that their passports, drivers' licences, money, and items of jewellery were missing when the Landlord delivered their personal belongings to their business premises and which were never recovered. They had not been permitted to re-enter the dwelling to search for their missing items. The Landlord said she was uneasy about this after the discovery of the firearm.

The Tenants did not confirm the amount of money missing or the value of any missing jewellery but claimed an award of €10,000 should be made to them as compensation for their loss of personal belongings and the effects the unlawful termination had on them, to include the return of their security deposit of €775.

The Landlord claimed she was at a loss of €12,350 as a result of the costs arising from the Tenants refusing to move their jeep, in addition to unpaid rent for the period 15 September 2020 to 30 September 2020 and that was why she had retained the security deposit.

The Tribunal finds that there was an unlawful termination of the tenancy by the Landlord. The Tenants were deprived of a valid Notice of Termination, notifying them of their right to refer a dispute to the RTB. The Landlord ought to have referred a dispute to the RTB for overholding after she was told by the Tenants they had nowhere to go and they had withdrawn their consent to her carrying out works and storing her belongings at the dwelling. Instead, she insisted on continuing with works at the dwelling, interfering with the peaceful occupation of the dwelling by the Tenants. Her attendance at the dwelling on 1 October 2020 ultimately resulted in the Tenants being evicted from the dwelling, without their belongings, with the loss of several items. In the absence of specific figures for the items claimed as missing, the Tribunal considers a sum of €4,000 to be a reasonable sum of damages in the circumstances. This figure takes in to account the sum of €775 security deposit due and owing to the Tenants and the sum of €394.52 unpaid rent due and owing to the Landlord. The Tribunal did not take into account unvouched costs claimed to have been incurred by the Landlord arising from the Tenant's jeep blocking access. Her insistence on continuing with works at the dwelling on 1 October 2020, after the Tenants had revoked their permission, contributed to the Tenants actions in blocking her access, and her refusal to allow the Tenants to re-enter the dwelling to get their belongings likely contributed to the loss of the key.

## **8. Determination:**

In the matter of Nina Fedcuka & Igors Skolnikovs [Appellant Tenants] and Pauline Maguire [Respondent Landlord] the Tribunal, in accordance with Section 108(1) of the Residential Tenancies Act, 2004, determines that:

The Respondent Landlord shall pay the sum of €4,000 to the Appellant Tenants being damages for the unlawful termination of their tenancy in respect of the tenancy of the dwelling at Clone Lane, Ferns, Enniscorthy, Co. Wexford within 28 days of the date of the issue of the Determination Order.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 28/04/2023.

A handwritten signature in black ink that reads "Ciara Doyle". The script is cursive and fluid, with the first name "Ciara" and last name "Doyle" clearly distinguishable.

**Signed:**

**Ciara Doyle, Chairperson**

For and on behalf of the Tribunal.