

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0221-004777 / Case Ref No: 0920-65067

Appellant Tenant:	David Costello
Respondent Landlord:	Jim Gilligan
Address of Rented Dwelling:	2 Jervis Place, Parnell Street, Clonmel, Co. Tipperary
Tribunal:	Karen Ruddy (Chairperson) John Keaney, Peter Shanley
Venue:	Ormond Meeting Rooms Telephone Conference Tribunal
Date & time of Hearing:	17 June 2021 at 10:30
Attendees:	David Costello, Tribunal Appellant Denise Kelleher, Denise Kelleher and Associates Solicitors, Tribunal Representative
In attendance:	RTB appointed recording technician

1. Background:

On 28/09/2020 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 22/12/2020. The Adjudicator determined that:

The Tenant's complaints of breach of landlord obligations in respect of the tenancy of the dwelling at 2 Jervis Place, Parnell Street, Clonmel, Co. Tipperary are not upheld.

Subsequently the following appeal was received from the Tenant on 26/02/2021. The grounds of the appeal: Unlawful termination of tenancy (Illegal eviction). The appeal was approved by the Board on 07/04/2021.

The RTB constituted a Tenancy Tribunal and appointed John Keaney, Peter Shanley and Karen Ruddy as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Karen Ruddy to be the chairperson of the Tribunal ("the Chairperson").

On 21/05/2021 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 17/06/2021 the Tribunal convened a Teleconference hearing at the Ormond Meeting Rooms, Dublin.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case files.

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

At 10.30am the Tribunal noted that there was no appearance by or on behalf of the Respondent landlord. Having waited a grace period of 15 minutes and being satisfied that the Respondent landlord was duly served with the details of this appeal hearing, the Appeal hearing commenced via teleconference at 10.45am, in the absence of the Respondent landlord.

It was explained that the Appeal was proceeding via teleconference owing to covid 19 restrictions being in place.

The Chairperson asked the persons participating to identify themselves and to identify in what capacity they were participating in the Tribunal. The Chairperson confirmed with the parties that they had received and understood 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 appellant tenant would be invited to present his case and make submissions.

The Chairperson stressed that all evidence would be taken on affirmation and would be recorded by the official stenographer present. The party present was reminded that this was the only recording permitted of the proceedings and they were asked to switch off all devices capable of recording the proceedings.

The Chairperson reminded the Appellant tenant that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or up to 6 months imprisonment or both. The Chairperson asked if there were any queries about the procedures, there were no queries.

The Chairperson also reminded the party present that as a result of the Hearing that day (which was a full rehearing on the facts), 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 [pursuant to section 123(3) of the 2004 Act].

The appellant tenant was then affirmed.

5. Submissions of the Parties:

The Appellant Tenant's Case:

The Appellant tenant confirmed that the tenancy commenced on the 1st September 2016.

He stated that he and two others agreed to take the tenancy of apartment no.1 on the ground floor of the dwelling. He said his portion of the rent was €267 per month payable in advance. He said he paid a deposit of €267 also.

He said he believes that the tenancy was terminated by the Respondent landlord on the 17th July 2020. He confirmed that no written notice of termination was served by either party on the other.

He confirmed that he had made contact with his co-tenants, Stephen Bolger and Iain Wool online in 2016 before they were all due to commence their studies in college in Clonmel.

He stated that they had always paid their rent on time and there were no arrears. He said in or around 2017 they moved from apartment no1 to apartment no2 which was upstairs in the same building.

He said they had agreed with the landlord that they would occupy the upstairs apartment on the same terms.

He said they had signed a written lease but that his copy was with the belongings that were thrown out by the Respondent landlord in July 2020.

He said in summer 2020 he moved home to his parents' house to take up a summer job. He said he had done this in previous years but that he had continued to pay his rent during the summer months as they had a year round tenancy.

He said he returned to the dwelling on the 1st September 2020 to start his final year of study. He said he was driven from Cork to Clonmel by his mother. He said when he arrived at the dwelling he was shocked to find someone else's belongings in his room and his belongings were not there. He said he contacted the Respondent landlord immediately who told him that Stephen Bolger had informed the landlord that all of the three tenants were moving out of the dwelling.

The Appellant tenant confirmed to the Tribunal that the Respondent landlord had not made contact with him in July 2020 to check whether he intended to stay on in the dwelling. He said the Respondent landlord suggested that it was he who should have made contact with the Respondent landlord to confirm that he intended to stay on in the dwelling after Stephen Bolger moved out. He said that there had been no effort made by the Respondent landlord, as far as he could ascertain, to make contact with him prior to throwing away his belongings. He said that it was curious that the third tenant's belongings were not touched and that the third tenant, Iain Wool, actually remained living in the dwelling until September 2020. He said the Respondent landlord had never adequately explained why he had behaved as he had. While the Respondent landlord claimed that Stephen Bolger had told him that all of them were moving out, the Appellant tenant pointed to a statement at page 5 of casefile 2 signed by Stephen Bolger on the 31st May 2021 refuting this and saying that he had informed the Respondent Landlord that only he, Stephen Bolger, was moving out in July 2020.

He said the Respondent landlord had claimed that Stephen Bolger had given him a contact number for the Appellant tenant but that it was not in service when the Respondent landlord tried to phone him. The Appellant tenant pointed out that the Respondent landlord had been provided with their phone numbers and home addresses at the time they had moved into the dwelling in 2016.

The Appellant tenant stated that he is claiming for an over payment of rent given that the Respondent landlord continued to accept rent payments from him via standing order into his bank account on the 27th July 2020 and on the 27th August 2020 of €267 per month. He stated that he was also owed the return of 10 days rent for the period from the 17th July to the 26th July. He provided bank statements as evidence that these rent payments were made and the bank statements are at page 11 of casefile1.

He also confirmed that he had paid a security deposit of €267 and that this had not been returned to him by the Respondent landlord.

The Appellant tenant described how upset he was upon his return to the dwelling on the 1st September 2020 to find his room full of someone else's belongings. He said he was upset when the Respondent landlord accused him of having not paid his rent and he had had to prove the payments of rent to the Respondent landlord.

He said he was shocked that all of his possessions had been thrown out by the Respondent landlord and he had to forego his return to college for the year 2020 as he had no clothes, equipment or possessions. He said he could not afford to immediately go out and purchase replacement clothes and bedding. He said he had gone home with his mother and had dropped out of college for the year. He told the Tribunal that all of his possessions were in the dwelling because he had just taken some shorts and t shirts home for the summer. He said sentimental items such as toys he had from his youth had been thrown away by the Respondent landlord. He described his utter devastation at what had occurred and at not being able to return to college.

The Appellant tenant referred to a list of items and evidence of the cost of replacing the items which he had provided in documentary form at pages 5, 6 and 7 of Case File 1 which included clothing, footwear and personal effects. He also listed a number of items such as computer and camera equipment that he said he needed for his multimedia course work.

He gave evidence in relation to the list of items that he had provided, together with estimates of the costs of replacement items.

He set out that he was claiming a sum of €4415 as the cost of replacement clothing and footwear. He also said he was claiming the sum of €3300.30 for replacement of his personal items. He provided proof of the costs of these items from the Amazon website and showing credit card receipts for his purchase of the various items. He agreed that he had calculated his figures by reference to the cost to buy the items new and not the cost of second-hand items. He agreed that his belongings were used and so were of a lesser monetary value than brand new items.

He agreed that he had not applied any discount to the figure claimed to take into account the fact that some items could be replaced with second hand items.

He said the course he is pursuing in college is in creative multimedia. He suggested that it will be very expensive to replace his electronic and camera equipment but that he needs them to complete his final year project.

When asked whether he could have borrowed money in order to complete his final year of studies, he replied that he already has student loans and overdrafts and cannot afford to borrow any more money.

In her closing submission the Appellant tenant's legal representative set out that he had been a tenant in the dwelling since 2016. She submitted that it was the Appellant tenant's case that no effort whatsoever had been made by the Respondent landlord to contact the Appellant tenant prior to throwing his belongings away and clearing out his room. She submitted that the Respondent landlord had his phone number and had his parents' home address so he should have been able to contact the Appellant tenant in July 2020.

She submitted that this eviction was clearly an illegal eviction given that the Respondent landlord failed to give notice to the Appellant tenant and had carried out an illegal eviction.

She said it was clear that the co-tenant denies having told the Respondent landlord that all three tenants were moving out in July 2020. She submitted that the Respondent landlord may have misinterpreted the situation. She submitted that the Respondent landlord should

have ensured that the verbal notice given was for all 3 tenants. She said the co-tenant had no authority to terminate the tenancy for the other tenants.

She submitted that the Respondent Landlord had caused a devastating loss to the Appellant tenant. She said the knock-on effect of the illegal eviction was devastating for the Appellant tenant. She said he had no access to money with which he could purchase replacement items. She said he now needs to get back on his feet.

She indicated that the illegal eviction had caused a scenario where the Appellant tenant could not finish his college course. She also stated that the Respondent landlord had made inaccurate submissions at the adjudication stage.

She submitted that the Appellant tenant had put considerable effort into getting a correct and accurate reflection of the estimate of costs of replacement items.

She submitted that the Appellant tenant did not report the matter to Gardai as he considered it to be a civil matter.

The Respondent Landlord's Case:

No appearance by or on behalf of the Respondent landlord.

6. Matters Agreed Between the Parties

None.

7. Findings and Reasons:

Having considered all of the documentation before it, and having considered the evidence and submissions presented to it by and on behalf of the Appellant tenant, the Tribunal's findings and reasons thereof, are set out hereunder.

Finding No. 1

The Tribunal finds that the Respondent landlord was in breach of his obligations in relation to the tenancy of the dwelling at no.2 Jervis Place, Parnell Street, Clonmel, Co. Tipperary in carrying out an illegal eviction of the Appellant tenant.

Reasons:

The Tribunal accepts the Appellant tenant's uncontested evidence that his tenancy of the dwelling commenced in September 2016 and continued uninterrupted until July 2020.

The Tribunal accepts the Appellant tenant's uncontested evidence that he was not served with a notice of termination in relation to the tenancy of the dwelling and that the Respondent landlord removed his possessions from his room in the dwelling in July 2020 and that the personal belongings were not recovered by the Appellant tenant. This was an illegal eviction contrary to the provisions of section 58 of the Residential Tenancies Act 2004 (as amended).

The Tribunal accepts the uncontested evidence of the Appellant tenant of the disruption and upset that the illegal eviction caused to his life and to the fact that the loss of personal belongings caused him to drop out of college for his final year.

The Tribunal accepts the figures/costs associated with the purchase of replacement clothing, footwear and equipment and allows the sums claimed by the Appellant tenant but

the Tribunal will allow a discount of one quarter on the sum claimed in recognition of the fact that the Appellant tenant's belongings, having been used, were of a lesser monetary value than items purchased brand new. The discount of one quarter is also applied in recognition of the fact that the Appellant tenant will be able to purchase some of the replacement items second hand.

The Tribunal awards the sum of €3,300 towards the Appellant tenant's costs of replacing his items of clothing and footwear.

The Tribunal awards the sum of €2,475 towards the Appellant tenant's costs of replacing his items of electronic and camera equipment and other personal effects.

The Tribunal awards the sum of €3,000 to the Appellant tenant in damages for distress and upset caused to him on account of the actions of the Respondent tenant in carrying out an illegal eviction of the Appellant tenant in July 2020.

Therefore, the Tribunal awards the total sum of €8,775 to the Appellant tenant in respect of his claim relating to the illegal eviction carried out in July 2020.

Finding No. 2

The Tribunal finds that there was an over-payment of rent by the Appellant tenant in the amount of €621.78.

Reasons:

The Tribunal accepts that the Appellant tenant paid rent in the sum of €267 on the 27th June 2020, on the 27th July 2020 and on the 27th August 2020. The Tribunal accepts the uncontested evidence given by the Appellant tenant that the Respondent landlord removed his belongings from his room and illegally evicted him from the dwelling on the 17th July 2020. Therefore, the Tribunal accepts that the Appellant tenant has overpaid his rent in the amount of €621.78, being the over-payment of 10 days rent in July 2020 equal to €87.78 ($\text{€}267 \times 12 = \text{€}3204 / 365 = \text{€}8.778 \times 10 \text{ days} = \text{€}87.78$, plus the rent for the month of August 2020 paid on the 27th July 2020 and plus the rent for the month of September 2020 paid on the 27th August 2020).

The total over-payment of rent amounts to €621.78.

Finding no.3

The Respondent landlord has wrongly retained the Appellant tenant's security deposit for the dwelling in the amount of €267.00.

Reasons:

The Tribunal accepts the Appellant tenant's uncontested evidence that he paid a security deposit in the sum of €267 to the Respondent landlord upon commencement of the tenancy in September 2016.

Upon termination of the tenancy, the Respondent landlord has an obligation to repay the security deposit to the Appellant tenant promptly under section 12 of the RT Act 2004, which provides:

12.—(1) In addition to the obligations arising by or under any other enactment, a landlord of a dwelling shall—

(d) subject to subsection (4), return or repay promptly any deposit paid by the tenant to the landlord on entering into the agreement for the tenancy or lease,

(4) Subsection (1)(d) applies and has effect subject to the following provisions:

(a) no amount of the deposit concerned shall be required to be returned or repaid if, at the date of the request for return or repayment, there is a default in—

(i) the payment of rent and the amount of rent that is in arrears is equal to or greater than the amount of the deposit, or

(ii) compliance with section 16 (f) and the amount of the costs that would be incurred by the landlord, were he or she to take them, in taking such steps as are reasonable for the purposes of restoring the dwelling to the condition mentioned in section 16 (f) is equal to or greater than the amount of the deposit,

(b) where, at the date of the request for return or repayment, there is a default in the payment of rent or compliance with section 16 (f) and subparagraph (i) or (ii), as the case may be, of paragraph (a) does not apply, then there shall only be required to be returned or repaid under subsection (1)(d) the difference between the amount of rent that is in arrears or, as appropriate, the amount of the costs that would be incurred in taking steps of the kind referred to in paragraph (a)(ii).

The Tribunal is satisfied that the exceptions provided for under section 12 of the RT Act 2004, permitting retention of the security deposit by the Respondent landlord, do not apply in this case in circumstances where the Respondent landlord has provided no evidence to justify retention of the security deposit in the sum of €267.00

8. Determination:

In the matter of David Costello (Appellant Tenant) and Jim Gilligan (Respondent Landlord) the Tribunal, in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlord shall pay the total sum of €9,663.78 to the Appellant Tenant in respect of breach of landlord obligations (being €3,000 damages for illegal eviction, €5,775 in respect of the wrongful disposal of the tenant's belongings, €621.78 in over payment of rent and €267 in return of the wrongly retained security deposit) within a period of 60 days from the date of issue of the Determination Order, in respect of the tenancy of the dwelling at 2 Jervis Place, Parnell Street, Clonmel, Co. Tipperary.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 23/06/2021.



Signed:

Karen Ruddy, Chairperson

For and on behalf of the Tribunal.