

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0223-005956 / Case Ref No: 0822-79471

Appellant Landlord:	John Melican
Respondent Tenant:	Wiktorina Osinska
Address of Rented Dwelling:	2 Meadow View, Kilmihil, Kilrush, Clare, V15H364
Tribunal:	Brian Murray (Chairperson) John Keane, Helen-Claire O'Hanlon
Venue:	Virtual
Date & time of Hearing:	22 May 2023 at 10:30am
Attendees:	John Melican Appellant Landlord David Molloy Appellant Landlord's witness Wiktorina Osinska Respondent Tenant
In Attendance:	John Melican Appellant Landlord David Molloy Appellant Landlord's witness Wiktorina Osinska Respondent Tenant

1. Background:

On 30 August 2022 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 18 January 2023.

The Adjudicator determined that:

In the matter of Wiktorina Osinska (Applicant Tenant) and John Melican (Respondent Landlord) the Adjudicator in accordance with Section 97(4)(a) of the Residential Tenancies Acts 2004 to 2022, determines that:

The Respondent Landlord shall pay the total sum of €1,250.00 to the Applicant Tenant, within seven days of the date of issue of the Determination Order, being damages of €1,250.00 for the consequences of the Respondent Landlord's unlawful termination of the Applicant Tenant's tenancy in breach of Sections 58, 62, 66 and 67 of the Act, in respect of the tenancy of the dwelling at 2 Meadow View, Kilmihil, Kilrush, Clare, V15H364.

Subsequently, an appeal was received from the Landlord and the RTB constituted a Tenancy Tribunal and appointed Brian Murray, Helen-Claire O'Hanlon, John Keane as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Brian Murray to be the chairperson of the Tribunal ("the Chairperson").

On 22 May 2023 the Tribunal convened Virtual Hearing via Microsoft Teams.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

None

4. Procedure:

The Chairperson opened the Hearing by asking the Parties attending the Virtual Hearing to identify themselves and to identify in what capacity each was attending the Tribunal. The Chairperson confirmed with the Parties attending 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, that as this was the Appellant Landlord's application to the Tribunal, he would be invited to present his case first, followed by an opportunity for cross-examination on behalf of the Respondent Tenant, then the Respondent Tenant would be invited to present her case followed by an opportunity for cross-examination on behalf of the Appellant Landlord. Then both parties would be entitled to make a closing submission.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official stenographer/recording technician present and he reminded the Parties attending 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 the hearing was a de novo hearing and 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.

Those giving evidence gave their affirmations.

5. Submissions of the Parties:

Evidence of the Appellant Landlord:

The Appellant Landlord stated that the Respondent Tenant moved into the property on 20 June 2022 and that it was a term of the tenancy agreement that there would be no pets allowed in the property. He stated that within two weeks of moving in, the Respondent Tenant breached the tenancy agreement by introducing two dogs into the dwelling. The Appellant Landlord stated that the Respondent Tenant had represented that she was minding the dogs for her sister but he stated that they were still present at the property nine weeks later.

He stated that after one month, the Respondent Tenant asked him to fill out an application form for HAP, which he attempted to do.

He stated that the Respondent Tenant was in arrears of rent for of approximately two months' rent and that she refused to pay it until the HAP assistance materialised. He stated that the house is in a village only a mile from where he lives and that he received lots of complaints about the dogs in the dwelling.

The Appellant Landlord referred the Tribunal to Tribunal Case File 1, page 29 which was a copy of a notice of termination which sought to terminate the tenancy on 7 November 2022. The notice is stated to be served on 1 September 2022.

The Appellant Landlord accepted that he changed the locks on the property around the end of August 2022 and he stated that on 20 August 2022, he gave one week's notice of this. He stated that he changed the locks because the Respondent Tenant was not paying rent and she had breached the terms of the tenancy by having dogs at the dwelling.

He stated that the Residential Tenancies Board contacted him to state that the Respondent Tenant was entitled to a key to the property. He said the key was available to her but only if she paid her rent.

The Appellant Landlord referred the Tribunal to Tribunal Case File 1, page 35 which was a photograph of a collection of refuse sacks. He stated that this was evidence that the Respondent Tenant had left the back yard of the property full of rubbish.

The Appellant Landlord stated that he was also seeking rent arrears for the period of 20 August to 7 November 2022 and that he was seeking a sum of damages of €1150 arising out of alleged damage to the property which was in excess of normal wear and tear.

In that regard, the Appellant Landlord stated that he had to re-sand and spray the staircase and had to paint a bedroom.

When asked by the Tribunal, the Appellant Landlord agreed that the tenancy had commenced on 15 June 2022 and that the Respondent Tenant had paid two months' rent, €1800, in advance and that this covered the rent up to 14 August 2022.

The Appellant Landlord confirmed that he had managed to place new tenants in the dwelling from mid December 2022.

Evidence of the Respondent Tenant:

The Respondent Tenant stated that when she moved in, she was going back and forth with the letting agency and nothing was mentioned to her about having dogs. She stated that she did not know that she was not allowed to have dogs but she now accepts that she was in breach of the tenancy agreement by having dogs at the property.

The Respondent Tenant disputed that there were any complaints about the dogs and she stated that none of the neighbours ever complained to her about the dogs.

The Respondent Tenant stated that the Appellant Landlord sent a text message on 25 August 2022 and that she had been asking him to sign the HAP papers for two months at this stage. The Respondent Tenant stated that the Appellant Landlord was taking too much time.

She stated that in the text message, the Appellant Landlord stated that if she was not able to pay the full rent, she would have to move out. She stated that on 28 August 2022, the Appellant Landlord contacted her to state that he had changed the locks. The Respondent Tenant stated that she was in Limerick at this time and when she was locked out of the property, she stayed with her sister in Limerick. She stated that she went back shortly after to get her belongings from the property.

The Respondent Tenant disputed that she was obliged to pay any rent after she had been locked out of the property. In relation to the rubbish, she stated that it was carefully placed in refuse sacks and was not strewn around the property. She stated that she had it removed.

In relation to the allegation of damage in excess of normal wear and tear, the Respondent Tenant stated that the staircase was already scratched. She stated that she painted the bedroom.

She stated that she had difficulty getting her belongings back from the Appellant Landlord. She stated that she collected some belongings on 29 August 2022 and then picked up the balance on 18 September 2022. She stated that the Appellant Landlord had offered to return her belongings a few times but if she was late for those appointments, the Appellant Landlord would not wait. She explained that she was living with her sister and then latterly her mother in Killarney and had a very long commute to work, two hours each way.

She stated that she found a new property on 10 November 2022 and estimated that she was homeless as a result of the Appellant Landlord's actions, for approximately three months.

Closing submission of the Appellant Landlord:

The Appellant Landlord submitted that the Respondent Tenant knew what the rent was and what her obligations were with regard to paying the rent. He stated that she came through an agency and from the outset it was made aware to her that there were no pets allowed. He submitted that the house was immaculate when she moved in and that she was guilty of multiple breaches of her tenancy agreement and obligations. He stated that he is struggling like many landlords and that this is the first time that this has ever happened to him. He stated that he has obligations to keep other tenants happy which is why he had a difficulty with the dogs being in the property.

Closing submission of the Respondent Tenant:

The Respondent Tenant stated that she disputed that there was any problem with the dogs and that she had offered to clean the house but the Appellant Landlord told that there was no need for that.

6. Matters Agreed Between the Parties

Tenancy commencement: 15 June 2022

Rent amount: €900

Tenant in occupation: No

7. Findings and Reasons:

Finding No 1:

The Tribunal finds that the Appellant Landlord carried out an unlawful termination of the tenancy.

Reasons:

A tenancy agreement may only be terminated in accordance with the provisions set out in the Residential Tenancies Act of 2004. In particular section 58 (1) of the Act prohibits the termination of a tenancy by a landlord by means of re-entry.

In this case, while a notice of termination was served by the Appellant Landlord, the termination date for the tenancy was stipulated to be 7 November 2022.

The Appellant Landlord in his own evidence stated that he changed the locks on the property around the end of August 2022 and he stated that on 20 August 2022, he gave one week's notice of this. He stated that he changed the locks because the Respondent Tenant was not paying rent and she had breached the tenancy by having dogs at the dwelling. He further stated that the new key was withheld from the Respondent Tenant until she paid rent.

The Tribunal is satisfied that the locks were changed on 28 August 2022. In taking these actions, the Appellant Landlord unlawfully denied the Respondent Tenant from accessing her rented dwelling and what was at the time, her home. This amounted to an unlawful termination of the tenancy.

In the particular circumstances of this case and the nature of the breach committed by the Appellant Landlord, the Tribunal finds it was appropriate to award €2,500 damages to the Respondent Tenant, in particular having regard to the nature of the inconvenience caused to the Respondent Tenant by the unlawful termination of her tenancy.

Finding No 2:

The Respondent Tenant failed in her duty pursuant to section 16 (a)(i) of the Act to pay rent as it fell due. The Landlord is entitled to payment of arrears of rent of €414.26.

Reasons:

The Tribunal is satisfied that the Respondent Tenant was in arrears of rent for the period between 14 August 2022 and 28 August 2022, that being the date of the termination of the

Tenancy. It was accepted that the Respondent Tenant had paid 2 months rent up front on 15 June 2022 and that the monthly rent was €900.

The total period for which rent was unpaid was 14 days. The daily rent is €900 x 12 / 365 = €29.59. 14 days rent at €29.59 per day is €414.26.

Finding No 3:

There was insufficient evidence that there was damage in excess of normal wear and tear in the Dwelling.

Reason:

No evidence was provided of damage to the stairs or of the complaint about painting. In addition, no evidence was provided of the state of the dwelling before the Respondent Tenant moved in. Accordingly, this aspect of the Appellant Landlord's complaint is not upheld.

8. Determination:

Re: TR0223-005956 / DR0822-79471

In the matter of John Melican (Appellant Landlord) and Wiktoria Osinska (Respondent Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004 that:

1. The Appellant Landlord shall pay the total sum of €2,085.74 to the Respondent Tenant within 28 days of the date of issue of the Determination Order, being damages of €2,500.00 for unlawful termination of the tenancy less rent arrears of €414.26, in respect of the tenancy of the dwelling at 2 Meadow View, Kilmihil, Kilrush, Clare.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 14/07/2023.



Signed:

Brian Murray Chairperson

For and on behalf of the Tribunal.