

**Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0223-006015 / Case Ref No: 1022-80783**

<b>Appellant Tenant:</b>	Xerico Ltd
<b>Respondent Tenant:</b>	Margaret Penrose
<b>Address of Rented Dwelling:</b>	258 Howth Road, Dublin 5, D05V4H9
<b>Tribunal:</b>	Fintan McNamara (Chairperson) Ciara Doyle, Mary Doyle
<b>Venue:</b>	Virtual
<b>Date &amp; time of Hearing:</b>	23 May 2023 at 2:30pm
<b>Attendees:</b>	Home Club Ltd., Dispute Representative Xerico Ltd., Tribunal Appellant, Landlord Margaret Penrose, Dispute Respondent, Tenant Home Club Ltd., Tribunal Representative,
<b>In Attendance:</b>	For the Applicant: Michelle Savage (Home Club Management Agents For the Respondent: Margaret Penrose Also in Attendance: Recording Technician/Stenographer as arranged by the RTB.

**1. Background:**

On 22/10/2022 the Landlord made an application to the Residential Tenancies Board (“the RTB”) pursuant to Section 78 of the Act. The matter was referred to an Mediation which took place on 23/02/2023. The Mediator determined that no agreement was reached during the mediation.

Subsequently the following appeals were received:

Landlord: received on 23/02/2023. The grounds of the appeal: Rent arrears, Validity of notice of termination (if you are disputing the validity of a termination notice issued) ; Approved by the Board on 28/02/2023.

The RTB constituted a Tenancy Tribunal and appointed Fintan McNamara, Ciara 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 25/04/2023 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 23/05/2023 the Tribunal convened a hearing at Virtual, Virtual.

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

1. PRTB File

## **3. Documents Submitted at the Hearing Included:**

None

## **4. Procedure:**

The Chairperson asked the Parties attending the Virtual Tribunal Hearing to identify themselves and to identify in what capacity each was attending the 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 his directions in this regard.

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 Applicant) would be invited to present his/her case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present his/her case; that there would be an opportunity for cross-examination by the Applicant 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 he 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 [reference section 123(3) of the 2004 Act].

The Parties giving evidence gave their respective affirmations.

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

**Applicant Landlord's Case:** The Applicant landlord's Agent in her submission said that the main dispute revolved around rent arrears. She said there was a rent review carried out by former agents Gillespie Lowe which increased the rent from €1800 to €2136. She said that the Respondent Tenant did not pay the increase and was claiming she had an agreement with the original landlord that the rent would not be increased so long as she took care of the property. However the Agent pointed out that she had not seen this agreement and there were no special conditions listed when the house was being sold.

She claimed that when she took over the management of the property from Gillespie Lowe on April 1st 2022 there were arrears totalling €6081 on the balance sheet. She said that €3600 of this was rent arrears and the balance consisted of deductions for appliances bought for the property. She explained that she operated a system which facilitated tenants when they had issues with repairs. They could log the issue and a team of various contractors was available to do the necessary work. She said this process had the effect of keeping down costs and tenants were not permitted to make deductions from the rent to cover the cost of any repairs. She claimed that the total rent arrears now amounted to €11,457.

She said that the Applicant Landlord had decided to sell and had issued a Notice of Termination which had expired on the 11th November 2022 but because of the eviction ban the Notice had been extended to the 1st April 2023. She said that the Respondent Tenant was still in the property and that the Applicant Landlord cannot sell it with a tenant still in occupation. She said that the property in all likelihood would be mainly of interest to a prospective owner occupier and a tenant in situ would compromise the sale of the property.

**Respondent Tenant's Case:** The Respondent Tenant in her evidence said that the original owner in 2016 agreed not to increase the rent so long as the property was looked after. She

said that he also gave her an option to buy the property. She claimed that in the light of this she had made substantial improvements to the property including the installation of a new pump but did not produce any receipts. She said she was a buyer's agent and had a team which dealt with purchasing appliances and dealt with maintenance issues. She pointed out that she had never made a deduction from the original €1800 rent which applied from the outset.

She said that Mazars, who were then acting as agents, told her the property was going into receivership in 2017. She said that subsequent to Mazars a number of agents managed the property. These were O Dwyer Property Management Co. followed by Dillon Marshall, and Gillespie Lowe. She said Home Club were now the agents and that Xerico, the Applicant Landlord, bought it in 2019 from the receiver. She said that the Notice of Termination was flawed because what Xerico bought was a loan portfolio not a property.

She said that there were defects in the property because it did not have a water meter. She claimed that rectifying this would be a huge job. She asserted that in its current state it could only be purchased by a cash buyer. She said that in these circumstances, while the Notice of Termination was valid, it was pointless serving it. She then acknowledged her family was occupying two houses owned by the Landlord, number 256 and 258 Howth Rd. Dublin 5

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

Matters ascertained at the Hearing

1. The tenancy commenced mid April 2016
2. The rent was originally €1800 per month
3. A security deposit was paid but the amount was disputed by the parties
4. The Tenant remains in occupation of the dwelling

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

### **7.1 Finding:**

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.

Finding: The Tribunal find that the Notice of Termination served on the Respondent Tenant on the 10 May 2022 with a termination date of the 11th November 2022 is valid.

Reason: The tenancy in the dwelling was a Part 4 tenancy. Section 34 of the Act sets out the grounds on which a Part 4 tenancy may be terminated by a landlord. Section 62 of the Act sets out the requirements for a valid Notice of Termination and Sections 66, 67 and 68 of the Act set out the notice periods required.

The Table in Section 34 of the Act sets out Grounds for Termination of a Part 4 or Further Part 4 tenancy, the third of which is as follows

3. The landlord intends, within 9 months after the termination of the tenancy under this section, to enter into an enforceable agreement for the transfer to another, for full consideration, of the whole of his or her interest in the dwelling or the property containing the dwelling and the notice of termination is accompanied by a statutory declaration referred to in section 35.

Section 35 (8) of the Act sets out the following

8) The statutory declaration that is to accompany a notice of termination in respect of a termination referred to in paragraph 3 of the Table shall include —

( a ) a declaration that the landlord intends to enter into an enforceable agreement to transfer to another, for full consideration, of the whole of his or her interest in the dwelling or the property containing the dwelling,

Secondly it is necessary to set out in accordance with Section 62 of the Act the requirements for a valid notice of termination as follows

(a) it must be in writing,

(b) it must be signed by the Landlord or the Landlord's agent,

(c) it must specify the date of service.

(d) It must specify the reason for the termination.

(e) It must specify the termination date.

(f) It must specify that any issue as to the validity of the notice must be referred to the Board within 28 days of the date of receipt of it.

Section 66 of the Act sets out the number of days notice required for the termination of a tenancy that has lasted not less than 8 years. With a commencement date of mid April 2016

at the date of service of the Notice of Termination (10 May 2022 the tenancy had lasted 6years and 1 month requiring a notice period of 180 days. The Termination date in the Notice was 11 November 2022, giving a notice period in excess of 180 days, starting on the day after the notice was served. Thus, the period of notice met the requirements of the Act.

The Statutory Declaration in this case was signed by Ms Athanasia Fotiadu a director of Xerico and witnessed and stamped by Christakis Kapitanis a practicing cypriot certifying officer who gave evidence under affirmation that she was a director of the company that owned the property and had authority to swear and/or complete the Statutory Declaration.

However, unless a country where the statutory declaration is sworn, has signed up to the EC Convention of 1987, there is, under the Hague Convention of 1961, an additional requirement for an apostille to accompany the statutory declaration.

An apostille verifies the origin of a document. It does so by certifying the authenticity of the signature on the document, the capacity in which the person signing the document acted and, where appropriate, the identity of the seal or stamp which the document bears

The Notice of Termination complies with the provisions set down by the Act and as Cyprus signed up to the EC Convention in 2005 the failure to include an apostille on the Statutory Declaration does not render the accompanying Statutory Declaration invalid.

Finding 2 The Notice of a rent review served by Gillespie Lowe former agents of the Applicant Landlord is valid

Reason ; Section 22 of the RTA set out the requirements for a valid rent review.

22.—(1) The setting of a rent (the “new rent”) pursuant to a review of the rent under a tenancy of a dwelling and which is otherwise lawful under this Part shall not have effect unless and until the condition specified in subsection (2) is satisfied.

(2) That condition is that, at least F57[90 days] before the date from which the new rent is to have effect, a notice F58[in the prescribed form] is served by the landlord on the tenant stating the amount of the new rent and the date from which it is to have effect F59[and the matters specified in subsection (2A)]. F59[(2A)

The notice referred to in subsection (2) shall—

(a) without prejudice to subsection (2) and pursuant to the condition referred to in that subsection, state the amount of the new rent and the date from which it is to have effect,

(b) include a statement that a dispute in relation to the setting of a rent pursuant to a review of the rent under a tenancy must be referred to the Board under Part 6 before—

(i) the date stated in the notice as the date from which that rent is to have effect, or

(ii) the expiry of 28 days from the receipt by the tenant of that notice, whichever is the later,

(c) include a statement by the landlord that in his or her opinion the new rent is not greater than the market rent, having regard to—

(i) the other terms of the tenancy, and

(ii) letting values of dwellings—

(I) of a similar size, type and character to the dwelling that is the subject of the tenancy, and Residential Tenancies Act [2004.] 2004 PT. 3 S. 20A [No. 27.] 48 (II) situated in a comparable area to that in which the dwelling the subject of the tenancy concerned is situated,

(d) specify, for the purposes of F60[paragraph (c)], and without prejudice to the generality of that paragraph, the amount of rent sought for 3 dwellings— (i) of a similar size, type and character to the dwelling that is the subject of the tenancy, and (ii) situated in a comparable area to that in which the dwelling the subject of the tenancy concerned is situated, F61[...]

(e) include the date on which the notice is F60[signed, F62[...]] F63

[(f) where the dwelling is in a rent pressure zone (within the meaning given in section 19(7)), state how the rent set under the tenancy was calculated having regard to section 19(4) or, where section 19(4) does not apply, state why it does F64[not apply, and]] F65

[(g) where the dwelling is in a rent pressure zone (within the meaning given by section 19(7)) to which section 19(4A) applies, state how any increase in the rent last set under the tenancy of the dwelling was calculated or, where section 19(4A) does not apply, state why it does not apply.]

(2B) The notice referred to in subsection (2) shall be signed by the landlord or his or her authorised agent.

(2C) In this section ‘amount of rent sought’ means the amount of rent specified for the letting of a dwelling in an advertisement the date of which falls within the period of 4 weeks immediately preceding the date on which the notice referred to in subsection (2) is served.]

(3) Where that condition is satisfied, a dispute in relation to a rent falling within subsection (1) must be referred to the Board under Part 6 before—

(a) the date stated in the notice under subsection (2) as the date from which that rent is to have effect, or

(b) the expiry of 28 days from the receipt by the tenant of that notice, whichever is the later.

The Notice rent review dated 24 May 2021 as exhibited in case file 2 page 35 complies with all the requirements of Section 22 of the Act and follows the formula of the rent calculator which applies in rent pressure zones and no issues were raised in respect of the service of same.

Finding 3 The Respondent Tenant is in rent arrears totalling €7056

Reason: The Applicant Landlord's Agent gave a detailed breakdown of the shortfall in rent payments from February 2022 close to when she took over the property. The Respondent Tenant did not deny that she had not paid the increased rent stated in the rent review notice, since the date of the rent review. The Applicant Landlord's Agent also claimed that when she took over the management of the property the account sheet recorded a deficit of rent of €6081 which included historic rent arrears of €3600. However the evidence she submitted was vague and insufficient to enable the Tribunal to make a determination on how these figures were calculated.

It was accepted by the Tenant that she had never paid the rent as per the rent review notice and continued to pay €1,800 per month. She submitted this was on the basis of an agreement not to review the rent, which she said she had with a former owner of the property, but could not produce any evidence of same. In the absence of any such evidence the Tribunal does not accept there was any such agreement

The notice of rent review stated that the new rent of €2136 was to commence on the 1st September 2021. Rent was payable on the first of every month which meant there were 21 months rent with a shortfall of €336 from 1st September 2021, including the rent due and owing up to 31 May 2023. totalling €7,056

## **8. Determination:**

**Tribunal Reference No.: TR01022-80783**

In the matter of Xerico Ltd. (Applicant Landlord) and Margaret Penrose (Respondent Tenant) the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act 2004 determine that: the



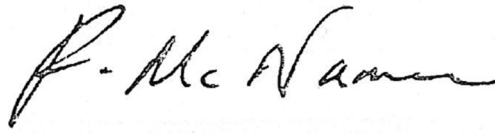
1. The Notice of Termination with a date of service of the 10th May 2022, served by the Applicant Landlord on the Respondent Tenant in respect of the tenancy of a dwelling at 258 Howth Road, Dublin 5, D05V4H9, Ireland is valid.

The Respondent Tenant and all occupants shall vacate the dwelling within 56 days of the issue of this determination order

2. The Notice of Rent Review dated 24 May 2021 served on the Respondent Tenant in respect of the tenancy of a dwelling at 258 Howth Road, Dublin 5, D05V4H9, Ireland is valid.
3. The Respondent Tenant shall pay the total sum of € 7,056 to the Applicant Landlord, by way of 12 consecutive instalments at the rate of €588 per calendar month, on or before the 1st day of each month, commencing the next month after the issue of the Determination Order. This sum represents rent arrears of €7056, in respect of the tenancy of the dwelling at 258 Howth Road, Dublin 5, D05V4H9, Ireland
4. The Respondent Tenant shall also pay any further rent outstanding at the rate of €2136 per month or proportionate part thereof at the rate of €70.22 per day, unless lawfully varied, and any other charges as provided for under the terms of the tenancy agreement for each month/week or part thereof, until such time as the above dwelling is vacated by the Respondent Tenant and any other persons residing therein.
5. The enforcement of the Determination Order for such payment of €7056 will be deferred and the total sum owing will be reduced by the cumulative sum paid, in monthly instalments, by the Respondent Tenant to the Applicant Landlord, on each due date, until such time as the total sum of €7056 has been paid in full.
6. For the avoidance of doubt, any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Applicant Landlord.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 30/05/2023.

**Signed:**

A handwritten signature in black ink, appearing to read 'F. McNamara', written in a cursive style.

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**Fintan McNamara Chairperson**

For and on behalf of the Tribunal.