

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0318-002894 / Case Ref No: 0118-40039

Appellant Tenant:	Brian Kavanagh
Respondent Landlord:	Conservation Assets Holdings
Address of Rented Dwelling:	Flat 5, 17 Annesley Bridge Road , Dublin 3,
Tribunal:	Kevin Baneham (Chairperson) Peter Shanley, Maureen Cronin
Venue:	Tribunal Room, RTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	18 September 2018 at 2:30
Attendees:	DTI Global Trading as "Wordwave" Recording Technicians.
In Attendance:	Brian Kavanagh, Appellant Tenant Ritchie MacRitchie, Tenant representative Michéal Martin, agent and representative of the respondent landlord

1. Background:

On the 9th January 2018, the appellant tenant made an application to the Residential Tenancies Board pursuant to Section 76 of the Act. The matter was referred to adjudication, which took place on the 12th February 2018.

The adjudicator held: "The Respondent Landlord shall pay the total sum of €750.00 to the Applicant Tenant, within seven days of the date of issue of the Order, being damages of €750.00 for the consequences of the Respondent Landlord's unlawful termination of the Applicant Tenant's tenancy, in respect of the tenancy of the dwelling at Flat 5, 17 Annesley Bridge Road, Dublin 3.

Subsequently the appellant tenant submitted an appeal.

The Residential Tenancies Board constituted a Tenancy Tribunal. Pursuant to sections 102 and 103 of the Act, it appointed Maureen Cronin, Peter Shanley and Kevin Baneham as Tribunal members and appointed Kevin Baneham to be the Chairperson of the Tribunal ("the Chair").

The parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue of the hearing. At 2.30pm on the 18th September 2018 the Tribunal convened for hearing at the Tribunal Room, Residential Tenancies Board, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

1. RTB File

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

The Chair asked the parties present to identify themselves and to identify in what capacity they were attending the Tribunal. He confirmed with them that they had received the relevant papers from the Residential Tenancies Board in relation to the case and that they had received the document entitled "Tribunal Procedures".

He explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be conducted in an informal manner. He outlined the order in which the evidence would be presented; that the appellant tenant would first give evidence following which the respondent landlord would be offered an opportunity to cross-examine this evidence. The respondent landlord would then give their evidence and the appellant tenant would be given an opportunity to cross-examine this evidence. Finally, both parties would be given an opportunity to give a summary of their evidence and to make submissions.

The Chair told the parties that members of the Tribunal might ask questions from time to time and stressed that all evidence would be taken on oath or affirmation and be recorded by the recording technician present. He reminded the attendees that to knowingly provide false or misleading statements or information to the Tribunal was an offence punishable by a fine of €4,000 or up to six months' imprisonment or both.

The Chair reminded the attendees that as a result of the hearing, the Board would make a Determination Order that would be issued to the parties and could be enforced by either of the parties or in some cases by the Residential Tenancies Board, at its discretion. He also advised the parties that the Tribunal process was the final step in the dispute resolution process unless appealed to the High Court on a point of law.

The parties intending to give evidence were sworn in or gave the affirmation.

The Chair outlined that the Tribunal would facilitate the parties by adjourning for a time to allow the parties to see if there were grounds to resolve this matter. This invitation was given to the parties at the outset of hearing.

5. Submissions of the Parties:

Submissions and evidence of the appellant tenant:

The appellant tenant outlined that he had lived in this dwelling and a dwelling in an adjoining building for 11 years. He took up occupation of the dwelling in or around the 1st July 2015. He resided there since then and referred to correspondence addressed to him at this address from the housing authority, the Department of Social Protection and utility providers. He referred to a bank statement showing his transactions in shops close to the dwelling. He referred to a letter from an estate agent advising that the building and the

dwelling would be viewed by prospective buyers prior to auction. The appellant tenant said that he facilitated the viewings by allowing people into his dwelling.

The appellant tenant described that he lived on the first floor and shared the landing with a named man in flat 6. There was a basement and two floors. He said that a doctor lived downstairs as did a couple with two children. Two women lived in the basement. The appellant tenant said that he paid rent of €120 per week and was in receipt of rent supplement. He confirmed that social welfare inspectors called to the dwelling.

The appellant tenant said that he left the dwelling at 9am on the 28th August 2017 to visit a friend, for whom he buys messages. He received a phone call from the new landlord, who said his name, which the appellant tenant could not now remember. He had left a lease, containing his phone number, on the table. The appellant tenant called to the dwelling and said he needed his medication. He observed his bags being packed. He phoned the Gardaí, who also spoke to the company director. The Gardaí did not come. The appellant tenant said that he spoke to the company director on the stairway to the building. He went to collect his medication from the flat and saw that the door to the dwelling was hanging off its hinges.

A named friend of the appellant tenant called later to collect his belongings. The appellant tenant said that his possessions were not damaged. He spent that night in another friend's house. He spent other nights in B & B accommodation, but spent nights in a fast food restaurant open all night. He spent two nights in a local public park. The appellant tenant said that he had since secured one-bedroom accommodation and moved in on the 1st August 2018.

The appellant tenant commented that he paid for electricity via a meter and there were about seven euros worth of credit on the 28th August 2017. A spreadsheet had been submitted by the respondent landlord which the respondent landlord stated contained the names and addresses of all persons living in the building at the time it acquired the building. This was provided to the respondent landlord by the vendor of the building. The name of the person stated to be living in the dwelling was not that of the appellant tenant. However, the appellant tenant commented that the person named on the spreadsheet lived in the dwelling prior to the start of his tenancy in 2015.

The appellant tenant outlined that he was not repaid his deposit and had paid of deposit of €620 to the original landlord. He said that the eviction affected him very badly and caused difficulties with his son. The appellant tenant was stressed out and was now receiving therapy. He had to go on different medication following the eviction.

In cross-examination, the appellant tenant said that he paid his rent in full and he had shown the respondent's letter to homeless services. The appellant tenant said he knew his predecessor from his time living in a neighbouring dwelling.

The appellant tenant said that he asked the respondent for a letter to explain his circumstances to homeless services. He left peacefully. There were five "big fellas" in his dwelling when he called to collect items. Even if the respondent landlord did not know whether he was in occupation of the dwelling, they should not have broken down the door. He submitted that while the respondent disputed his evidence, it had not been directly contradicted. The appellant tenant had submitted documentary evidence, which supported that he lived in the dwelling. This was supplemented by evidence of his transactions in the area around the date of the eviction. He submitted that there was sufficient evidence to indicate that the tenancy was in place. The respondent took over

the dwelling, thereby taking over the tenancy. The respondent landlord was obliged to issue a valid notice of termination and no notice was served in this case. The date of acquisition confirmed that the respondent landlord was in possession of the building of the 28th August 2017. There was no direct evidence from the respondent regarding the termination of the tenancy or taking possession of the dwelling. This had a clear impact on the appellant tenant and he slept in a park and in fast food restaurants. The appellant tenant had been homeless for over a year and no firm offer was made him at the adjudication hearing.

Submissions and evidence of the respondent landlord:

The respondent landlord's representative outlined that the building including the dwelling was acquired on the 24th August 2017. This was confirmed in the PRSA notice submitted in evidence. The respondent landlord's representative disputed that the appellant tenant was residing in the tenancy between the 24th August and the 28th August 2017. The appellant tenant had not provided proof of his tenancy. The representative said that he ran a letting agency and became involved in this after the fact.

The respondent landlord's representative submitted that the case presented by the appellant tenant at the Tribunal was at odds with what he said at adjudication. Responding to the appellant tenant's evidence, the respondent landlord's representative said that he did not think that any bags were removed from the dwelling on the 28th August. He commented that one trip would not have been enough to empty a dwelling. The respondent landlord's representative referred to a landscape spreadsheet, detailing who lived in the dwellings contained in the building. This was prepared by the vendor solicitors and in respect of the dwelling, cites a different tenant than the appellant tenant.

The respondent landlord's representative said that the company director met the appellant tenant on the steps of the building on the 28th August 2017. The company director was genuine when he told the appellant tenant that the dwelling was empty. The company director refused the appellant tenant entry as no one was living in the dwelling. The respondent landlord's representative said that he did not know what was in the dwelling and confirmed that the door was drilled to gain access. The company director informed him that there was no one living in the dwelling and that it did not look occupied.

The respondent landlord's representative disputed that the company director had phoned the appellant tenant on the 28th August 2017. This must have been somebody else in the building. He outlined that things got heated on the 28th August and the respondent landlord's letter was supplied as an attempt to de-escalate the situation. He said that the letter does not acknowledge the tenancy. In respect of the deposit, the respondent landlord's representative said that it did not have a deposit belonging to the appellant tenant. He outlined that the appellant tenant's tenancy had come to an end prior to the 28th August 2017. He had asked about rent arrears as it could have been terminated due to arrears. He indicated that at the adjudication, he offered accommodation for the appellant tenant as his letting agency then had 60 properties available.

In cross-examination, it was put to the respondent landlord's representative that the appellant tenant had been able to gain entry to collect medication on the 28th August; he replied that his understanding was that the appellant tenant was refused entry. The respondent landlord's representative said that handwritten notes were dropped in under doors and the appellant tenant's dwelling looked empty. He confirmed that no notice of termination was served and the respondent landlord had tried to make initial contact. It

was put to the respondent landlord's representative that the respondent's letter of the 28th August is clear that the appellant tenant was evicted; he replied that this was written in this way to defuse the situation and not as proof of tenancy.

In closing comments, the respondent landlord's representative said that the offer of accommodation made at the adjudication hearing was not an admission of liability. It submitted that the appellant tenant had not provided evidence of the creation of his tenancy or who he was paying rent to.

6. Matters Agreed Between the Parties

The parties were in agreement as to the address of the dwelling and that the respondent landlord wrote the letter of the 28th August 2017.

7. Findings and Reasons:

Finding no. 1:

The appellant tenant was a tenant of the dwelling on the 28th August 2017.

Reasoning:

A central conflict arising in this case was whether the appellant tenant held a tenancy of the dwelling as of the 28th August 2017. The appellant tenant gave evidence that he was a tenant and described leaving the dwelling on this Monday morning. He submits correspondence from state agencies, addressed to him at this address. He submits a bank statement of transactions close to the dwelling address. He submits a June 2017 circular regarding accessing his dwelling for viewings. The respondent landlord outlined that the appellant tenant may have had a tenancy of the dwelling at some stage, but it ended prior to the respondent landlord's acquisition of the dwelling and building on the 24th August 2017. It referred to a spreadsheet prepared by the vendor's solicitors, stating who lived in each flat in the building. This states that flat 5, the dwelling in this dispute, was occupied by someone other than the appellant tenant. It further states that this person, a woman, was in hospital.

There was also conflict relating to the events of the 28th August 2017. The appellant tenant stated that the dwelling was full of his possessions, including his lease left on a table. The respondent landlord's representative outlined that the respondent landlord had sought to make contact by dropping letters underneath the door of each dwelling and there was no answer from the appellant tenant. He refers to gaining entry to the dwelling by drilling the door and it was found to be empty.

The burden of proof rests on the party making an assertion to establish, on the balance of probabilities, that the assertion is supported by evidence and took place. In this case, the burden of proof rests with the appellant tenant; he must show, on the balance of probabilities, that he was living in the dwelling as of the 28th August 2017. The Tribunal finds the appellant tenant has established that he was living in the dwelling on this date. His documentation clearly shows that he was resident in the dwelling in 2016 and 2017. It was only a tenant of a dwelling in the building who could have acquired possession of the June 2017 note about prospective buyers viewing the dwelling in advance of the auction. The appellant tenant gave cogent evidence of his tenancy and living in the dwelling. The respondent landlord accepted that the spreadsheet could have included an error with

regard to the identities of the tenants. The respondent landlord did not present direct evidence of calling to the dwelling in the days between the 24th and 28th August. There was no direct evidence of what happened on the 28th August 2017, for example what was in the dwelling. Taking these factors together, the Tribunal finds that the appellant tenant was a tenant and in occupation of the dwelling as of the 28th August 2017.

Finding no. 2:

The respondent landlord unlawfully terminated the tenancy of the appellant tenant on the 28th August 2017.

Reasoning: Section 58(1) provides: "From the relevant date [1st September 2004], a tenancy of a dwelling may not be terminated by the landlord or the tenant by means of a notice of forfeiture, a re-entry or any other process or procedure not provided by this Part."

It follows that for a tenancy to be lawfully terminated, it must be terminated in accordance with the Residential Tenancies Act. This includes the service of a valid notice of termination, compliant with section 62 and giving the correct notice period. Where the tenant has a Part 4 tenancy (as the appellant tenant had in this case), the landlord is required to rely on the grounds set out in section 34 of the Act. None of this took place in this case.

The respondent landlord accepted that it gained entry to the appellant tenant's home by drilling the lock. Even if the respondent landlord was under the impression that the dwelling was empty, it should have paused for thought on gaining entry to the dwelling and seeing the appellant tenant's possessions. There was medication and enough other possessions to fill a car. It should have certainly changed its approach once the appellant tenant called to the building to challenge the eviction. The plain words of the respondent landlord's letter of the 28th August 2017 refer to the "eviction" of the appellant tenant. It follows that the respondent landlord unlawfully terminated the tenancy of the appellant tenant on the 28th August 2017. In assessing damages due to the appellant tenant arising from the unlawful termination of his tenancy, the Tribunal notes that he was homeless for some time, including spending overnight in fast food restaurants and two nights in a public park. It notes that his possessions were stored at friends. Taking account of the loss and inconvenience incurred by the appellant tenant, the Tribunal makes an award of damages of €8,500.

Finding no. 3:

The Tribunal makes no award in respect of the deposit of €620 paid by the appellant tenant to the predecessor landlord.

Reasoning: While the Tribunal accepts that the appellant tenant paid a deposit of €620 to his former landlord, he has not demonstrated why the respondent landlord acquired liability to repay this amount to him on the termination of the tenancy.

8. Determination:

Tribunal Reference TR0318-002894

In the matter of Brian Kavanagh (Tenant) and Conservation Assets Holdings (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 €8,500 to the appellant tenant, within 28 days of the date of issue of the Order, being damages for the unlawful termination of the tenancy of the dwelling at flat 5, 17 Annesley Bridge Road, Dublin 3.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 26/09/2018.

Signed:



Kevin Baneham Chairperson

For and on behalf of the Tribunal.