Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0319-003603 / Case Ref No: 1118-50197

Appellant Landlord:	Piotr Glisciak
Respondent Tenant:	Irena Sacha
Address of Rented Dwelling:	283 Killinarden Estate, Tallaght, Dublin 24, D24W7V2
Tribunal:	Michelle O'Gorman (Chairperson) Brian Murray, Simon Noone
Venue:	Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	15 May 2019 at 10:30am
Attendees:	Irena Sacha, Respondent Tenant Francesco De Martino, Threshold, Tenant's Representative, Aleksandra Robuta, Tenant's Witness Piotr Glisciak, Appellant Landlord
In Attendance:	Stenographer, Interpreter

1. Background:

On 20/11/2018 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 25/01/2019. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €7,500 to the Applicant Tenant within 56 days of the date of issue of the Order, being damages for the consequences of unlawfully terminating the Applicant Tenant's tenancy of the above dwelling.

Subsequently an appeal was received from the Landlord.

The RTB constituted a Tenancy Tribunal and appointed Brian Murray, Simon Noone, Michelle O' Gorman as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Michelle O' Gorman to be the chairperson of the Tribunal ("the Chairperson").

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 15/05/2019 the Tribunal convened a hearing at Tribunal Room, RTB, 2nd Floor, 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:

a) 'Contract of Tenancy' dated 3 July 2017 and translation thereof.

b) Screenshot of dwelling being advertised for rent on the Internet.

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 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 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 Appellant Landlord would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondent Tenant, that the Respondent Tenant would then be invited to present her case; and that there would then be an opportunity for cross-examination by the Appellant Landlord. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission. She reminded the parties that the hearing was a de novo hearing.

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

5. Submissions of the Parties:

Appellant Landlords case:

The Appellant Landlord stated that he should not have evicted the Respondent Tenant. He stated that it was an emotional response as he was under pressure. He gave evidence that the rent was €550.00 a month and there was a fixed bills charge of €250.00 a month. A lease was provided to the Respondent Tenant so that she could apply for HAP and to confirm payment of the deposit. The Appellant Landlord confirmed that he claimed tax-relief for this rent under the 'rent-a- room' scheme.

He stated that in his opinion, he lived in a shared house. He stated that he shared a main entrance of the house with the Tenants and he had a separate entrance to his rooms on the ground floor, for his convenience. To access her rooms, he stated the Respondent Tenant would have to come in through a main entrance, then proceed upstairs to the left, and then she would enter her accommodation through her own internal door. The Respondent Tenant had her own key for this first floor accommodation and the entrance

to this accommodation had an internal lock on the door. There was a bathroom in the hall upstairs which the tenant used, and the Appellant Landlord stated that he used this bathroom as “it was an open space for everyone”.

According to the Appellant Landlord, there was no problem for one year, and after this time he stated that the Respondent Tenant started behaving in a strange, vulgar and inappropriate manner. One day when he tried to give her the Notice of Termination, he stated that “she almost pushed me from the stairs”. The Appellant Landlord stated that he decided that he would have to remove the Respondent Tenant from the dwelling.

The Appellant Landlord stated that he could not remember the date he removed the Respondent Tenants personal effects from the dwelling. He stated that he packed her belongings in heavy duty black bags and left them outside the house. He gave evidence that it was a dry day. He stated that he did not put things of value (such as the Respondents Tenants TV and lap-top) into the bags, as he was afraid, they would be taken. He stated that he watched over the property so that the bags would not be taken.

The Appellant Landlord stated that he first contacted the Respondent Tenant by a note dated 29 September, 2018 advising her that he wanted to terminate the tenancy. On the 30 October, 2018 he said that he tried to give the Respondent Tenant the Notice of Termination by hand on the 30th of October, 2018 but that the Respondent Tenant destroyed the Notice and was rude to him. He then served the Notice of Termination, dated 31 October, 2018, which was in Polish, and translated into English, by registered post. The Appellant Landlord accepted that he retained the deposit and denied that the Respondent Tenant overpaid rent while in the dwelling. He stated that he had to rent rooms to pay the mortgage and that that he had no money in the bank.

Under cross-examination the Appellant Landlord agreed that part of the rent was paid by HAP. It was put to the Appellant Landlord that he had intended to rent out the Respondent Tenants accommodation as a self-contained unit and that the Respondent Tenant had exclusive possession of this accommodation. The Appellant Landlord stated that his new tenants rent out the Appellants former dwelling as a ‘shared accommodation’, that they agreed to it in a similar fashion to the Respondent Tenant. He stated that the house was not divided, that it had one address, one gas bill, one internet bill and one ESB bill. The Appellant Landlord confirmed that there was a kitchen downstairs for his use and kitchens in each of the accommodations on the first floor of the house. Mr. De Martino put it to the Appellant Landlord that when he bought the property there had been no kitchens on the first floor of the property.

Respondent Tenants case:

The Respondent Tenant stated that she had seen the dwelling initially on a polish website and she asked Aleksandra to view it with her. She said that when viewing the dwelling she was told the bathroom in the hall outside the internal entrance door to her accommodation was for her sole use. She stated that the house had two entrances, the Landlord had one and the Tenants shared a main entrance on the ground level and then had their own separate internal to their accommodation on the first floor. She confirmed that she could not use the Appellant Landlords entrance. The Respondent Tenant confirmed that there was a kitchen and a bathroom in the other flat on the first floor. She confirmed that she received a text telling her that her lease was terminated. On the 30th October, 2018 she said that the Appellant Landlord attacked her on the stairs and that he pulled her arms. She stated that she told the Appellant Landlord to send the Notice of

Termination by registered post. After she had been evicted on the 19 November, 2018, she said that her son collected her and helped her. The Respondent Tenant said that it was raining, her belongings in the black bag were wet and dirty and much of her personal belongings were damaged. The Respondent Tenant stated that she could not find her medication. She said that the guards did not help her as they told her that it was a civil matter. The Respondent Tenant confirmed that she had no photos of her damaged goods or any vouching material. She also stated that her laptop and TV were returned to her after engaging with the Appellant Landlord for twenty minutes. She states that she left with her son and returned the next day to remove more of her personal effects. She said that she arranged a self-storage space for her personal effect and that this cost her €199.00 per month. The Respondent Tenant explained that she was currently homeless and that she was couch surfing. She stated that she was looking for a place to rent but that this was "mission impossible". The Respondent Tenant stated that she has high cholesterol, hypertension, Type II Diabetes and that she had high blood pressure.

When cross-examined by the Appellant Landlord, the Respondent Tenant stated that when she entered the house using the main entrance, she would take the stairs on the right and that there was a washing machine underneath the stairs for the use of all people in the house. There was a door behind the stairs which led into the Appellant Landlords accommodation. In reply to the Tribunal, the Appellant Landlord stated that sometimes he used his door to enter his accommodation and sometimes he used the 'Tenant's door'. He gave evidence that if his wife parked in front of the houses main entrance, he would then use "our entrance'. The Respondent Tenant denied that the upstairs bathroom had an external key. She denied that the Appellant Landlords post came through the main door and she stated that most of her belongings were damaged by the Appellant Landlords actions.

Aleksandra Robuta- Witness

The witness stated that he was a friend of the Respondent Tenant for a long time. The dwelling had been listed as a studio one bed apartment on a polish website and when they went to see the property, she met the Appellant Landlord. She stated that the house was divided up into three flats and that he lived on the ground floor and the two separate flats were on the top floor. She confirmed that she was aware for the viewing that the bathroom outside the Respondent Tenants accommodation was for the Respondent Tenant's sole use and she stated that the Appellant Landlord had his own separate door to access his downstairs flat. The Witness confirmed that she had not noticed if the up-stair accommodations had separate post boxes or doorbells. She stated that people could only access the Respondent Tenants accommodation if permitted to by the Respondent Tenant.

6. Matters Agreed Between the Parties

The Deposit paid by the Respondent Tenant was €800.00 and has been retained by the Appellant Landlord.

The lease commenced in July, 2017.

The Respondent Tenant is no longer in occupation of the dwelling.

7. Findings and Reasons:

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 therefor, are set out hereunder.

Finding 1: The Respondent Tenants living space in the Respondent's house constituted a dwelling, of which she enjoyed a lawful tenancy, for the purposes of the Residential Tenancies Act 2004.

Reasons:

Section 4(1) of the Residential Tenancies Act 2004 defines a dwelling as: "… a property let for rent or valuable consideration as a self-contained residential unit and includes any building or part of a building used as a dwelling…".

This section goes on to define the term 'self-contained unit' which is stated to include "the form of accommodation commonly known as "bedsit" accommodation;"

Section 3(1) of the 2004 provides that the 2004 Act applies to all dwellings which are the subject of a tenancy, although Section 3(2)(g) of the 2004 Act provides that the Act does not apply to a dwelling "within which" the landlord also resides.

I am satisfied on the balance of probabilities, having heard the evidence of the parties, that the living space allocated to the Respondent Tenant was a self-contained dwelling, in a part of a building, and was sufficiently and identifiably separate from the rest of the Appellant Landlords house, so as to render it as a separate dwelling to the rest of the house. The Tribunal accepts the Respondent Tenants evidence and the witness evidence that the Respondent Tenants had a separate entrance to the building on the ground floor than the Appellant Landlord and both had an individual internal entrance to their dwellings on the first floor. It appears occasionally that the Appellant Landlord may have used the Tenants entrance on the ground floor, but this does not negate my above finding, as both Tenants still had internal entrances to their dwelling and the Tribunal notes that during his cross-examination of the Respondent Tenant that the Appellant Landlord referred to "our entrance" when referring to the separate entrance he and his wife used. The Respondent Tenant had exclusive occupation of the living space/kitchen and bedroom area, within the internal entrance to her dwelling, accessible only by the Respondent Tenant. While it is accepted that the bathroom was outside the entrance to the Respondent Tenants dwelling, and other parties could use it, the Respondent Tenant was the only person using the bathroom as the other contained living spaces in the property had their own bathroom contained within them. I do not find the fact that the Respondent Tenant occasionally may have shared bathroom facilities and shared laundry facilities with other persons detracts from my above finding. In any event, shared bathrooms and laundry facilities are not an uncommon characteristic of rented dwellings, such as bedsit accommodation and the Act specifically states that self-contained units include "bedsit type" accommodation. The Appellant Landlord did not reside within the Respondent Tenants self-contained accommodation on the first floor of the building. I am satisfied that the Respondent Tenant's apartment comprised an individual dwelling where the Respondent Tenant resided separately and alone. The Respondent held tenancy of that dwelling (and is referred to as a Tenant in the lease), by virtue of a binding lease with the Appellant Landlord to rent it for valuable consideration, and the provisions of the 2004 applied to the dwelling and to the tenancy.

Finding 2. The Notice of Termination served on the 31 October, 2018 is invalid

Reason:

Pursuant to S58 of the Residential Tenancies Act 2004, a tenancy may only be terminated by a notice of termination that is compliant with Part 5 of that Act. As the Applicant's tenancy commenced on the 3 July 2017, she therefore had the benefit of a "Part 4" tenancy of greater than six months at the time of service of the notice of termination. Part 4 tenancies may only be terminated based on certain grounds as set out in the Table to Section 34 of the 2004 Act (as amended), and pursuant to a notice of termination which is compliant with Section 62 of the 2004 Act.

Section 62(1) sets out what a valid notice of termination must contain. That subsection provides that a valid notice of termination must:

"(a) be in writing,

(b) be signed by the landlord or his or her authorised agent or, as appropriate, the tenant,

(c) specify the date of service of it,

(d) be in such form (if any) as may be prescribed,

(e) if the duration of the tenancy is a period of more than 6 months, state (where the termination is by the landlord) the reason for the termination,

(f) specify the termination date, that is to say, the day (stating the month and year in which it falls)—

(i) on which the tenancy will terminate, and

(ii) on or before which (in the case of a termination by the landlord) the tenant must vacate possession of the dwelling concerned, (and indicating that the tenant has the whole of the 24 hours of the termination date to vacate possession), and

(g) state that any issue as to the validity of the notice or the right of the landlord or tenant, as appropriate, to serve it must be referred to the Board under Part 6 within 28 days from the date of receipt of it."

The notice of termination in this dispute issued in the Polish language, and a certified English translation was provided by the Appellant Landlord. The notice of termination is not complaint with Section 62 of the 2004 Act as:

a) it does not contain a reference to the Tenant's entitlement to challenge its validity to the RTB, and

b) it does not afford the Tenant the full 24 hours of the termination date to vacate the dwelling.

The Appellant Landlord relies on a text message sent on the 17 October, 2018 wherein he stated he is issuing the Respondent Tenant one month's notice of termination, expiring on 17th November 2018. However, the Notice of Termination notice is dated 31st October 2018. A text message is not a valid basis for the service of notice of termination, which must be in writing as per Section 62.

The Appellant Landlord by his own admission effected a forced eviction on 19th November 2018.

An attempt to remove a tenant from a dwelling the tenancy of which has not been validly terminated constitutes a breach of a tenant's right to peaceful and exclusive occupation of a dwelling under Section 12(1)(a) of the 2004 Act. I find such a breach of Section 12(1)(a) took place in this case. The tenancy never having been validly terminated, and the Respondent Tenant was lawfully residing in the dwelling when the Appellant Landlord deprived her of occupation of the dwelling. While the Respondent Tenant suffered stress and inconvenience due to this eviction on her own account, she was able to move in with her son and she has not submitted any documentation to substiatiate a claim that she suffered financial loss due to the eviction. No medical report was submitted to support the Respondent Tenants claim that the eviction affected her health. The Tribunal accepts that she would have suffered stress and inconvenience on the balance of probabilities. The Respondent Tenant referred to damage to her belongings, but no photographic evidence or specific vouching evidence as to the monetary value of such damage was before me and no award will be made in respect of same. The Respondent Tenant stated that she now has her personal effects in storage and she referred to a receipt for such storage. However, the receipt was not submitted to the Tribunal. The Tribunal considers that, having regard to: (i) The forced eviction of the Respondent Tenant, (ii) The interference with her personal belongings by the Appellant Landlord, (iii) The inconvenience and emotional stress caused by the foregoing, (iv) The Respondent Tenants lack of documentation in relation to any financial loss suffered due the eviction and the Respondent Tenants lack of evidence in relation to damage to personal belongings, and (v) The Respondent Tenants lack of medical documentation to support her claim that the eviction affected her health, the appropriate compensation to her in all the circumstances is the sum of €4,000.

Finding 3 : The Appellant Landlord shall refund the Respondent Tenant's security deposit of €800.00, less any amounts properly withheld in accordance with the provisions of the Act.

Reasons

Section 12 (1) (d) of the Act places an onus on landlords to return a deposit to a tenant promptly. Section 12 (4) of the Act sets out three circumstances under which a deposit (or part of a deposit) may be retained :

(i) where there are rent arrears:

(ii) where that has been damage in excess of normal wear and tear, and:

(iii) where charges payable under the lease or tenancy agreement are outstanding.

The Landlord accepted at the appeal hearing that he retained the deposit. In light of the fact that the Respondent Tenant's tenancy was unlawfully terminated and considering that there is no evidence before the Tribunal which indicates that the Appellant Landlord retained the deposit for any lawful reason, the Appellant Landlord shall refund the Respondent Tenant her deposit of €800.00 within twenty- eight days of the issue of the Order.

8. Determination:

In the matter of Piotr Glisciak (Landlord) and Irena Sacha (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

the Appellant Landlord shall pay the Respondent Tenant the total sum of €4,800.00 within 28 days of the date of issue of the Order, being €4000.00 for the unlawful termination of the tenancy and €800.00 for the unlawfully retained deposit in respect of the tenancy of the dwelling of 283 Killinarden Estate, Tallaght, Dublin 24, D24W7V2.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 17/05/2019.

Signed: 

Michelle O' Gorman Chairperson
For and on behalf of the Tribunal.