

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0321-004806 / Case Ref No: 1120-66046

Appellant Landlord:	Nabeela Jafri
Respondent Tenants:	Denis Vatamaniuc, Ilona Vatamaniuc
Address of Rented Dwelling:	49 Dodsborough Road, Lucan, County Dublin, K78V296
Tribunal:	Louise Moloney (Chairperson) Anne Leech, Andrew Nugent
Venue:	Tribunal Room - Virtual Hearing
Date & time of Hearing:	08 July 2021 at 2:30pm
Attendees:	Nabeela Jafri, Tribunal Appellant, Landlord Denis Vatamaniuc, Tribunal Respondent, Tenant
In attendance:	RTB appointed stenographer

1. Background:

On 03/11/2020 the Tenant made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 76 of the Act. The matter was referred to an Adjudication which took place on 21/12/2020. The Adjudicator determined that:

"In the matter of Denis Vatamaniuc [Applicant Tenant] and Nabeela Jafri [Respondent Landlord], the Private Residential Tenancies Board, in accordance with Section 121 of the Residential Tenancies Act, 2004, determines that:

1. The Notice of Termination as served on 11 July 2020 by the Respondent Landlord on the Applicant Tenant in respect of the tenancy of the dwelling at 49 Dodsborough Road, Lucan, Dublin, K78V296 is invalid.
2. The Respondent Landlord shall pay the total sum of €12,000 to the Applicant Tenant within 28 days of the date of issue of the Order, being damages of €12,000 for the consequences of unlawfully terminating the Applicant Tenant's tenancy of the above dwelling."

Subsequently the following appeal was received from the Landlord on 11/03/2021. The grounds of the appeal: Unlawful termination of tenancy (Illegal eviction); Validity of Notice of Rent Review. The appeal was approved by the Board on 24/04/2021.

The RTB constituted a Tenancy Tribunal and appointed Louise Moloney, Andrew Nugent and Anne Leech as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Louise Moloney to be the chairperson of the Tribunal ("the Chairperson").

On 17/06/2021 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 08/07/2021 the Tribunal convened a Virtual Hearing at 14.30.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case file.

3. Documents Submitted at the Hearing Included:

None

4. Procedure:

The Chairperson asked the Parties present 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 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 Appellant) would be invited to present her case first; that there would be an opportunity for cross-examination by the Respondents and that the Respondents would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant. 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 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 [reference section 123(3) of the 2004 Act].

The Chairperson offered the Parties an opportunity to talk to each other to see if they could negotiate an agreed resolution of the issues in dispute, this without any obligation or prejudice to them.

The Parties giving evidence then gave their affirmations.

5. Submissions of the Parties:

Appellant Landlord's Case:

The Appellant Landlord said that she wanted possession of the dwelling for her own use and that the first named Respondent Tenant told her to look at the RTB website for the appropriate notice. She said that she was contacted on the 1st of August 2020 by the first named Respondent Tenant and he told her that he had found a place. She said she had no idea that the Respondent Tenant would be homeless when he vacated the dwelling. She said that she had to leave the Country on the 2nd of October 2020 to attend to a family emergency arising from her mother's ill health and that she was shocked when she received

an email from the RTB to advise her that the Respondent Tenants were homeless. She said that her intention to use the dwelling herself remained unchanged. She said that she was still looking after her mother and that in October 2020, after a week or two, she decided to relet the dwelling. She said that she contacted her Agents who knew the dwelling, that she arranged for them to pick up the keys for the dwelling and to relet the dwelling. She said she had no idea that the Respondent Tenants had no place to live when the dwelling was re-let. She said also that she was not aware of the requirements in the Act to serve a Notice of Termination with accompanying Statutory Declaration where a Landlord requires the dwelling for his/her own use.

She said that she spoke on the phone to the first named Respondent Tenant concerning the return of the deposit. She confirmed that she had phone and contact details for the first named Respondent Tenant. She said that she was in Pakistan, that the Respondent Tenants knew her Agents and that they said nothing of their situation to her or to her Agents. She emphasised that she had no intention of creating a problem for the Respondent Tenants and she pointed out that the Respondent Tenants had left before the expiry of the notice period she gave to them. She said, whether or not there was fault on her part, she wanted to apologise to the Respondent Tenants. She said that she herself was under considerable stress due to her family situation and she said why would she want to put someone out who was paying rent. She said that there was a break down in communications between the parties.

Respondent Tenants' Case:

The first named Respondent Tenant, Denis Vatamaniuc, said that in April 2020 the Pandemic started and that both of the Respondent Tenants were out of work. He said that he was out of work for 3 months and his wife, the second named Respondent Tenant, Ilona Vatamaniuc, was out of work for 1.5 months following which she then started to work part time. He said that it was extremely difficult for the Respondent Tenants to manage to pay the rent for the dwelling and to run their two cars. He said that his wife, the second named Respondent Tenant, asked the Appellant Landlord if she would decrease the rent for a few months. He said that the Appellant Landlord was not able to reduce the rent payable as she said the rent was her bread and butter, that the Respondent Tenants said okay and that they would manage with their savings for a couple of months. He said that a week later the Appellant Landlord contacted them to see if they wanted to stay in the dwelling and the Respondent Tenants told her that they were happy to stay. He said that the Appellant Landlord started asking questions as to where the Respondent Tenants worked and was also asking for the rent to be increased. He said that the Appellant Landlord mentioned a house in Lucan she knew of which was rented for €2,000.00 per month, that the Respondent Tenants told her of the Rent Pressure Zone restrictions and of the RTB calculator and suggested to the Appellant Landlord that the maximum rent increase was restricted to €1,456.00 per month for the dwelling.

He asserted that the Appellant Landlord was ringing the Respondent Tenants and putting them under pressure with her questions and that she wanted to increase the rent for the dwelling to €1,700.00 per month. He said that he told the Appellant Landlord that the increase she proposed was illegal, that the Respondent Tenants did not want to leave and that they wanted to stay in the dwelling.

He said that the Appellant Landlord telephoned him a few times and he asserted that she started to become aggressive. He said that the last phone call he received from the Appellant Landlord was in June 2020 and he asserted that the Appellant Landlord said to

him that the Respondent Tenants must pay €1,650.00 per month or leave the dwelling. He said that the Appellant Landlord said that she could wait for the ban on notices of termination to be lifted and that she sent the notice of the 1st of August 2020 saying she wanted to move into the dwelling. He said that the Appellant Landlord told him that he could accept this notice or she could serve another and he said that he received a further letter on the 19th of August 2020. He said that after this letter he received weekly phone calls from the Appellant Landlord asking when he was moving out of the dwelling, that the Appellant Landlord visited the dwelling in September 2020 and that the Respondent Tenants felt under pressure. He said that relations between the parties were not so good at the end.

The first named Respondent Tenant said that he had a friend who was thinking of getting a mortgage to buy a property, that he was going to rent the house his friend was renting and that this arrangement fell apart when his friend changed his mind about the mortgage. He said that the Respondent Tenants moved out of the dwelling and rented a room in a friend's house, that they moved from one friend to another and were back in Moldova for a few weeks. He said that he is working from home and that his wife is not working.

He asserted that the Appellant Landlord had caused the Respondent Tenants a lot of problems and he said that he did not say they were living on the street. He said that rents went very high in Lucan and that it was not financially sustainable for the Respondent Tenants to rent a house for a year, paying one month's rent deposit and one month's rent in advance.

In response to questions the first named Respondent Tenant said that he did tell the Appellant Landlord in August 2020 that the Respondent Tenants were having trouble finding a place to move to. He also said that he met that Appellant Landlord's Agent once and that the Agent did not acknowledge him.

6. Matters Agreed Between the Parties

1. The names of the Parties as set out in the title to this Report were confirmed by the Parties. The second named Respondent Tenant, Ilona Vatamaniuc is to be added to the application and to the appeal before the Tribunal.
2. The description of the dwelling the subject of the dispute between the Parties was confirmed as being: 49 Dodsborough Road, Lucan, County Dublin, K78V296.
3. The tenancy in the dwelling commenced on the 16th of September 2016 on foot of a fixed term agreement for twelve months.
4. The tenancy in the dwelling ended on the 1st of October 2020.
5. The initial rent payable in respect of the tenancy of the dwelling was €1,350.00 per month payable monthly in advance. This rent increased to €1,400.00 per month from and including the 16th day of September 2018.
6. A deposit of €1,350.00 was paid by the Respondent Tenants to the Appellant Landlord at the commencement of the tenancy in the dwelling, this deposit was refunded in full to the Respondent Tenants.

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 thereof, are set out hereunder.

7.1 Finding:

The Tribunal find that the Notice of Termination served on the 1st of August 2020 in respect of the tenancy in the dwelling was an invalid Notice and that damages of €4,200.00 are appropriate for the breach of the Appellant Landlord's obligations under the Act.

Reasons:

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 Appellant Landlord sought to terminate the tenancy under Ground 4 in Table 4 of Section 34 of the Act being that:

"The Landlord requires the dwelling or the property containing the dwelling for his or her own occupation or for occupation by a member of his or her family and the notice of termination (the "notice") contains or is accompanied by a statutory declaration -

(a) specifying—

(i) the intended occupant's identity and (if not the landlord) his or her relationship to the landlord, and

(ii) the expected duration of that occupation,

And

(b) that the landlord, by virtue of the notice, is required to offer to the tenant a tenancy of the dwelling if the contact details requirement is complied with and the following conditions are satisfied—

(i) the dwelling is vacated by the person referred to in subparagraph (a) within the period of 6 months from expiry of the period of notice required to be given by the notice or, if a dispute in relation to the validity of the notice was referred to the Board under Part 6 for resolution, the final determination of the dispute, and

(ii) the tenancy to which the notice related had not otherwise been validly terminated by virtue of the citation in the notice of the ground specified in paragraph 1, 2, 3 or 6 of this Table."

The tenancy in the dwelling commenced on the 16th of September 2016 and was a Part 4 tenancy. The Appellant Landlord says that she was not aware of the requirements under the Act for the service of a notice of termination with accompanying declaration. The Tribunal is satisfied from the evidence furnished that no statutory declaration was furnished with the Notice served on the 1st of August 2020 by the Appellant Landlord and that the Notice of Termination served is invalid.

The Tribunal notes that the Respondent Tenants vacated the dwelling on the 1st of October 2020 and notwithstanding that the Appellant Landlord had the contact details for the Respondent Tenants no contact was made with them when the Appellant Landlord instructed her Agents to re-let the dwelling in or about the middle of October 2020. The Tribunal also notes that the Appellant Landlord was managing a serious family emergency

at the time and accepts that notwithstanding the invalid Notice of Termination served she did intend to use the dwelling herself in August 2020 when she served the invalid notice on the Respondent Tenants.

The Respondent Tenants vacated the dwelling on the 1st of October 2020 and have given evidence of the pressure through repeated phone calls from the Appellant Landlord enquiring as to when they were leaving the dwelling which they said occurred on a weekly basis. Repeated phone calls of this nature are a breach of a Landlord's obligations to allow a tenant to enjoy peaceful occupation of the dwelling under Section 12 (1) (a) of the Act. The Tribunal is satisfied from the evidence furnished that there was a breach of the Appellant Landlord's obligations under Section 12 (1) (a) of the Act in respect of the tenancy in the dwelling.

The Tribunal notes that the Respondent Tenants had envisaged an arrangement with a friend to rent a house their friend was renting, that this arrangement fell through and that there appears to have been a lack of communication between the Parties as to the circumstances in which the Respondent Tenants found themselves when they vacated the dwelling on the 1st of October 2020. The invalid notice served by the Appellant Landlord in respect of the tenancy sought to terminate the tenancy within 180 days of the 1st of August 2020. The Tribunal accepts that the Respondent Tenants were caused stress and inconvenience by the service of the invalid notice of termination.

The Tribunal considers that damages in the amount of €4,200.00 payable by the Appellant Landlord to the Respondent Tenants within 56 days of the date of the Determination Order, are appropriate for the breach of the Appellant Landlord's obligations under the Act and in particular Section 34 and Section 12 (1) (a) thereof in respect of the tenancy in the dwelling.


8. Determination:

In the matter of Nabeela Jafri (Appellant Landlord) and Denis Vatamaniuc and Llona Vatamaniuc (Respondent Tenants) the Tribunal, in accordance with Section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Tribunal finds that the Respondent Tenants' application in respect of Breach of Landlord Obligations and the validity of the Notice of Termination served on the 1st of August 2020 in respect of the tenancy in the dwelling at 49 Dodsborough Road, Lucan, County Dublin, K78V296 is upheld.
2. The Appellant Landlord shall pay the total sum of €4,200.00 to the Respondent Tenants within 56 days of the date of issue of the Determination Order. This sum represents damages of €4,200.00 for the breach of the Respondent Landlord's obligations under the Act and in particular Section 34 and Section 12 (1) (a) thereof in respect of the tenancy in the dwelling at 49 Dodsborough Road, Lucan, County Dublin, K78V296.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 23/08/2021.

Signed:

A handwritten signature in black ink, appearing to read 'Louise Moloney', written over a horizontal line.

Louise Moloney, Chairperson

For and on behalf of the Tribunal.