

**Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0321-004839 / Case Ref No: 1220-66979**

<b>Appellant Tenant:</b>	Tomasz Biel
<b>Respondent Landlord:</b>	Peter Rafferty
<b>Address of Rented Dwelling:</b>	7 Coleman Court, Coleman Road, Cavan
<b>Tribunal:</b>	Healy Hynes (Chairperson) Dairine Mac Fadden, Suzy Quirke
<b>Venue:</b>	Telephone conference tribunal - Ormond Rooms
<b>Date &amp; time of Hearing:</b>	14 July 2021 at 2:30
<b>Attendees:</b>	For the Appellant Tenant: Tomaz Biel, Appellant Tenant  For the Respondent Landlord: Desmond Brady, Respondent Landlord Representative
<b>In Attendance:</b>	Audio recording technician Alicja Szturma Interpreter

**1. Background:**

On 27/12/2020 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 18/02/2021. The Adjudicator determined that

The Applicant Tenant's application regarding the unlawful termination of the tenancy, deposit retention and breach of landlord obligations, in respect of the tenancy of the dwelling at 7 Coleman Court, Coleman Road, Cavan, is not upheld.

Subsequently the following appeal was received:

Tenant : received on 18/03/2021. The grounds of the appeal: Breach of landlord obligations, Unlawful termination of tenancy (Illegal eviction).

The RTB constituted a Tenancy Tribunal and appointed Healy Hynes, Dairine Mac Fadden and Suzy Quirke as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Healy Hynes 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 25th January 2021 the Tribunal convened a telephone Tribunal In accordance with Emergency legislation the parties were not physically in attendance and no members of the public were in attendance.

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

RTB File.

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

None.

## **4. Procedure:**

In accordance with social distancing guidelines directed by the RTB, the Tribunal took place over a telephone conference line. 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; 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 his case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present his 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 given by way of affirmation and be recorded by the official stenographer 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.

As the Tribunal was being conducted in accordance with social distancing guidelines, parties giving evidence then took an affirmation.

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

Appellant Tenant's Case:

The Appellant Tenant gave evidence that he flew to Poland on 13th December 2020. He referenced a boarding pass on Page 56 of case file 1 as supporting documentation.

The Appellant Tenant continued in evidence that he gave a friend the key of the property so that he could pay rent on the Appellant Tenant's behalf in his absence. The procedure was for the rent, along with a rent book, to be left in cash in a post box inside a storage unit adjacent to the property.

On the 15th of December the Appellant stated that his friend met the landlord and was denied entry to the property. There then was a telephone call between the Appellant Tenant, the Respondent Landlord and the friend which took place outside the property. At

that time the Appellant Tenant states the Respondent Landlord refused to accept rent and told the Appellant Tenant he must leave the property.

The Appellant Tenant said that Gardai then attended the property on the request of the Appellant Tenant's friend.

The Appellant Tenant then instructed his friend to remove personal documents for him from the property on 21st December 2020. The Appellant Tenant said that he was informed by his friend that his possessions were on the floor of the property.

The Appellant Tenant said that he flew back to Ireland on 27th December 2020 to find the front door boarded up. He rang the Respondent Landlord and got no answer. Messages were left and he then went to the Gardai. The Gardai also attempted to contact the Respondent Landlord but received no reply.

He then stayed with a friend and flew back to Poland on the 30th December 2020. In the intervening period he made efforts to contact the Respondent Landlord and got no reply. On questioning from the Tribunal, the Appellant Tenant stated that no response was ever received from the Respondent Landlord.

On questioning from the Tribunal, the Appellant Tenant stated that when he left Ireland on the 13th December, he had not booked a return ticket as he did not know when he would return but thought that it could be after a month. His rent was paid weekly in advance on a Sunday and he had given his friend enough money to cover 2 weeks rent before he left the country.

He stated that all his belongings were left behind in the property. When asked by the Tribunal of the value of these he said "a few grand, €10,000 or something but that it was difficult to determine".

On questioning from the Respondent landlord representative, he confirmed he did receive contact from a building company but did not know who they were but that was after he had left.

#### Respondent Landlord Representative

The Respondent Landlord's Representative stated that on the 15th of December 2020, the Respondent Landlord met the Appellant Tenant's friend up town and was informed the Appellant Tenant had gone to Poland and the friend needed to get in. The Respondent Landlord refused this person the key. The Representative pointed out that he was not saying the tenancy had been terminated. The Landlord had not terminated the tenancy.

The Representative then stated that the Appellant Landlord's friend broke the window to get into the property and the neighbour then called the Gardai. The Appellant Tenant's friend was then arrested for breaking a window.

The window remained broken for a number of days.

On 23rd December 2020, the Gardai were in contact with the Respondent Landlord's wife and they were informed the front door had been broken, some time between the 15th or 23rd / 24rd of December 2020.

The Representative then stated that the Respondent Landlord called a builder (later clarified as being the Respondent Landlord's Representative's own business). The builders then secured the door and turned off the water as there was water damage in the property.

The Representative then stated that between the 27th and 30th of December attempts were made to give the Appellant Tenant access to the property to remove his belongings but the Appellant Tenant did not show up.

The position of the Respondent Landlord's Representative was that the property was not fit for habitation in its then current state.

On questioning from the Tribunal, the Representative stated that no works have been done to the property in the interim due to Covid restrictions and that in fact all the units in the building were now vacant and the entire block was up for sale.

The Respondent Landlord's Representative stated that it was never the Respondent Landlord's intention to stop the Appellant Tenant from coming back into the property, that the Respondent Landlord had never been asked to refund the deposit and the situation was not of the Respondent Landlord's making.

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

1. Address of the property is 7 Coleman Court, Coleman Road, Cavan, Ireland
2. Tenancy commenced 30th July 2017
3. Rent was in the amount of €120 per week
4. Deposit of €500 was paid in respect of rent
5. Deposit of €300 paid on electricity bill
6. The deposit remains in the possession of the landlord

## **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.

Finding: An invalid termination of the tenancy was carried out by the Respondent Landlord on 23rd December 2020.

Reasons: The tenancy commenced on 30th July 2017, therefore by 31st January 2018, the tenancy had the protections of part 4 of the Residential Tenancies Act. To ascertain the nature of the termination, the Tribunal must first ascertain if a notice of termination was served.

If a part 4 tenancy is to be terminated, a notice of termination must first be served either by the Landlord or the Tenant. The parties are agreed that no such notice was served by either party at any stage, before, during or after the tenancy.

The parties are also agreed that there were no arrears of rent at the time of the Appellant Tenant going to Poland. In fact, the evidence of the Appellant Tenant is that the dispute that arose on 15th December 2020 between the Respondent Landlord and the Appellant Tenant's friend was as a consequence of the friend attempting to pay the rent in advance, on behalf of the Appellant Tenant.

No first hand evidence was presented by the Respondent Landlord in the matter; although his representative was clear to point out that the Respondent Landlord was approached on the street by the Appellant Tenant's friend to get keys to go into the property.

First hand evidence was given by the Appellant Tenant in the matter that the friend was instructed to enter the property to get the rent book so the rent could be paid in cash. The Appellant Tenant further gave evidence that he had given his friend money to pay the rent.

It is therefore evidence that the tenant did not terminate the letting either explicitly by serving a notice, or implicitly by carrying out a deemed termination as prescribed under s.37 of the Act.

37.—(1) Subject to subsection (3), a Part 4 tenancy shall be deemed to have been terminated by the tenant on his or her vacating the dwelling if—

(a) before or on or about that vacating, he or she serves a notice of termination in respect of the tenancy that does not give the required period of notice, and

(b) before or on that vacating the rent has fallen into arrears.

(2) Subject to subsection (3), a Part 4 tenancy shall also be deemed to have been terminated by the tenant upon any rent owed by him or her being in arrears for a period of 28 days or more if—

(a) whether before or after the end of that period, the tenant has vacated the dwelling, and

(b) no notice of termination has been served by the tenant in respect of the tenancy.

(3) Subsections (1) and (2) do not apply if the Part 4 tenancy has been sub-let or assigned.

As stated above the Respondent Landlord did not serve a notice of termination, but the Tribunal finds that by their actions on 23rd December 2020 in boarding up the property, they deprived the Appellant Tenant of access and terminated the tenancy invalidly.

This position is supported by the parties' evidence that the Respondent Landlord refused to give the Appellant Tenant access to the property when he returned from Poland and that the Appellant Tenant's possessions were retained by the Respondent Landlord.

The Tribunal has heard the evidence that the property was boarded up as result of damage caused but that does not entitle the Respondent Landlord to dispossess the Appellant Tenant of their tenancy.

In the matter of arriving at damages as a consequence of the breach of Landlord obligations, the Tribunal is mindful of the fact that the Appellant Tenant had indicated that they had not return flights booked from Poland at the time of first leaving. Also that they had no idea how long they would be remaining in Poland, and in fact, the Appellant Tenant continues to live in Poland. The Tenant claimed loss of contents but his evidence was lacking in detail as regards what exactly had been lost and there was no vouching or replacement estimates furnished.

The Tribunal therefore finds that damages in the amount of €1,000 are appropriate in the circumstances. Further the Tribunal determines that the full amount of the total deposit in the sum of €800 is to be refunded to the Tenant. The Landlord's position was that the Tenant had not asked for the deposit back. Damage in excess of normal wear and tear or unpaid utilities was not claimed.

## 8. Determination:

In the matter of Tomasz Biel (Appellant Tenant) and Peter Rafferty, (Respondent 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 €1,800 to the Appellant Tenant, within 28 days of the date of issue of this Order, being the entire of the unjustifiably retained security deposit of €800 plus damages of €1,000 for invalid termination of the tenancy of the dwelling at 7 Coleman Court, Coleman Road, Cavan.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 22/07/2021.

Signed:

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

**Healy Hynes Chairperson**

For and on behalf of the Tribunal.