

**Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0321-004855 / Case Ref No: 1220-66701**

**Appellant Landlord:** David McCarthy

**Respondent Tenant:** Sean Twomey

**Address of Rented Dwelling:** 30 Cois Luachra, Dooradoyle, Limerick, V94NFT7

**Tribunal:** James Egan (Chairperson)  
Finian Matthews, Dervla Quinn

**Venue:** Ormond Meeting Rooms  
Telephone Conference Tribunal

**Date & time of Hearing:** 06 September 2021 at 10:30

**Attendees:** David McCarthy, Appellant Landlord  
Sean Twomey, Respondent Tenant  
Stephen Byrne, Tribunal Representative

**In attendance:** Digital Logger provided by the RTB.

**1. Background:**

On 07/12/2020 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 22/01/2021. The Adjudicator determined that:

In the matter of Sean Twomey [Applicant Tenant] and David McCarthy [Respondent Landlord], the Residential Tenancies Board, in accordance with Section 97 of the Residential Tenancies Act, 2004, as amended, determines that:

1. The Respondent Landlord shall pay the total sum of €5,333 to the Applicant Tenant within 28 days of the date of issue of the Determination Order, being damages of €5,000 for the consequences of unlawfully terminating the Applicant Tenant's tenancy plus the retained deposit of €400, having deducted the sum of €67 in respect arrears, in respect of the tenancy of the dwelling at 30 Cois Luachra, Dooradoyle, Limerick.

Subsequently the following appeal was received from the Landlord on 25/03/2021. The grounds of the appeal: Other, Anti-social behaviour. The appeal was approved by the Board on 05/05/2021.

The RTB constituted a Tenancy Tribunal and appointed James Egan, Finian Matthews and Dervla Quinn as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed James Egan to be the chairperson of the Tribunal ("the Chairperson").

On 11/08/2021 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 06/09/2021 the Tribunal convened a hearing at Ormond Meeting Rooms, Dublin 7.

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

RTB Tribunal case files.

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

RTB Case Files

## **4. Procedure:**

The Chairperson introduced himself and the Tribunal members and asked the parties present to identify themselves.

The Chairperson confirmed with the parties that they had received from the RTB the case files and that he had read and understood the Tribunal procedures.

The Chairperson explained the procedure which would be followed; that the party who appealed the adjudicator's decision (the Appellant) would be invited to present his case first; the procedure would then be reversed and the Respondent would be given the same opportunity to present his case and that throughout the hearing the Tribunal may question the parties on their evidence. The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official stenographer present. He reminded the parties that knowingly providing false or misleading statements or information to the Tribunal is an offence punishable by a fine of up to €4,000 and/or up to 6 months imprisonment or both. The Chairperson also stated 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 then stated their affirmation before beginning their evidence.

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

The Appellant Landlord's submissions:

The Appellant stated that he has owned the dwelling for 17 years and he has never had any issues with tenants. The Appellant stated that he was not a landlord from 4th December 2020 when he deregistered himself as a landlord. The Appellant stated that he had not been a landlord since that date and that he and his family re-occupied the dwelling on 5th December 2020. On this basis the Appellant queried whether the RTB had jurisdiction to address the dispute because he asserted that the Respondent had become a lodger when the Appellant deregistered as a landlord on 4th December 2020. The Appellant stated that he acted on his understanding with advice he stated was provided to him by the RTB and the Citizen's Information service.

By way of background, the Appellant explained that in December 2020 he had a desperate need for accommodation for his wife and young children. The Appellant stated that he was told by an Engineer and Builder that he needed to vacate his family home because it had become uninhabitable. The Appellant set out that he had commenced works at his home in November 2020 and he had approached the tenants that resided in the dwelling on 31st October 2020 to request them to facilitate himself and his family to move into the dwelling. The Appellant stated that after receiving advice from the RTB, he served a notice of termination on the tenants on the 6th November 2020. The Appellant stated that two of the

tenants had no difficulty and they vacated the dwelling in mid November 2020 and he duly returned the deposits to those parties.

The Appellant stated that he encountered hostility to his proposal from the Respondent and he claimed that the latter was taking advantage of his family's predicament by trying to claim one month's free rent. In particular, the Appellant referred to a phonecall of 4th November 2020 when the Respondent asked him why did his family not move somewhere else. The Appellant explained that this was his house and his children were familiar with it and it was located close to schools and a creche. The Appellant stated that he told the Respondent that he and his family would be on the street in December if he did not facilitate his request. According to the Appellant, the Respondent did not accept that the Appellant was going to move into the dwelling.

The Appellant stated that another tenant was happy to move out after he discussed the matter with her father and he stated that he returned her deposit. During a conversation on 14th November 2020, the Appellant asked the Respondent how his search for new accommodation was going and the Respondent stated that the rooms in the locality were in excess of €500.00 per month. The Appellant disputed this rent level and he attached an advertisement from a rental website to support his claim that there were alternatives nearby. During this conversation, the Appellant stated that he told the Respondent that he, his wife and three young children would be moving into the vacant rooms in the dwelling. According to the Appellant, the Respondent's response was that he would be remaining until 9th January 2021 and that was fine with him. The Appellant submitted that this was a verbal agreement which enabled him to move back into the dwelling. The Appellant stated that he was advised by the RTB that, if a tenant agreed, that he would be allowed to move back into the dwelling.

The Appellant sent a message to the Respondent that he would be attending at the dwelling on 3rd December to clean the house and move belongings into the dwelling. The Appellant stated that he returned on 4th December to clean the dwelling however he did not believe the dwelling was in a habitable condition for his family due to the condition of some of the rooms. The Appellant told the Respondent to remove items from the bathroom and to confine his items in the kitchen to one press. In response the Appellant stated that the Respondent sent him a message stating that "I am a tenant in this house and entitled to use my room. Also if you move out any of my stuff I will cause plenty of trouble". The Appellant said he interpreted this message which was sent on the evening of 4th December 2020 to be a threat to him, his property and to the safety of his family.

Having removed himself from the register of landlords on the 4th December the Appellant said he believed that the Respondent was a lodger and no longer a tenant. The Appellant said he was extremely worried for the safety of his children and his wife and he decided to attend at the dwelling on 5th December and change the locks. The Appellant called to the dwelling on 5th December and noted that the Respondent was driving away. The Appellant moved into the dwelling, changed the locks and placed the Respondent's belongings neatly into black plastic bags and left them outside the front door. On the return of the Respondent, the Appellant attempted to give him a notice of eviction through the letter box from inside the dwelling, however he did not accept the document. The Appellant believed his actions were justified on the basis of advice that he stated he had received from the RTB, Citizen's Information and also for the safety of his children.

The Appellant stated that he would be subtracting €67.00 for the 5 days of lodging at the dwelling for December, a cleaning fee of €100.00 and €80.00 for heaters. The Appellant

said he would return the remainder of the deposit of €400.00 however the Respondent did not give him his bank details.

The Appellant stated that he did move into the dwelling and he vacated it in August 2021 when the essential works were completed at this family home. The Appellant acknowledged that the house was advertised for sale shortly after he took up occupancy however he remained in the dwelling with his family. The Appellant said that the commute for the Respondent was only 1 hour 20 minutes from his family's home in Cork. The Appellant stated that he had respect for HSE workers because he had family who had worked in the same hospital where the Respondent was based and for the HSE. The Appellant alleged that the Respondent was not compliant with covid guidelines because he said the Respondent had attended a gym which he regarded as a hotbed of infection. The Appellant stated that the Respondent's behaviour in this regard would have health implications for him and his family and it further justified his removal.

The Appellant stated that he was given incorrect advice by the RTB and that he was not provided with enough support from them in addressing the tenancy. The Appellant was shocked when someone from the RTB contacted him about the Respondent's exit from the dwelling on 8th December 2020. The Appellant stated that the dwelling was no longer a rental property but was his own primary residence so the Act did not apply to him any further. The Appellant stated that he was a fair and honest person.

The Tribunal asked the Appellant if he had served a notice of termination on the four tenants and the Appellant stated that he served the notice on the parties and that it would take effect 38 days after the lockdown ended. The Tribunal asked the Appellant if he was aware when he proposed moving in that the Respondent was remaining in the dwelling and the Appellant stated that the Respondent advised him that he would remain until the end of the notice period. The Appellant stated that it was open to the Respondent to use his room and the en suite bathroom while he lived with the Appellant's family.

#### Cross Examination by the Respondent:

The Respondent asked how the Appellant felt threatened by his text message. The Appellant stated that the phrase 'cause plenty of trouble' was a threat to the Appellant and his family's safety. The parties discussed which belongings were referred to over the course of the text messages which gave rise to the Respondent stating that he would 'cause plenty of trouble' if his belongings were removed. The parties discussed the Appellant's request for the driveway to be cleared and about the usage of the rooms in the dwelling. The Respondent put it to the Appellant that he told the RTB that he did not require the dwelling until the end of December and he asked why he was moving in at the start of December. The Appellant stated that he needed the dwelling immediately. The Respondent stated that the Appellant made the dwelling look presentable so it could be sold and it was put on the market in early December. The Appellant stated that the proposed sale of the dwelling was irrelevant because he and his family were in occupation until August 2021. The Respondent asked the Appellant if any landlord could simply deregister to avoid complying with the law and the Appellant said to ask the RTB. The Respondent put it to the Appellant that in the email to de-register that he lied because he had not moved in on 4th December but had moved in on 5th December. The Appellant stated that he moved in on the 5th December, that he did not have to live there 7 nights a week and that it became his primary residence. He added that he moved some belongings in on 4th December. The Respondent asked the Appellant for proof of the agreement he alleged happened in November. The Appellant stated that the RTB told him it had to be agreed and that he explained the situation to the

Respondent on 14th November. The Appellant stated that the Respondent did not say he could not move in and that he believed by the responses that it was agreed that the Appellant and his family could occupy the dwelling. The Appellant stated he told the Respondent he was moving belongings in and that no objection was taken to those messages. The Appellant stated that there was an obvious verbal agreement between the parties for his family to move into the dwelling. In response to the Tribunal, the Appellant stated that he did not contact the Garda when he received what he alleged was a threat from the Respondent.

#### Submissions of the Respondent Tenant:

The Respondent stated that there were no issues with the tenancy until the Appellant contacted the tenants to ask them to move out. The Respondent did not understand why he should move without proper notice. The Respondent stated that he received a notice of termination from the Appellant on 6th November 2020. The Respondent stated that the Appellant had discussed the notice period as expiring in January 2021 however he asked the tenants to vacate the dwelling at an earlier date. The conduct of the Appellant over the course of November was described as harassing the Respondent into moving out and putting him under huge pressure to vacate. The Respondent stated that the Appellant was frequently contacting him about vacating the dwelling. The Respondent said there was no verbal agreement on 14th November about altering the tenancy arrangement however he said he was in the dark about his rights and the possibility of the Appellant moving into the dwelling with him. The Respondent stated that the lockdown lifted on 1st December 2020 and that on 5th December 2020 he went out to buy food in the local shopping centre and on returning he discovered the locks were changed, the Appellant attempted to pass him an eviction notice through the letter box and his belongings were in black bags outside the front door. The Respondent called the Garda who attended at the scene and stated that it was a civil matter. The Respondent stated that the Appellant put him out on the street on the 5th December 2020 and that he moved back in with his mother. He described this as being difficult for his mother who is a carer for her own parents and who lives with his sister. The Respondent stated that he had to commute to work in Limerick Hospital from Cork and that he also used a short term letting website to avail of overnight accommodation. The Respondent described the experience as being traumatic.

#### Cross Examination by the Appellant Landlord:

The Appellant asked the Respondent if he believed that he moved into the dwelling. The Respondent replied that it was listed for sale shortly after he moved in. The Respondent was asked why he became angry over the phone with the Appellant and the Respondent stated that he did not believe that the Appellant needed the house, that he was not happy with his attitude and that he expected the Respondent to move out in December, before Christmas, when other rooms were difficult to find. The Appellant asked why the Respondent said he would cause 'plenty of trouble'. The Respondent replied that the Appellant had been harassing him about moving out of the dwelling, that he told him he was throwing out his belongings if he did not remove them. The Respondent explained that the reference in the text message to belongings could only have applied to his belongings because all other tenants had vacated the dwelling. The Appellant asked the Respondent about the conversation which they had on 14th November 2020 and the Respondent stated that the Appellant stated that he would have two rooms 'for his own use'. The Respondent stated that he did not agree or disagree as he did not know if there was anything he could do because the Appellant owned the dwelling. The Appellant asked why the Respondent

would use a bathroom with a family of 5 people. The Respondent said the Appellant was being very difficult and that he had no intention of moving into the dwelling. The Appellant asked if he looked after the Respondent in respect of the en suite when it became available and the Respondent disagreed stating that it was not offered to him first. The Appellant asked the Respondent if he realised the pressure he was under and why he was being so unfair and the Respondent stated that he did not know of the Appellant's family's circumstances or of the condition of his family's house.

The Appellant asked the Respondent if he was happy in the dwelling and the Respondent said he was happy. The Appellant wished to introduce verbal statements made by third parties who were not called to give evidence and this was not allowed by the Tribunal. The Respondent stated that he was unsure of his position in work for a time given the status of his contract however once this was rectified he was happy to stay. The Appellant asked if the Respondent was going to live in the dwelling with no heating and the Respondent stated that all tenants had heaters (electric) in their rooms. The Appellant asked if the Respondent was going to live without broadband and the Respondent stated that he and the other tenants has unlimited data on their mobile devices so broadband was not an issue for him at the dwelling.

The Appellant was asked if the works to his family home required planning permission and he stated that planning permission was required.

Concluding Submissions:

The Appellant stated that as a homeowner he complied with all rules and regulations from the RTB. He added that he is a polite, truthful and friendly person and that he did not need the pressure. The Appellant stated that he moved house twice and that he had to borrow money to cover costs of the build at his own house. The Appellant stated that the dwelling has now been sold and that he is happy because he will not need to deal with tenants again. The Appellant stated that he was being penalised, that he was protecting his family and his health and that there was no need for threats.

The Respondent stated that there was no evidence of a legal termination and that he found himself out on the street on a cold December morning following his food shop. The Respondent submitted that the Appellant took the law into his own hands that what happened was not right and that it was 'all on himself'. The Respondent stated that having regard to the picture provided that the works to the Appellant's home was that of an extension and that this did not constitute essential works.

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

The Parties agreed the address of the dwelling.

The parties agreed that rent was in the sum of €400.00 per month when the tenancy commenced on 1st June 2020. The parties agreed that the Respondent occupied the dwelling at the end of July 2020 and that he moved into an ensuite room in September 2020 which carried an increase in rent to €450.00 per month. The parties agreed that they had a conversation on 31st October 2020 which entailed the Appellant Landlord telling the Respondent Tenant and the other tenants of the dwelling that he wished to re-occupy the dwelling. The Appellant Landlord served notices of termination on the tenants of the dwelling on 6th November 2020.

## 7. Findings and Reasons:

Finding:

The dispute falls within the jurisdiction of the RTB.

Reasons:

The Appellant stated that when he moved into the dwelling on 5th December 2020, having moved his belongings in in advance of that date and having sent an email on 4th December to the RTB that he was deregistering as a landlord that the Respondent became a lodger and he no longer fell under the remit of the RTB.

The Appellant spoke to the RTB about occupying the vacant rooms in the dwelling when two of the four tenants moved out. In this regard, the Appellant stated that the RTB confirmed with him that he could move in with the agreement of the tenants. The Tribunal notes that in the course of his conversations with the RTB that the Appellant was told that he would need to agree any change to the tenant's living arrangements, that is, for the Respondent to become a lodger with the Appellant and his family.

Having listened to the parties, heard the conversations with the RTB submitted with the Appellant's appeal evidence and having read the submissions provided as part of the Tribunal case files, the Tribunal finds that there is no determinative evidence of an agreement between the Respondent and the Appellant that would change the nature of the relationship from landlord and tenant to one of a lodger / licence type agreement. The Tribunal notes there is no written agreement that confirms that the parties position had changed from that of landlord and tenant.

The Tribunal further notes that the Respondent did not accept that he agreed verbally to the Appellant re-entering the dwelling in a conversation dated 14th November 2020. The Tribunal accepts that an exchange took place on this date, however it is clear that the outcome of the discussion did not result in an agreement that would alter the parties' relationship. In addition to the Respondent's denial of an agreement taking place, the Tribunal notes that the Appellant was unclear about the agreement reached as during the Tribunal he contended that the Respondent 'did not say we could not move in' which suggests that there was uncertainty on the Appellant's side as to what was agreed with the Respondent.

The Tribunal further notes that the Appellant continued to send the Respondent links to a rental website to suggest alternative accommodation and this action is not consistent with a concluded agreement having been reached by the parties to enable the Respondent to reside with the Appellant, as a licensee or lodger. The Tribunal notes the content of the telephone calls with the RTB helpline which were submitted by the Appellant with his appeal and which did not form part of the evidence at adjudication.

Having reviewed the transcripts of the phone calls, it is the view of the Tribunal that the Appellant selected parts of the information provided by the RTB to formulate a plan to occupy the dwelling and force out the Respondent. The RTB correctly set out that when a landlord lives with a tenant that it does not come under the RTB legislation, however the Appellant disregarded the information that he was given that any change in the living arrangement would need to be by agreement. During a call of 5th November the Appellant asked the RTB if he moved into the dwelling that "surely they'll just kind of budge"(9:50) and he was told that the tenants would have to agree to him moving in. When the Appellant was asking the RTB personnel about a situation where he or his wife would live with the

Respondent, he stated (at 6:38s on 6th November) “the other thing (reference to living together) isn't going to happen but i'm just going to say it to them just to see if they go here, we'll just move out”. He further states that he could “throw the kids toys on the kitchen floor before December, that might freak them out”. While this last quote was said seemingly in jest, it demonstrates that the direction that the Appellant was thinking in forcing out the Respondent. The conversations can be summarised by the Appellant seeking information on notice periods, stating that his family home had defects which necessitated him requiring the dwelling, queries over him moving in with the tenants if he was desperate and the lack of understanding from two tenants who he described as immature and stubborn people.

The Tribunal has had regard to the email sent by the Appellant to the data protection unit of the RTB on 4th December 2020 in which he stated that he wished to de-register as a landlord. This action did not have this effect because the Respondent remained a tenant at that time and was entitled to remain in the dwelling for a period of 38 days after 1st December 2020, as provided by the Appellant's own notice. In short, the email did not have the effect of removing the Appellant's obligations as a landlord under the Act. The occupation of the dwelling by the Appellant and his family did not alter or remove his status as a landlord either as it meant that he simply ignored the rights of the Respondent tenant at that time. Having regard to these factors, the Tribunal is satisfied that, as of 5th December, 2020, the parties relationship was that of a landlord and tenant. This brings the dispute under the remit of the Tribunal constituted by the Residential Tenancies Acts. The Tribunal notes when the Appellant revisited the matter through the RTB helpline on 21st March 2021 that he described himself as a landlord.

#### Finding:

The Appellant Landlord illegally terminated the Respondent Tenant's tenancy on 5th December 2020.

#### Reasons:

The conclusion that has been reached by the Tribunal is that the Appellant decided to take back the dwelling at whatever cost it took at the time. The Appellant took a series of steps with the tenants in the dwelling which escalated over time culminating in a clear illegal eviction on 5th December 2020. The Appellant appeared to make the claim that his family home had defects which necessitated an urgent evacuation of his family from the property and that their only option was to take up occupation of the dwelling. It is the Appellant's evidence that the Appellant's family home had undergone building works and remodification which required planning permission which renders the Appellant's circumstances different to the picture he presented to the RTB helpline and the Respondent. The Tribunal notes that the Appellant stated that he had delayed the works for a number of years therefore the Appellant, it can be concluded, was fully aware of the extent of the works that were required at his family home and of the possibility that he may have required alternative accommodation. The Tribunal notes the Appellant's family's circumstances and it notes that while he placed this at the heart of his submissions to the Tribunal, it emerged during the Tribunal that he had not discussed this with the Respondent in the lead up to the termination.

The Appellant's claim regarding his status as a landlord was contradictory in that he claimed not be a landlord yet he served notices of termination on the tenants. The Appellant claimed a lack of support from the RTB helpline together with claiming to have been given incorrect advice; however he did not fully disclose his circumstances to the RTB helpline staff to

enable them to provide meaningful information with all the facts before them. The transcripts show that over the course of the phonecalls, the Appellant stated that he urgently needed the dwelling while in another statement he admitted he required the dwelling at the end of December 2020 and in a further statement he stated that the builder could delay the works further. Therefore the information being furnished to the RTB helpline was evolving throughout a series of phone calls that took place over the 5th and 6th November 2020 and in March 2021.

The Appellant was aware, having spoken to the RTB, of the notice period requirements which would commence when the emergency period ended. During the phonecalls, the end date was unknown to the Appellant or the RTB helpline staff. Subsequently, the 1st December 2020 was the date when the emergency legislation period ended and from which the notice periods would commence. The Appellant was told that a 28 day notice period and additional 10 day grace period applied to the Respondent.

It is clear that the Appellant was frustrated by the Respondent's insistence that he would not leave the dwelling unless in accordance with the law. The Tribunal notes that the Respondent worked in a nearby hospital during the course of a global pandemic and therefore the location of the dwelling, being close to the hospital, was a factor in the Respondent's decision to live there and not to leave without adequate notice. In the normal course of events, the Appellant would have been able to serve a notice of termination and the notice period would run from the day after service in accordance with the legislation. However, with the emergency legislation in place, the Respondent could be served with a notice of termination; however the notice period was frozen until the emergency period expired. The purpose of the legislation was to provide tenants with certainty as to their accommodation status during the public health crisis that was ongoing at the time.

Against this backdrop, the Appellant's steps in seeking to persuade the Respondent to move out ought to have ended when he refused and he should have waited for the notice period to expire, while even at that point he would not be entitled to simply move into the dwelling. The Appellant, having learned that he would require an agreement to alter the arrangement between the parties, is considered to have sought to infer an agreement that did not exist from an exchange between the parties on 14th November 2020. It is evident to the Tribunal that an agreement to alter the nature of the parties relationship from Landlord and Tenant to a licence arrangement was not concluded on that date. The Tribunal notes the Respondent's denial of any agreement however it also notes the Appellant's own uncertainty over what he had purported to agree. There was insufficient evidence advanced by the Appellant of an agreement save for his own assertions which were denied by the Respondent. The Tribunal notes that the Respondent asserted his own position by way of text message on the 4th December 2020 by stating that he was a tenant, a position consistent with the parties' behaviour. The Appellant's communications by text message highlight the absence of any agreement and a summary of their content is set out hereunder:

Message of 19th November 2020: "Hi Sean. Hope the search is going well.."

Message of 21st November 2020 from the Appellant: "Check out this property I found on daft"

On the evening of 23rd November 2020, the Appellant sent 8 further accommodation options to the Respondent which the Tribunal concludes was directed to placing further pressure on the Respondent to vacate the dwelling imminently. These actions had the

effect of placing significant pressure on the Respondent to vacate when he had intimated to the Appellant that he was not leaving the dwelling in advance of the expiry of the notice period.

Over the course of November 2020, the Appellant asked the Respondent to leave the dwelling, acted to exert pressure on the Respondent to force him to leave and when these efforts did not achieve the desired outcome he prevented the Respondent from re-entering the dwelling by changing the locks and leaving his belongings outside the dwelling on a December morning.

In respect of the Respondent's approach, he accepted that the Appellant provided him with the en suite room when it became available. The Respondent confirmed that there were no issues between the parties until 31st October when the initial conversation took place about the Appellant seeking the return of the dwelling from the Respondent. The Appellant contended that the Respondent was being awkward and stubborn compared to his fellow tenants; however the Tribunal finds that the tenant was relying on the safeguards that are provided for parties to a tenancy as regards notice periods. It is clear that the Respondent did not trust the Appellant's approach from an early stage and the parties relationship deteriorated over the month of November due to the Appellant's actions. It further is evident that when other tenants vacated the dwelling that the Appellant saw the opportunity to increase pressure on the Respondent at the start of December by asserting a claim over the common areas of the dwelling and the bathroom. The Appellant told the Respondent that the main bathroom would be for his family's use and that the Respondent was to have the use of only one cupboard in the kitchen for his food. The Appellant took it upon himself to clean the dwelling on the 3rd and 4th December and he made clear that if the Respondent's belongings were in areas that he had designated for his own use that they would be removed. These actions were part of a campaign to pressure the Respondent into vacating the dwelling early.

Having dictated which parts of the dwelling the Respondent could use or access, the Appellant told the Respondent that he would be throwing out any belongings that were left in any areas he wished to keep for his own use. The Respondent asserted his position as being that of a tenant and told the Appellant that if he removed his belongings, "he would cause a lot of trouble". The Appellant contended that this was a threat to his family, his house and to his safety. However, the Tribunal notes that the Appellant did not directly address the Respondent on the content of this message, nor did he contact the Gardaí to alert them of what he now claims was a threat to his children's and his own safety. In those circumstances, it is apparent that, while the language could be regarded as intemperate, the Appellant had no basis for considering the message to be a valid threat. In the Tribunal's view, the Appellant was using the message as a means to orchestrate a situation where he could plead that a threat from a tenant merited an immediate eviction. The actions of the Appellant following the alleged threat portray someone that did not interpret the message as a threat because on the morning of 5th of December 2020 he brought his children and his wife to the dwelling (where the alleged threat originated) and entered the dwelling to move in. This does not reflect the actions of someone that had concerns over any alleged threat to his wife, his children's or his property's safety, as a result of a relatively innocuous response from the tenant to the enormous pressure being put on him by the landlord at that time. The Tribunal notes that the Appellant did not request An Garda Síochána to assist them with accessing or calling to the dwelling which may have been prudent if someone considered a tenant to be a valid threat.

The Tribunal notes that the Appellant's evidence was that he saw the Respondent driving away and he then entered the dwelling, changed the locks and removed his belongings by placing them into black bags. The Tribunal notes that the Respondent returned from his food shop in a local shopping centre and he was confronted by the locks having been changed, being refused entry and of black bags outside the door containing his belongings. The Appellant had succeeded in regaining control of the dwelling and he appeared to have had no concern for the impact of his actions on the Respondent. The Tribunal notes that the Gardaí were called, not by the Appellant but by the Respondent, and it was generally agreed that the dispute was a civil matter. The Tribunal notes that the Appellant claims he disclosed the apparent threat from the Respondent to the Gardaí however they do not appear to have viewed this as a criminal matter. Over the course of the Tribunal hearing the Appellant attempted to impugn the Respondent's character by stating that it was strange that the Respondent wished to share a bathroom with his family and by making vague accusations over compliance with Covid guidelines. It is clear that the Respondent did not agree to sharing with the Appellant or his family and instead the Appellant decided to contrive reasons for forcing the Respondent from his home.

In those circumstances, the effect of the circumstances of the illegal eviction on the Respondent by the Appellant merit an award of damages. The actions of the Appellant in escalating the pressure on the Respondent over the course of November was a clear interference with his peaceful enjoyment of the tenancy. These actions were designed to unsettle and force the Respondent's hand, that is to leave the dwelling. The Appellant's actions having been confronted with the Respondent's reluctance to leave before the expiry of the notice period was to claim that an agreement was reached on 14th November 2020 for him to move into the dwelling. This agreement was contrived to the extent that the Appellant followed up with a series of alternative accommodation options for the Respondent to consider. The Appellant's series of text messages over the course of 3rd to 4th December show little consideration for his tenant's status and were, in the view of the Tribunal, intended to pressure the Respondent to vacate the dwelling. The final resort for the Appellant was to lock the Respondent out of the dwelling, while he was a tenant in the dwelling under a tenancy, contrary to the provisions of section 58(1) of the Act, which provides that a tenancy of a dwelling may not be terminated by a landlord by means of a notice of forfeiture, a re-entry or any other process or procedure not provided by Part 5 of the Act. A termination of a tenancy may accordingly only be effected by means of a notice of termination compliant with that Part of the Act. If there was any issue with overholding following the expiry of the notice period, the Appellant could have taken a case to the RTB seeking possession of the dwelling against the Respondent.

In considering the award of damages for an illegal eviction, the Tribunal considers the impact the eviction had on the Respondent who was shocked by the nature of the eviction, discommoded from his work as someone who works in a hospital, forced him into seeking short term accommodation to enable him to attend work and by forcing him back to live with his family in Cork who he did not wish to interpose on. The damages payable are compensatory, not punitive or exemplary in nature. The award reflects that the damage to the Respondent was at the less serious end of the spectrum, having regard to the tenant's circumstances. However the Tribunal is satisfied that the Respondent was seriously impacted upon by the eviction having regard to the above factors and the fact that he had his belongings interfered with and the timing of the eviction which the Tribunal accepts was in December. The Tribunal notes that the maximum award of damages is €20,000.00 and

it considers the situation to be sufficiently serious to merit an award of €7,000.00, in accordance with the provisions of section 115(2)(d) of the Act

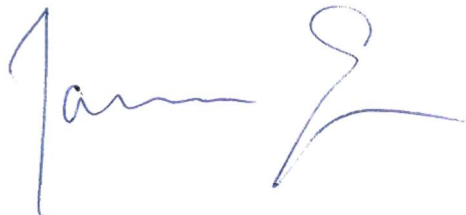
The Tribunal finds that the deposit of €400.00 should be returned to the Respondent with a deduction for rent for 5 days which the Appellant claimed in the amount of €74.00. The rental figure is calculated by reference to a monthly rent of €450.00 and a daily rate of €14.80 per day. The Tribunal does not allow the other claims against the deposit being a cleaning fee of €100.00 which was unsubstantiated by supporting evidence and particularly when the Respondent was not afforded any opportunity to address any shortfalls in the condition of the dwelling as alleged. The issue of the restoration of the gas supply was not supported by the Appellant's evidence in circumstances where the Appellant is responsible for his own utility costs.

#### **8. Determination:**

In the matter of David McCarthy (Appellant Landlord) and Sean Twomey (Respondent Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Appellant Landlord shall pay the total sum of €7,326.00 to the Respondent Tenant within 56 days of the date of issue of the Determination Order, being damages of €7,000.00 for the consequences of unlawfully terminating the Respondent Tenant's tenancy plus the balance of the retained deposit of €400, having deducted the sum of €74.00 in respect of rent arrears, in respect of the tenancy of the dwelling at 30 Cois Luachra, Dooradoyle, Limerick, V94NFT7.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 14/09/2021.



**Signed:**

**James Egan, Chairperson**

For and on behalf of the Tribunal.