

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0323-006079 / Case Ref No: 0922-80161

Appellant Tenants:	Aaron Doyle, James Heffernan, Orin Byrne, Lauren Barry
Respondent Landlord:	Ray Kelly
Address of Rented Dwelling:	38 Fuchsia Drive, Renmore, Galway, H91PD32
Tribunal:	John Keaney (Chairperson) Ciara Doyle, Anne Leech
Venue:	Virtual
Date & time of Hearing:	10 May 2023 at 10:30 a.m.
Attendees:	Aaron Doyle, Tribunal Appellant Tenant James Heffernan, Tribunal Appellant Tenant Ray Kelly, Tribunal Respondent Landlord
In attendance:	Epiq Digital Logger

1. Background:

On 28/09/2022 the Landlord 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 09/02/2023. The Adjudicator determined that:

1. The Notice of Termination with a date-of-service of 28th June 2022 served by the Applicant Landlord on the Respondent Tenants in respect of the tenancy of the dwelling at 38 Fuschia Drive, Renmore, County Galway, is valid.
2. The Respondent Tenants, and any other person/s residing in the above dwelling, shall vacate and give up possession of the above dwelling within 7 days of the date of issue of the Determination Order.
3. The Respondent Tenants shall pay the total sum of €12,300 to the Applicant Landlord, by way of 12 consecutive monthly instalments at the rate of €1000.00 per month, to be paid on or before the 28th day of each month, followed by one further instalment of €300.00, to be paid on or before the 28th day of the 13th month, commencing in the month immediately following the month of issue of the issue of the Determination Order. The said sum of €12,300 being rent arrears in respect of the tenancy of the above dwelling.
4. The enforcement of the Determination Order for such payment of €12,300.00 shall be deferred and the total sum owing shall be reduced by the cumulative sum paid, in monthly instalments, by the Respondent Tenants to the Applicant Landlord, on each due date, until such time as the total sum of €12,300.00 has been paid in full.

5. For the avoidance of doubt, any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Applicant Landlord.

6. The Respondent Tenants shall also pay any further rent outstanding from 9th February 2023, being the date of the (virtual) adjudication hearing, to the Applicant Landlord, at the rate of €1200.00 per month or proportionate part thereof at the rate of €39.45 per day, unless lawfully varied, plus any other charges as provided for under the terms of the tenancy agreement, for each month or part thereof, until such time as the above dwelling is vacated by the Respondent Tenants and any other person/s residing therein.

Subsequently the following appeal was received by the RTB from the Tenant on 16/03/2023 and thereafter approved by the Board on 20/03/2023.

The RTB constituted a Tenancy Tribunal and appointed Ciara Doyle, Anne Leech, John Keaney as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Keaney to be the chairperson of the Tribunal ("the Chairperson").

On 06/04/2023 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 10/05/2023 the Tribunal convened a virtual hearing, using MS Teams.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case files.

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 they were attending the Tribunal. The first and second-named Appellant Tenants confirmed that the other two Appellant Tenants would not be attending and that they were giving evidence only on their own behalves. 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 then 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; the Appellant Tenants would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present his case, and that there would be an opportunity for cross-examination by the Appellant Tenants. The Chairperson explained that following the evidence, the parties would be given an opportunity to make final submissions.

The Chairperson explained that all evidence would be taken on affirmation and be recorded by the digital logger 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 up to €4,000 or up to 6 months' imprisonment or both. The Chairperson noted that the proceedings were being recorded by the appointed digital logger.

The Chairperson also reminded the parties that as a result of the hearing, 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.

All parties giving evidence then made an affirmation.

5. Submissions of the Parties:

Appellant Tenants' Case

The first-named Appellant Tenant, Aaron Doyle, gave his evidence first. He began by referring to the advice he received from Threshold at the end of March 2022, confirmation of which was at page 3 of Case File 3. He said that the Respondent Landlord had wanted them to leave the dwelling but that he had not served any Notice of Termination. He said that at that time the situation with an anti-social tenant living in the dwelling with him had been ongoing for a year and that there was no indication from the Respondent Landlord of how he was trying to resolve it. He said that on 11 April 2022 the Respondent Landlord sent a message via WhatsApp telling them he wanted them out by the end of the month. He said that on 15 April 2022 the Respondent Landlord attended at the dwelling without prior warning and tried to, unsuccessfully, gain access to the dwelling. He said that when he was unsuccessful, the Respondent Landlord kicked the door repeatedly. He said that on 22 May 2022 the Respondent Landlord sent them a text message apologising for entering the dwelling at midnight without prior agreement.

He went on to say that at the end of June 2022 the Respondent Landlord sent them a rent arrears warning letter and a Notice of termination at the same time.

He said that on 14 August 2022 the Respondent Landlord introduced them to a Denis O'Sullivan who he described as a part-owner of the dwelling. He said that Denis O'Sullivan was not a part-owner according to the Land Registry record. He said he thought Denis O'Sullivan had been hired by the Respondent Landlord to coerce the Appellant Tenants to pay the rent. He said that on 08 September 2022 Denis O'Sullivan entered the dwelling via the back door wearing gloves and that when he was confronted by the first-named Appellant Tenant he left.

He said that on 10 October 2022 the dwelling was raided by An Garda Síochána.

He went on to say that the Respondent Landlord had never communicated that the situation with the troublesome former tenant couldn't be resolved. He said that the Respondent Landlord had never once given the troublesome former tenant a notice regarding her anti-social behaviour. He confirmed that they had still not paid rent since this tenant's departure. He said that they had tried to pay the rent but that the Respondent Landlord would not accept it. He said they had tried to negotiate a settlement with the Respondent Landlord to write off the arrears and to pay the rent going forward.

There was no cross-examination of the first-named Appellant Tenant.

The second-named Appellant Tenant then gave his evidence. He said that they had tried to negotiate with the Respondent Landlord after the departure of the troublesome tenant but that the Respondent Landlord would not agree to their proposals. He said the Respondent Landlord told them lies and that they could not trust his word.

There was no cross-examination of the second-named Appellant Tenant.

The first-named Appellant Tenant gave the closing statement. He said that they had taken a stand against what they perceived as inaction on the part of the Respondent Landlord because information was not being relayed to them. They took the stand of not paying rent to force the Respondent Landlord to deal with the issue. He said that things became exacerbated from there, that they had dug their heels in. He said he couldn't describe the amount of stress they were under and would just like for it all to be over.

Respondent Landlord's Case

The Respondent Landlord agreed that there had been a troublesome tenant in the dwelling. He said she commenced the tenancy with three other tenants, not the Appellant Tenants. Since she commenced occupation lots of other tenants had moved in and moved out. He said that when he received complaints about the former troublesome tenant's behaviour he had to listen to both sides. He said he had found it difficult to decide as she was always mannerly to him and paid her rent on time. He said he suspected that there were clashes of personality. He said that this troublesome tenant had been the one to introduce the first-named Appellant Tenant to the dwelling. He said even so, the complaints continued. He said he recalled meeting the first-named Appellant Tenant to discuss his complaints and that the first-named Appellant Tenant confirmed to the Respondent Landlord that he did not wish to see the troublesome tenant out on the street.

The Respondent Landlord said that he found the address of the parents of this troublesome tenant and met with her mother and communicated with her regularly for over a year. He said that he asked the troublesome tenant to move out. He said she agreed to do so and began paying her rent weekly for this reason. He said that she would regularly tell him she had found a new place and then tell him that it had fallen through. He said that he put her under constant pressure to move out. He pointed out that the Appellant Tenants were free to move out at any time. He said that the first-named Appellant Tenant introduced the second-named and fourth-named Appellant Tenants to the dwelling in December 2021, knowing at that time of the problem with the behaviour of the troublesome tenant. He said the second-named and fourth-named Appellant Tenants had not paid rent since moving in. He received constant excuses. In March 2022 all the Appellant Tenants stopped paying their rent.

He said that the occasion on which he entered the dwelling was by prior arrangement with the troublesome tenant. He said that on another occasion when he called at the dwelling the door was slammed in his face but that he did not kick the door.

He said that after the troublesome tenant vacated the dwelling he asked the Appellant Tenants of their intentions but received no reply. He said at this point he asked Denis O'Sullivan, whose services were recommended to him, to intervene. He was present when Denis O'Sullivan met the Appellant Tenants outside the dwelling and did not hear him introduce himself as a part-owner. He said he believed that the Appellant Tenants told Denis O'Sullivan that they would put forward a proposal but they never did. He said that texts from Denis O'Sullivan to the Appellant Tenants chasing their proposal went unanswered.

He said Denis O'Sullivan had told him that on the occasion he entered the dwelling the door was open and he withdrew as soon as he came across people under the influence of drugs. He said that he believed the local resident had complained to An Garda Siochana and that this resulted in the raid. He said Denis O'Sullivan terminated his services when he could not make any progress. He said that he had had no contact with the Appellant Tenants for

many months, the last occasion being with Denis O'Sullivan when the Appellant Tenants said they would put forward a proposal.

When asked by the Tribunal he said he believed the second-named and fourth-named Appellant Tenants moved into the dwelling before Christmas 2021.

He said that the Notices of termination served on the first-named and third-named Appellant Tenants were sent by post to them and that copies were sent at the same time to the RTB. He said that copies of these notices were before the adjudicator at the adjudication hearing. He said that the amount of arrears as at the date of the Tribunal amounted to €15,600 and that the rent was due on the first day of each month. He said there had been no attempts by the Appellant Tenants to pay the rent. He said they ignored his texts and also ignored the texts from Denis O'Sullivan. He said the Appellant Tenants had details of his bank account, as some rents were paid in cash and some into the bank account.

When cross-examined, the Respondent Landlord said that he wasn't aware of the text message sent by the first-named Appellant Tenant to Denis O'Sullivan on 18 August 2022. He said that Denis O'Sullivan just told him that there was no point in trying to mediate. He said that he never thought that he would not be able to resolve the issue with the troublesome tenant. He said that he was in contact with another tenant at the time, by the name of Luna and that he kept her updated of his efforts. He said that some of the text messages in the Case Files showed that he had put Luna in touch with the troublesome tenant's mother and that Luna knew what was going on. He said that he had told the first-named Appellant Tenant of his efforts and that it was the first-named Appellant Tenant who had given him the parents' address. He said that the first-named Appellant Tenant was present when the troublesome tenant's mother called at the dwelling when it was assumed by all that she had called to take the troublesome tenant home. He said he was trying as amicably as possible to remove her from the dwelling.

In his closing statement the Respondent Landlord stated that the Appellant Tenants were free to move out of the dwelling at any time. He said that the non-payment of rent was a massive financial loss to him, and that the Appellant Tenants had been living in the dwelling rent free for over a year and that he was the one under stress because of this. He said that the Appellant Tenants were taking advantage of the situation.

6. Matters Agreed Between the Parties:

No matters were agreed by the parties.

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 finding and reasons therefor are set out hereunder.

Finding 1 : The Appellant Tenants are liable to the Respondent Landlord for rent arrears from 01 March 2022 to 10 May 2023, being the date of the Tribunal, in an amount of €17,194.52.

Reasons:

1. Pursuant to section 16 (a) of the Act a tenant owes an obligation to a landlord to pay to the landlord or his authorised agent the rent due under the tenancy agreement on the day it falls due for payment.

2. The Appellant Tenants accepted that they had not paid rent since the end of February 2022. Whatever the problems with the troublesome tenant, the Appellant Tenants were legally obliged to pay their rent and were not entitled to withhold or refuse to pay the rent as and when it fell due for payment. If the Appellant Tenants thought the Respondent Landlord was in breach of his obligations in relation to resolving the issue with the troublesome tenant then they were obliged to make an application to the RTB. They were not entitled to withhold or refuse to pay the rent.

3. The amount of the rent was €1,200.00 per month and due on the first of the month. There are 14 months and 10 days unpaid rent as at the date of the Tribunal. The arrears are therefore calculated as:

$14 \times €1,200.00 = €16,800.00$ plus $10 \text{ days} \times €1,200.00 \times 12/365 = €394.52$.

$€16,800.00 + €394.52 = €17,194.52$.

4. The Respondent Landlord is entitled to be paid these arrears as soon as reasonably practicable. However, the Tribunal recognise that this is a large sum of money and considers it a reasonable balance between the parties, bearing in mind that there are four tenants, if the arrears are paid at the rate of €1,000.00 per month.

5. In any event the Tribunal finds, on the basis of the Respondent Landlord's evidence, which was not disputed by the Appellant Tenants, that the Respondent Landlord was not in breach of his obligations as it finds that the Respondent Landlord had been making efforts to resolve the issue with the troublesome tenant that took account of her rights as a tenant and of her personal problems.

Finding 2 : The Notices of Termination served by the Respondent Landlord on the Appellant Tenants are invalid.

Reasons:

1. Pursuant to s.28 of the Act, once a tenant has been in occupation of a dwelling for more than 6 months then, unless before the expiry of that 6 months the landlord has served a notice terminating the tenancy, after the six months has elapsed the tenant gains the protection of Part 4 of the Act.

2. Once a tenant has the protection of Part 4 of the Act then that tenancy can only be terminated on one of the grounds in the Table referred to in s.34 of the Act.

3. The Respondent Landlord served a Notice of Termination on the fourth-named Appellant Tenant on 28 May 2022 and on the second-named Appellant Tenant on 30 May 2022, in each case purporting to terminate their tenancy on the ground that they had been in occupation for less than 6 months and therefore did not have the benefit of a Part 4 tenancy.

4. However, in his evidence the Respondent Landlord stated that fourth-named and second-named Appellant Tenants took up occupation prior to Christmas 2021, meaning that they had each been in occupation of the dwelling for a period of six months prior to 25 May 2022. The Respondent Landlord was therefore out of time by a few days when he served each of those Notices of Termination.

5. The Notice of Termination in relation to the tenancies of the first-named and third-named Appellant Tenants is contained in Page 46 of Case File 1. That Notice of Termination is invalid as it does not comply with the requirements of a valid Notice of Termination as set out in s.62 of the Act.

6. The Tribunal has considered as to whether it can apply the “slip rule” in this instance. Pursuant to S.64 A:

“On the hearing of a complaint under Part 6 in respect of a notice of termination, an adjudicator or the Tribunal, as the case may be, may make a determination that a slip or omission which is contained in, or occurred during the service of, the notice of termination shall not of itself render the notice of termination invalid, if he or she or it, as the case may be, is satisfied that—

(a) the slip or omission concerned does not prejudice, in a material respect, the notice of termination, and

(b) the notice of termination is otherwise in compliance with the provisions of this Act.”

The Tribunal has determined that it would not be appropriate to apply the slip rule as the Notice of Termination completely fails to comply with the requirements of s.62 that it cannot be said that there has been a slip or omission by the Respondent Landlord when it appears to the Tribunal that he has not complied with the requirements for a valid Notice of Termination.

7. For that reason the Tribunal finds that the Notice of Termination served by the Respondent Landlord on 28 June 2022 on the first-named and third-named Appellant Tenants is invalid.

Finding 3 : The Appellant Tenants’ claim in relation to the breach of landlord’s obligations is not upheld.

Reason:

The Appellant Tenants complained of two instances when the Respondent Landlord attended at the dwelling, which they said was a breach of their entitlement to peaceful and exclusive occupation. They also referred to an incident when the Respondent Landlord’s agent entered the dwelling. The Respondent Landlord disputed the versions of events put forward by the first-named Appellant Tenant. The Tribunal finds that in circumstance where the facts were disputed the Appellant Tenants have failed to prove their claim on the balance of probabilities.

Finding 4 : The Respondent Landlord’s claim in respect of anti-social behaviour by the Appellant Tenants is not upheld.

Reasons:

1. Pursuant to s.16(h) of the Act, tenants have an obligation to:

“not behave within the dwelling, or in the vicinity of it, in a way that is anti-social or allow other occupiers of, or visitors to, the dwelling to behave within it, or in the vicinity of it, in such a way”

2. S.17 of the Act sets out the definition of three different categories of anti-social behaviour.

3. The Respondent Landlord did not particularise as to which of these three different categories the behaviour of the Appellant Tenants fell into.

4. The Respondent Landlord gave evidence of reports of drug-taking at the dwelling and of a raid by An Garda Síochána. No evidence was given as to the result of that raid i.e. as to whether any offences had been committed.
5. A finding of anti-social behaviour is a serious matter as it affects the reputation of the tenant and therefore, while the test is whether on the balance of probabilities such behaviour has occurred, the evidence to support that test must be robust.
6. The Respondent Landlord is relying on hearsay evidence in support of his claim and it is the Tribunal's view that such evidence is not, on its own, sufficiently robust to discharge the burden of proof.

8. Determination:

In the matter of Aaron Doyle, James Heffernan, Orin Byrne and Lauren Barry (otherwise Lauren Cronin) [Appellant Tenants] and Ray Kelly [Respondent Landlord] the Tribunal, in accordance with Section 108 (1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served on the first-named and third-named Appellant Tenants on 28 June 2022 is invalid.
2. The Notice of Termination served on the second-named Appellant Tenant on 30 May 2022 is invalid.
3. The Notice of Termination served on the fourth-named Appellant Tenant on 28 May 2022 is invalid.
4. The Appellant Tenants shall pay the total sum of €17,194.52 to the Respondent Landlord, by way of 17 consecutive instalments at the rate of €1,000.00 per calendar month, on or before the 28th day of each month, followed by one further instalment of €194.52 on or before the 28th day of the immediately succeeding month, commencing the next month after the date of issue of the Determination Order. This sum represents rent arrears of €17,194.52 for the period from 01 March 2022 to 10 May 2023 inclusive in respect of the tenancy of the dwelling at 38 Fuschia Drive, Renmore, Galway G91PD32.
5. The enforcement of the Determination Order for such payment of €17,194.52 will be deferred and the total sum owing will be reduced by the cumulative sum paid, in monthly instalments, by the Appellant Tenants to the Respondent Landlord, on each due date, until such time as the total sum of €17,194.52 has been paid in full.
6. For the avoidance of doubt, any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Respondent Landlord.
7. The Appellant Tenants shall also pay any further rent outstanding from 10 May 2023, being the date of the Tribunal hearing, to the Respondent Landlord, at the rate of €1200.00 per month or proportionate part thereof at the rate of €39.45 per day, unless lawfully varied, plus any other charges as provided for under the terms of the tenancy agreement, for each month or part thereof, until such time as the above dwelling is vacated by the Appellant Tenants and any other person/s residing therein.
8. The Appellant Tenants' claim in respect of breach of landlord's obligations is not upheld.

9. The Respondent Landlord's claim in respect of anti-social behaviour on the part of the Appellant Tenants is not upheld.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 30/05/2023.

Signed:



John Keaney, Chairperson

For and on behalf of the Tribunal.