

**Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0419-003708 / Case Ref No: 0319-53215**

**Appellant Landlord:** Blenheim Property Company

**Respondent Tenants:** Mariusz Piekutowski, Magdalena Gizycka

**Address of Rented Dwelling:** 6 Rathbaun House, Bride Street, Loughrea, Co. Galway, H62W207

**Tribunal:** Healy Hynes (Chairperson)  
Roderick Maguire, Ciara Doyle

**Venue:** Executive Lounge, Hotel Meyrick, Eyre Square, Galway

**Date & time of Hearing:** 04 July 2019 at 11:00am

**Attendees:** Andrew Turner - Landlord Representative  
Daniel Dwyer - Landlord Representative  
Robert Hickey - Landlord Representative  
Paul McGrath - Landlord Representative  
Sandra Bermingham-Maher- Landlord Representative  
Mark Lennon - Landlord Representative  
Kevin Higgins - Landlord Representative  
Mariusz Pieutowski - Tenant  
Magda Gizyska - Tenant  
Meadhbh Statham - Tenant Representative

**In Attendance:** Stenographers

**1. Background:**

On 27/03/2019 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 10/04/2019. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €8,885.92 to the Applicant Tenants within 35 days of the date of issue of the Determination Order, by the Board being damages of €10,000.00 for the consequences of unlawfully terminating the Applicant Tenants tenancy, plus the retained security deposit of €550.00, less rent arrears of €1,664.08, in regard to the tenancy of the dwelling at 6 Rathborne House, Loughrea, Galway

Subsequently an appeal was received from the Landlord.

The RTB constituted a Tenancy Tribunal and appointed Healy Hynes, Roderick Maguire, Ciara Doyle 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 4th July 2019 at 11.00 am the Tribunal convened a hearing at Executive Lounge, Hotel Meyrick, Eyre Square, Galway.

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

1. RTB File

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

None.

## **4. Procedure:**

The Tribunal was scheduled to start at 11.00 am. The Tribunal then began the hearing and the Chairperson asked the parties present to identify themselves and to identify in what capacity they were attending the Tribunal.

The Chairperson informed the parties that the hearing was a public hearing. 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 explained the procedure which would be followed; the parties who appealed (the Appellants) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondents; that the Respondents would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellants.

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

The Chairperson confirmed with the parties that they had received the relevant papers from the RTB in relation to the case being the two case files circulated in advance of the hearing. The Tribunal confirmed with the parties that they had received and understood the RTB document entitled "Tribunal Procedures".

The parties giving evidence were duly sworn in.

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

Appellant Landlord:

Sandra Bermingham Maher Evidence:

The witness gave evidence that a number of HAP application forms had been returned as the names kept changing during the course of the tenancy. Arrears had continued to climb during this time.

The final one was on 18th September 2018. A notice of arrears of rent was issued at this time. The Appellant Landlords were advised that only Mr. Pieutowski was in occupation at this time.

The Notice of Termination as served on 10 January 2019 was done so via email and post. The witness gave evidence that this was done so via ordinary mail as was the norm in the business.

The witness gave evidence that on 26th March 2019 a call came from the tenant of No.5 that an alarm was going off and there was a smell of smoke. The witness then stated she checked to see who was the nearest person to inspect the property and called Mr. Higgins although she had not had prior dealings with him. She then attempted to contact the Respondent Tenants but got no answer on the phone. She also contacted one of the tenants in No.5. The other party living there then called her. She was then advised that the smoke was from No.4. The witness confirmed she received a call from Mr. Higgins in respect to the Respondent Tenants and their statement to Mr. Higgins saying they had to leave. She then instructed "if they want to go that's up to them".

She continued her evidence by saying another employee of the company, Mr. Sean Bennis, attended the property on following day. It was agreed between Mr. Higgins & the Tenants that the Tenants could come to the following day to get their possessions and Ms. Bermingham Maher instructed Mr. Bennis that the Tenants would not be allowed in as they would then not leave. Mr. Bennis walked away from the Tenant at that time. The witness confirmed that she had been instructed not to engage with the Tenants Representative, Threshold, subsequent to their correspondence to the Appellant Landlords on the afternoon of the event advising the Landlords of the illegal eviction and the request to regain the keys and possession of the property.

Kevin Higgins Evidence:

The witness gave evidence that the post boxes were on the external wall of the downstairs of the building. These boxes are opened by keys which only Tenants have. These boxes are individually numbered.

The witness made reference to the case file and the extent of correspondence between the parties in the matter of rent arrears and the attempt to address same.

The witness did say that the post boxes had been replaced for aesthetic purposes.

The witness stated that he carried out maintenance work for the Appellant Landlords, that there was no prior reports of smoke in the building and that he was not in attendance in the property on the day of the termination. He was there 3-4 days later taking stock and found clothes, goods etc. in the tenanted property. He took photos and videos of same.

He was not aware of any efforts by the Respondent Tenants to regain their possessions. He stated that the Respondent Tenants attended the property after 26th March 2019 when he was there doing regular maintenance but he did not talk to them.

Furthermore the witness stated he was not at the property on 27th March 2019. He confirmed that the smoke and fire alarms in the building were functional.

Paul McGrath Evidence:

The witness gave evidence that he was regional maintenance manager for the company with a national role. He looks after 2,000 apartments and had never been in this block before.

The witness stated that he was in Loughrea on another job when he got a call from the office around 12 noon, that there was a reported smell of smoke from the building. He and his colleague Mr. Lennon went to the building to investigate. They started at the top of the building with No.5. There was nobody there and they drilled locks to enter that unit. They then did the same in No. 6 (the property in question). This was done to external and internal doors. At approximately 12.40 the Respondent Tenants arrived at the property. The witness then gave evidence that the Tenants said to him "we have to go" and that he then called the office who advised him there were arrears in the matter. The witness then gave evidence that he replied "that's up to yourself" in answer to the Tenants statement.

The witness says he did not go any further into the matter with them.

He gave evidence that he was informed Ms. Gizyska was going to stay with her mother. The parties then discussed the reported smoke and that the Tenant advised him it was coming from No.4 who had a barbecue outside. This subsequently proved to be the case.

The witness gave evidence that at this stage there were new locks in the property, the keys were not provided to the Respondent Tenants and the Tenants did not request keys.

He further gave evidence that the parties were to meet the next day to facilitate the Tenant removing their possessions.

Mark Lennon Evidence:

Mr. Lennon gave evidence he was a gas installer for the Appellant Landlords. He stated that he was in Loughrea on a job when around lunchtime they got a call in relation to smoke in a building. When they arrived there was no smell so they went to the top of the building and started at No.5.

The witness gave evidence that the report of smoke came from No.3. The witness continued to say that they were in No.6, locks were being changed and he did not have any direct discussions with the Tenants.

On cross-examination the witness stated that there was no fire alarm sounding and they checked the light fittings in the common areas before entering the units.

Respondent Tenant Case:

Marius Pieutowski Evidence:

The Respondent Tenants denied having received the arrears of rent notice and the notice of termination in question; they questioned the condition of the post boxes but did confirm that no other post had gone missing. The Respondent Tenants further stated that they had not reported the condition of the post boxes to the Appellant Landlords.

The Witness gave evidence that on the morning in question he and his partner went into the city. Upon their return they found the locks being changed. The witness then stated that he was asked "do you know why I'm here? You have to go."

The witness continued in evidence to state that he had nowhere to go but his sister would let him sleep on the sofa. He gave evidence he was advised that the people at the apartment did not have time to allow him take his possessions and would not give him keys.

He then went to Threshold who contacted the Appellant Landlords, requesting access.

He then went to his sister's house and subsequently found new accommodation 3 days before the Tribunal hearing. He regained his possessions 3 months after the date of termination.

On cross-examination he was asked how he intended to pay the arrears of rent to which he stated he had previously borrowed from a friend. He further stated that he attended the property the following day and there was a small altercation when he requested keys.

Magda Gizyska Evidence:

The witness gave evidence that she and her partner were in Galway that morning and came home to find the door open. She then asked Mr. McGrath if they could get in - to which the answer was yes. She supported Mr. Pieutowski evidence that they were asked did they know why people were in the property and did they have somewhere to go. She confirmed she went and stayed with her mother.

She further confirmed they went to Threshold who contacted the Appellant Landlords.

Meadhbh Statham, Tenant Representative Statement:

The Respondent Tenants Representative stated that whilst her clients may have gone into emergency accommodation, the issue was accelerated by the actions on the day. Her clients were over the threshold for HAP and had been deleted from the housing list which caused them issues. On questioning from the Tribunal it was confirmed that they were accelerated up the housing list as a consequence of this dispute.

Appellant Landlord Representative Closing Submissions;

The Appellant Landlord Representative closed by stating that the Appellant Landlord was Blenheim Property group. There was a number of Notices of Termination issued in the matter by the Landlord. The representative stated that the Tenants vacated of their own volition on the day and that no illegal eviction had been carried out by his client or the representatives.

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

Dwelling Address: 6 Rathborne House, Loughrea, Galway, Ireland

Tenancy commenced: 01/07/2016

Rent: €550.00 per month

Deposit: €550.00

Arrears of Rent: €1,664.

Rent arrears notice served: 20 December 2018 citing arrears of €194.00

Notice of termination served: 10th January 2019 citing a termination date of 9th February 2019

Locks changed 26th March 2019

## **7. Findings and Reasons:**

Finding 1: The Notice of Termination served on 10th January 2019 is Valid

Reason: The Tribunal finds the notice is valid as the Respondent Tenants were in breach of their obligations in failing to pay rent on the property. This Respondent Tenants were advised of this breach of obligation on 20th December 2018 and did not remedy same within a reasonable time period as required under the act.

The Appellant Landlords were therefore within their rights to serve the notice.

Regarding the services of notices, the Appellant Tenants state that they did not receive them as the post boxes were broken. However according to the Tenants themselves no other post has gone missing. On the balance of probabilities, the Tribunal therefore finds that the notices were indeed validly served by putting them in the post box for the unit.

Finding 2: The tenancy was unlawfully terminated by the Appellant Landlords.

Reasons. The Tribunal finds the evidence of the Appellant Landlords as to the happening on the law to be largely credible. The Tribunal accepts that there was a report of smoke in the area and that the Appellant Landlords' Representative gained access to the property so as to investigate same and ensure the safety of the surrounding Tenants.

However the Tribunal finds that the Appellant Landlords subsequently took advantage of the situation and the circumstances of the Respondent Tenants to make them believe the access was made as they were being evicted.

The actions of the Respondent Tenants in the hours after leaving the property, in leaving their possessions in the property, then requesting the keys and via their Representatives - Threshold - advising the Appellant Landlords that an unlawful termination had been carried out are testament to this.

The fact that that direct evidence was given by the Appellant Landlords Representatives that they were instructed not to engage with the Respondent Tenants Representative is testament to same.

The Tribunal finds this is a cynical exercise in exploitation.

The matter now turns to the quantum of damages. The Tribunal is mindful of the fact that the Respondent Tenants were over-holding on a valid notice of termination. And whilst no countenance can be given for Landlords taking matters into their own hand in such circumstances, all parties are cognisant of the fact that the tenancy itself was untenable and the actions of the Landlords were a catalyst of the Respondent Tenants subsequent experience rather than a sole cause.

Direct evidence was given that the Respondent Tenants had accommodation to go to with family and that this was always going to be the case in the event of the tenancy being terminated. The parties accept that arrears in the matter would have continued to climb during a lawful RTB process and would have eventually accumulated to the region of €5,000.00. By their own evidence the Respondent Tenants had made no steps to find alternate accommodation on foot of receiving the valid notice of termination. In fact direct evidence was given that the Respondent Tenants envisaged being in emergency accommodation at the end of the process regardless.

The Respondent Tenants were at the time overholding for 3 months and gave evidence that the combined income was over that required for HAP. The Tenants had found new accommodation and were paying €7,320 per annum in rent. By their own evidence the Respondent Tenants stated that they were fast tracked through the HAP system as they were rendered homeless by the actions of the Appellant Landlords.

The loss in the present case was the loss of the remaining occupation of the dwelling, up to the point at which the tenancy would have been validly recognised as having been terminated in accordance with the act in any event through the RTB process; the temporary loss of possessions in the property which the Tenants gave uncontroverted evidence of being deprived of for 3 months; and forced separation of a young family by virtue of the locks being changed on the property.

While some of the loss suffered may have occurred in any event, nonetheless the Tribunal must endeavour, as best they can, to put the Tenants in the position they would have been in had they not been unjustly deprived of possession of the dwelling by the Landlord. The Tenants were entitled to due process in the determination of their occupation and that was not afforded to them by the changing of the locks.

The Tribunal further acknowledges that the Appellant Tenants took steps to mitigate their own losses and secured accommodation in July 2019.

Given that the evidence shows that alternative accommodation was secured by the Tenants for €60 per month more than they had been paying, it is appropriate to award damages approximately equivalent to the sum of rent for the period from the date of the ending of occupation by the changing of the locks to the date of occupation of new accommodation while also having regard to the general distress caused by the unlawful manner in which the Respondent Tenants were expelled from the property. The Tribunal decides that the amount of €610 per month (which is their new rent) should be awarded for the 3 months from 26 March 2019 when they were homeless, being an amount of € 1,830; in addition, the amount of €1,500 in respect of the loss of their possessions; and an amount of € 1,670 in respect of the distress caused by the manner in which the occupation of the dwelling was ended and the ongoing separation of a young family for three months.

This gives a total figure of €5,000.

In respect of the period to be provided for payment of this sum, the Tribunal is satisfied that it is appropriate to allow 28 days, given the length of time that has passed since the termination of the tenancy and the right of the Respondent Tenants to a prompt remedy.

## **8. Determination:**

**In the matter of Blenheim Property Company (Landlord) and Mariusz Piekutowski, Magdalena Gizycka (Tenants) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlord shall pay the total sum of €3,885.92 to the Respondent Tenants within 28 days of the date of issue of the Determination Order by the Board, being damages of €5,000.00 for the consequences of unlawfully terminating the Respondent Tenants' tenancy, plus the retained security deposit of €550.00, less rent arrears of €1,664.08, in regard to the tenancy of the dwelling at 6 Rathbaun House, Bride Street, Loughrea, Co. Galway.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 14/08/2019.

**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.