

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0518-002958 / Case Ref No: 0118-40344

Appellant Tenant: Sylwia Majcher

Respondent Landlord: Sansovino Property Company Unlimited Company

Address of Rented Dwelling: 79 Talbot house, Tallaght Cross East, Tallaght ,
Dublin 24,

Tribunal: Helen-Claire O'Hanlon (Chairperson)
Hugh Markey, Kevin Baneham

Venue: Dublin, Tribunal Room, RTB, 2nd Floor, O'Connell
Bridge House, D'Olier Street, Dublin 2,

Date & time of Hearing: 12 November 2018 at 10:30

Attendees: For the Appellant:
Tomasz Pysz (Representative on behalf of the
Appellant Tenant)

For the Respondent:
Kyle Denny, Comer Property Management (Agent
for the Respondent Landlord)

RTB appointed Stenographer / Logger

In Attendance:

1. Background:

On the 20th of January 2018 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 the 27th of February 2018. The Adjudicator determined that:-

1. It is declared that the Respondent Landlord is in breach of its obligation to repair under s. 12(1)(b) of the Act with respect of the Tenancy of the dwelling at 79 Talbot House, Tallaght Cross East, Tallaght, Dublin 24 D24 YR6N.
2. The Respondent Landlord is directed to repair the three leaks in the ceiling of the dwelling at 79 Talbot House, Tallaght Cross East, Tallaght, Dublin 24 D24 YR6N on or before the 27th of April 2018. The claim for damages from the aforesaid breach of the obligation to repair is reserved to a future complaint to the RTB (unless resolved by agreement in the meantime).

3. The Respondent Landlord shall provide the Applicant Tenant particulars of the means by which the tenant may, at all reasonable times, contact him or her or his or her authorised agent in accordance with section 12(1)(f) of the Act.

Subsequently an appeal was received from the Tenant.

The RTB constituted a Tenancy Tribunal and appointed Hugh Markey, Helen-Claire O'Hanlon and Kevin Baneham as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Helen-Claire O'Hanlon 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 the 12th of November 2018 the Tribunal convened a hearing at Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

1. RTB File

3. Documents Submitted at the Hearing Included:

None

4. Procedure:

The Chairperson asked the parties present to identify themselves and to identify in what capacity 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". Both parties confirmed that they had done so and it was confirmed that the parties had read and understood them. The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be as informal as was possible. The Chairperson said that members of the Tribunal might ask questions of both parties from time to time. She also stated that the parties must follow any instructions given by the Chairperson and directed that neither party should interrupt the other when oral testimony is being given.

The Chairperson explained that as this was the Appellant Tenant's appeal her representative would be invited to present her case first and that there would be an opportunity for cross-examination on behalf of the Respondent Landlord. The Agent for the Landlord would then be invited to present his case, and there would be an opportunity for cross-examination on behalf of the Tenant. The Chairperson explained that following this, representatives for both parties would be given an opportunity to make a final submission.

The Chairperson indicated that she would be willing to clarify any queries in relation to the procedures either then or at any stage during the course of the Tribunal hearing. It was also indicated that the Tribunal would be willing to consider an application made at any stage during the Hearing seeking a short adjournment for the purpose of allowing the

parties to try to negotiate, on a without prejudice basis, a consent settlement of the dispute.

The Chairperson stated that all evidence would be taken on Oath or Affirmation and be recorded by the official stenographer present and she reminded the parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or up to 6 months imprisonment and/or both. It was explained to the parties that as a result of this 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 pursuant to Section 123(3) of the 2004 Act. All persons giving evidence to the Tribunal were then sworn in.

5. Submissions of the Parties:

Evidence on behalf of the Appellant Tenant:

The Tenant's representative had direct knowledge of some matters the subject matter of the dispute and also referred to the written documents which had been submitted by the Tenant. He set out the case on behalf of the Tenant in respect of all matters as follows:

He stated that on the 2nd of January 2018, a leak occurred in the ceiling of the dwelling, which is an apartment. The Tenant reported the leak to security and used an emergency number to report the issue to the landlord. Security personnel arrived within 15-20 minutes. They took photos, said someone would be in touch shortly and left. The Tenant also sent an email the following day. It was a requirement that such matters be reported directly, per the lease.

The first leak was in the utility room of the apartment, but then two other leaks occurred, including one in the bedroom of the Appellant Tenant, which caused major water damage to the Tenant's bed, her bedding and some personal belongings. The personal items which were damaged including a backpack, a duck down pillow and duvet, and a duvet cover. The mattress on her bed was also soaked with dirty, foul-smelling water. The Tenant emailed the Agent for the Landlord again to notify them of this on the 8th of January 2018.

A repair team arrived from Comer Property in subsequent days, who are the property management agents on behalf of the Landlord. The Tenant's representative said that two men came in, looked at the leak, told the Tenant they were going to get tools, and then never came back.

More repair men came on the 16th of January 2018. They cut a hole in the ceiling of the Tenant's bedroom to investigate the possibility that it was a leak in a pipe that was causing the problem, and then left the hole in the ceiling and did not repair the leak. While they were doing this work they did not cover the Tenant's bed, so the water damage was made worse when material from the roof and water fell down on it.

The Tenant's representative said that he was aware of these ongoing difficulties. He said that he worked in construction and that his company could have done the work and solved the problem of the leak. The Tenant notified the Landlord's agent that Mr Pysz would be in a position to do the necessary repairs, and sought access so that someone from his company could come and quote for the repairs and so an interim repair could be done but the Landlord's agent refused.

As no steps were taken to repair the leak, the Tenant and her infant child had to move into the sitting room to sleep. The Tenant had to sleep on a small couch. The hole was still in her bedroom ceiling and there was still water coming into her room. Because the Tenant was sleeping in the living room, and there was a hole in the ceiling, there was a sizeable increase in utility bills for the dwelling, as it was much more expensive to keep the open plan living area heated than her bedroom. Various electricity bills were submitted on behalf of the Tenant in support of this, although it was noted that the meter readings for the relevant period were estimated. It also had a significant impact on the living conditions not just for the Tenant and her baby but also for her co-tenant. The Tenant had no privacy, and her co-tenant could not use the living space of the apartment without severely interfering with her. It also meant that the baby was always in the living room, rather than in a quiet bedroom to sleep.

There were ongoing emails from the Tenant requesting that the situation would be resolved, but nothing was done. As no further steps had been taken by the 5th of February 2018, the Tenant sent another email to the Agent to complain. The Landlord's agent sent a response to this email two days later, complaining about her tone and saying that she would no longer be entitled to communicate with the Agent by phone or email, but would instead be required to communicate only by registered letter. The email concludes "any other form of communication from you will be ignored."

The Tenant submitted complaints to the RTB and Threshold. Threshold also advised her to report the issue to the Environmental Health Officer in South Dublin County Council. She did so and an inspection took place on the 9th of February 2018. A report was prepared by the EHO which noted that the accommodation did not meet the Housing (Standards for Rented Houses) Regulations 2017. The EHO also wrote to the Landlord directing that the remedial works be done within a specified period.

The Tenant's former co-tenant notified the Landlord's agent by email in February that he was moving out. The Tenant's representative (who is the cousin of the former co-tenant) said that this was because the living conditions were so unsatisfactory, in circumstances where he did not have the use of the living room and kitchen as this was the area where the Appellant Tenant was now sleeping with her child and there was the ongoing water leak and soaked carpet in the utility room.

The co-tenant sought the consent of the Landlord's agent to Mr Pysz replacing him in the dwelling, but consent was not forthcoming. In an email of the 20th of February 2018, the Agent also refused to give the co-tenant a reference in respect of the tenancy.

All in all, it was submitted on behalf of the Tenant that she had been staying in the sitting room of her dwelling for four months with her baby. She had been obliged to discharge the rent on her own for much of that time because the Agent for the Landlord withheld consent to Mr Pysz moving in with her, and in circumstances where the living conditions in the dwelling were so poor that no other tenant could have been found.

There was an adjudication hearing in February at which the Landlord was directed that the repair works must be completed within eight weeks. The Landlord was already obliged to do the works within that timeframe because it had been ordered by the EHO that the works must be completed by the 26th of April 2018. There was a delay completing the internal works on the dwelling (repairing the hole in the ceiling and replastering and painting the ceiling) and it was not finished until the very end of that period.

In addition to the complaints about her living conditions, the damage to her personal items and the fact that she had to pay the rent on her own when the dwelling was in such a state and she could not get another tenant, the Tenant claimed that the Landlord's agent had behaved inappropriately. It was submitted that the Agent had not allowed her to communicate except by registered post, and had sent her an anti-social behaviour notice on the 11th of February 2018 when she tried to get him to carry out the necessary works. This notice was allegedly because Comer staff had reported her swearing in phone calls and / or emails. The Tenant said that this was not true. She had submitted her emails as part of the case file. There was no swearing. It was submitted that the Agent got offended when she emailed him saying that he was ignoring her and being ignorant. It was denied that there was any vulgar language either by phone or by email.

In relation to the requirement that she communicate only by registered post, it was submitted that the only reason the Tenant was sending emails every second or third day was because she was only being given "empty" promises, and the repairs were not being done.

The evidence was that her former co-tenant moved out on the 1st of March 2018 and the Tenant had to pay the rent on her own thereafter for over four months before the Landlord's Agent gave consent for Mr Pysz to move in with her.

Under cross examination, it was suggested that the Tenant had not had to move out of her bedroom straight away and that the earlier leak had only been in the utility room. The Tenant's representative stated that the Tenant had reported the first leak on the 3rd of January in the utility room. On the 8th of January she reported that it was now in her bedroom. There was also another leak in the bathroom which was worrying because the water was coming down through the light fixtures. The water came in every time it rained. She was unable to move back into her bedroom until the end of April 2018.

It was put to the Tenant's representative that the delays in carrying out the final interior repairs (i.e. the repair of the hole in the bedroom ceiling and decorative works inside the dwelling) had only been delayed because the Tenant had not made herself available to give access. In response her representative referred to correspondence from the Tenant in this regard, where she stated that she had told the maintenance man to call her back on the one occasion he had rung but he did not call her back. The Tenant's representative submitted that she would have been happy to give access for the purpose of completing repairs but that this was the only attempt there had been to contact her. He pointed to the fact that there were no emails requesting access.

The Respondent Landlord's case:

The Respondent Landlord's Agent attended to represent the Landlord. He stated that he was at all times dealing with the Tenant and trying to address the problems. He accepted that there was a leak in the ceiling of the Tenant's apartment and accepted the timescale which had been set out.

However, the Agent said that the problems could not have been resolved any quicker and the Landlord had done all that could be done to meet its obligations to repair and maintain the dwelling. He said that the complexity of the issues which existed in the building overall, and in other buildings owned by the Landlord, had contributed to the length of time it had taken to getting the problems fixed. He said that there was a leak coming from the roof above the dwelling. But that there were various tests which had to be done before the repairs could be carried out. He said there were wet and dry tests which had to

be done and for a dry test to be carried out a dry structure was required, which meant they had had to wait a long time for the right conditions to do the testing. He noted that the "Beast From The East" snowstorm had occurred during this period and said that these adverse weather conditions had impacted on the timescale for testing and repairs.

The Agent identified that there were a number of issues not only in the apartment block in question but also across other buildings. He said that particular problems had been identified with the flat roof construction.

The Agent said that there had also been problems caused by the Tenant being uncontactable. He said that towards the end of April, the roof problems had been repaired and the maintenance men were trying to get access to do the necessary repairs inside the dwelling but that the Tenant was not answering her phone. He said that it was only when someone from the EHO contacted the Tenant to say that they needed to carry out a follow up inspection to confirm that the works had been done that the tenant responded to his attempts to gain access.

In respect of the issues with communication generally, the Agent said that he had told the Tenant that she could only communicate by registered post because of what he described as the profanities they were receiving from her. However he said that in any event that issue had been sorted out at adjudication and the Tenant was permitted to communicate normally thereafter.

The Agent said that he had accepted at the adjudication stage that the Tenant would have to be compensated for what had occurred and that these discussions would take place once the works were finished. The Agent posited his view that the Tenant had delayed access to the dwelling to complete the works because she wanted additional compensation.

It was put to the Agent in this regard that the emails on file suggested that the Tenant was open to facilitating access but he said that as far as he knew there had also been phone calls which had gone unanswered. He said that he did not email the Tenant at that time requesting access.

The Agent submitted that at no point did the Landlord or its representatives ignore any obligation on behalf of the landlord. He said that they knew there was an issue. It was just that it took some time to chase up contractors, especially given the adverse weather conditions and access issues.

In response to questions from the Tribunal, the Agent said that there are over 300 apartments owned by the Landlord, but they were at 100% occupancy at the time so there was no alternative accommodation which could be offered while the works were ongoing. He said he never contemplated moving the tenant to another property. There were seven apartments which were affected by the problems with the roof and it would have been impossible to start trying to move people to alternative apartments. He said that it was not considered and noted that there was no legal obligation to do so.

It was put to the Agent by the Tenant's representative that he personally witnessed a phone call from Comer, when it had been suggested that the Tenant had refused access. It was put to the Agent that in fact what the Tenant had said was that she was feeding the child and said "right now I can't talk, call me back later" but that there was no follow up call. The Agent said that she did not attempt to call their office back after she had been

unable to talk. He said he was unaware as to whether anyone from his office did or didn't call her back.

In relation to the compensation which had been sought by the Tenant in their direct communication, the Agent said that the damages sought were excessive and arbitrary. He said that he could not agree to the amount sought for extra electricity consumption because the bills were only estimated meter readings. He said that the extra consumption could have been partly due to the very severe weather events that had taken place during that period, namely the "Beast From The East" storm. He had agreed to the amounts given in respect of damaged personal items in correspondence.

The Agent said that the Landlord had accepted from the outset that there was a leak which would have to be resolved. He said that this was just delayed because of the complexity of the issues and the adverse weather. He said that while he had sympathy for the Tenant, the Landlord had tried to meet its obligations.

6. Matters Agreed Between the Parties

- The tenancy commenced on the 20th of June 2013
- The tenant remains in occupation of the dwelling
- The rent is €1,120 per month
- There are no rent arrears
- The landlord retains a deposit of €850 in respect of the tenancy.
- Tomasz Pysz moved into the dwelling with the tenant in or about the beginning of September 2018

7. Findings and Reasons:

Finding No 1: The Tribunal finds that the Appellant Landlord is in breach of its obligation in failing to properly maintain the dwelling and is liable for damages in the total sum of €7,200.

Reason: Pursuant to s.12(1)(b) of the Act, a landlord is obliged to carry out such repairs to a dwelling as are necessary from time to time. This means that a landlord must ensure that repairs which are required to the exterior and structure of the dwelling are carried out. Further, repairs and replacement of fittings to the interior of the dwelling must be carried out as necessary, to maintain a dwelling in (at least) the standard that it was in at the start of the tenancy, and also in order that it complies with regulations. A tenant is required, pursuant to s.16(d) of the Act, to notify a landlord of any defect which arises in the dwelling, to enable them to comply with their obligations.

The Tribunal accepts the submissions made on behalf of the Appellant Tenant that there were very serious ongoing problems with regard to the condition of the dwelling. It is accepted that these problems were highlighted on numerous occasions and caused discomfort, inconvenience, upset and distress to the Tenant, her infant child and her former co-tenant, who ultimately left the dwelling. A Landlord is required to comply with the obligation to carry out such repairs as are necessary, and must make reasonable efforts in that regard. Whilst the Tribunal had cognisance of the Landlord's explanations

as to a large scale repairing project, it does not suffice to say that there was testing ongoing and therefore no repairs could be done.

The Agent for the Landlord identified that there was very severe weather at the end of February which impacted testing and might have caused the Tenant to have higher utility bills. However it was not acknowledged that there had been a leak in the ceiling and serious loss of amenity in the dwelling for almost two months by the time the storm occurred, and that no repairs had been done during that time. Additionally, it is not surprising that there was extra consumption of utilities during extreme weather event given that there was an ongoing leak in the roof of the dwelling in three different places, and a hole cut out of the ceiling of one of the bedrooms. The Tenant and her child could only have suffered severe discomfort as a consequence, in addition to significant outlay on utility bills. In respect of the excess utility usage, the Tribunal notes that the bills submitted contained estimated meter readings only. This is something which cannot be rectified at this stage, but having regard to the inevitable overconsumption of electricity in the circumstances, the Tribunal accept that the sum of €250 is a fair assessment of additional costs incurred by the Tenant.

Minimum standards for rented dwellings are set out in the Housing (Standards for Rented Houses) Regulations 2017 and include inter alia the requirement that a building in which a dwelling is contained must be free from damp and in good structural repair. The Regulations require the landlord to maintain the property in a sound state, inside and out, including the roof, windows, floors, ceilings, walls, stairs, doors, skirting boards etc, all of which must be maintained in good condition and repair and must not be defective due to dampness or otherwise. Electrical wiring must be in good repair. Having regard to the evidence set out heretofore, minimum standards were not met by the Landlord for the period from early January 2018 until the end of April 2018. In all the circumstances, the failure to address the issues in the dwelling during that time caused a significant reduction in the quality of the Tenant's living environment.

The problems encountered by the Tenant were exacerbated by her dealings with the Landlord. In circumstances where the living accommodation in the dwelling was severely reduced, the co-tenant decided to move out. This is hardly surprising in the circumstances. He notified the Agent of this in February, at a time when for over a month there were leaks affecting him directly in the utility room and bathroom and where he had not had proper use of the kitchen or living room for over a month, as it was being used as a bedroom by the Tenant and her baby. The former co-tenant sought the consent of the Landlord for Mr Pysz to replace him in the dwelling, but consent was not forthcoming. In an email of the 20th of February 2018, the Landlord also refused to give the co-tenant a reference in respect of the tenancy. No reason was identified for refusing to give a reference.

In the circumstances, particularly having regard to the living conditions in the dwelling, the Tenant could obviously not secure any other co-tenant. The Landlord, while withholding consent, did not release the Tenant from her obligation to discharge the full rent for a four month period. The Tenant was unfairly required to discharge the full rent alone during that period. The Tribunal regards this as wholly unfair practice by the Landlord and holds that the Tenant is entitled to damages in this regard in the sum of €2,240, being half the rent (€560) for four months.

In respect of damage to personal items, the Tribunal accepts that an amount of €210 is an appropriate amount to compensate the Tenant for the lost items, as previously agreed by the Agent for the Landlord in open correspondence.

The foregoing addresses quantified losses incurred by the Tenant of €2240 + €210 + €250, giving a total of €2,700. However, in addition to the above, the Tribunal is satisfied that the Tenant also suffered extreme inconvenience, upset, anxiety and distress as a direct consequence of the breach of obligations by the Landlord.

The Tenant and her baby were required to move out of their bedroom and suffered indignity, discomfort and loss of privacy until the works were done. The Landlord did not comply with its obligations regarding this ongoing discomfort, but also failed significantly to deal with her complaints and requests.

The Landlord refused to correspond with the Tenant by email or phone, requiring her to correspond by registered post only. This was in circumstances where the problems were ongoing and where repairs had not been carried out. The Tenant's emails (which were the only evidence before the Tribunal of the nature of her communications) had certainly become more strident, but contained no profanities and were not objectionable. Notwithstanding the fact that the Tenant was simply trying to seek her entitlement to a proper living environment, an anti-social behaviour notice was issued to the Tenant. The Tribunal is satisfied that this was meant to convey to the Tenant that her tenancy was in jeopardy. This can only have been a source of extreme anxiety and concern for the Tenant, and was clearly calculated to prevent her from insisting further that the necessary repairs would be carried out.

When the Tenant contacted the Agent on the 29th of March (when the repairs still had not been done), seeking consent once again for Mr Pysz to move in with her, the Agent replied by email, suggesting that as there was a time limit for carrying out the repairs, her tenancy might have to be terminated. There was absolutely no basis for this contention. The repairs were carried out without any interruption of the tenancy. None of the reports submitted on behalf of the Landlord suggested that there was any reason why the dwelling would have to be vacated to complete the works. The Tribunal is satisfied that the communication was inappropriate.

The reality of the current housing situation is one which causes Tenants in general to feel unease and to be hesitant about raising issues with their Landlords, lest they place their tenancy in jeopardy. The Tenant in this case is a young woman who was at the time on maternity leave, with an infant child to care for. The Tribunal regards the breach of landlord obligations as constituting a serious interference with the Tenant's occupation of the dwelling.

The Tribunal assesses this case to be at the lower mid-range of the scale in terms of the gravity of loss and inconvenience incurred by the Tenant. However, the Tribunal are in no doubt that the Tenant endured prolonged anxiety, discomfort, inconvenience and distress as a consequence of the Landlord's breach of obligations and accordingly awards the sum of €4,500 in general damages to the Tenant, together with the quantified losses of €2,700, giving a total sum of €7,200.

8. Determination:

Tribunal Reference TR0518-002958

In the matter of Sylwia Majcher (Tenant) and Sansovino Property Company Unlimited Company (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 €7,200 to the Appellant Tenant, within 28 days of the date of issue of the Order, being damages for breach of landlord obligations under s. 12(1)(b) of the Residential Tenancies Act 2004 in failing to carry out necessary repairs, in respect of the tenancy of the dwelling at 79 Talbot house, Tallaght Cross East, Tallaght, Dublin 24.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 28/11/2018.

Signed:



Helen-Claire O'Hanlon Chairperson

For and on behalf of the Tribunal.