

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0519-003760 / Case Ref No: 0319-53121

Appellant Tenant:	Mihai Miron, Mihaela Miron, Monika Zbunek, Gheorghe Miron
Respondent Landlord:	Noel Martin
Address of Rented Dwelling:	Longfield House, Longfield, Carrickmacross, Co. Monaghan,
Tribunal:	Claire Millrine (Chairperson) Finian Matthews, Nesta Kelly
Venue:	Ante Chamber, Athlone Municipal District, Civic Centre, Church Street, Athlone, Co. Westmeath
Date & time of Hearing:	01 August 2019 at 2:30
Attendees:	Gheorghe Miron, Appellant Tenant, Mihai Miron, Appellant Tenant, Gheorghe Miron, Appellant Tenant
In Attendance:	Stenographer

1. Background:

On 22/03/2019 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 02/05/2019. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €4,000.00 to the Applicant Tenants within 28 days of the date of issue of the Order, being damages in the sum of €1,000.00 for the unlawful termination of the tenancy, plus the security deposit of €3,000.00, in respect of the tenancy of the dwelling at Longfield House, Longfield, Carrickmacross, Co Monaghan.

Subsequently an appeal was received from the Tenants.

The RTB constituted a Tenancy Tribunal and appointed Finian Matthews, Nesta Kelly, Claire Millrine as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Claire Millrine to be the Chairperson of the Tribunal ("the Chairperson").

On 02/07/2019 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 01/08/2019 the Tribunal convened a hearing at Ante Chamber, Athlone Municipal District, Civic Centre, Church Street, Athlone, Co. Westmeath, Athlone.

2. Documents Submitted Prior to the Hearing Included:

1. RTB File

3. Documents Submitted at the Hearing Included:

Document entitled Pat and Noel Martin Invoice

4. Procedure:

Having waited for a period of 15 minutes and having ascertained that the Respondent Landlord had been notified by the RTB of the date, time and venue set for the hearing and having ascertained that no communications had been received by or on behalf of the Respondent Landlord in relation to attendance at the hearing, the Tribunal commenced the hearing in the absence of the Respondent Landlord at 2.45pm. The Chairperson asked the Party present to identify himself and to identify in what capacity he was attending the Tribunal. The Chairperson confirmed with the attending Party that he had received the relevant papers from the RTB in relation to the case and that he had received the RTB document entitled "Tribunal Procedures". The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; that the person who appealed (the Appellant) would be invited to present his case first and that thereafter, as there was no appearance by the Respondent Landlord, the Appellant Tenants would be given an opportunity to make a final submission. The Chairperson also indicated that questions may be asked from the members of the Tribunal from time to time. The Chairperson stressed that all evidence would be taken on oath or affirmation and would be recorded by the official stenographer present and he reminded the attending Party 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 imprisonment for up to six months or both. The Chairperson also reminded the attending Party that as a result of the hearing that day, the Board would make a Determination Order which would be issued to the dispute Parties and could be appealed to the High Court on a point of law only. The persons present intending to give evidence were sworn in and the hearing commenced.

5. Submissions of the Parties:

Appellant Tenants evidence: The Appellant Tenants gave evidence that his father, who was present also at the Tribunal, found the dwelling for rent on the DAFT property website and he viewed the property. Evidence was given that on 15 February, the property was viewed by them and the house was freshly painted. Evidence was given that on that date €3,000.00 cash was paid to the Respondent Landlord by way of security deposit. The rent thereafter was paid in the sum of €1,500.00 per month. Evidence was given that on that date, a receipt was requested for the cash amount, however the Respondent Landlord said that he would rather state it in the contract that the amount was paid. Evidence was given that on 16 February 2019, the family moved into the dwelling and at first glance, the property was lovely and newly insulated. Evidence was given that the dwelling was let unfurnished and the Appellant Tenants brought the following belongings into the dwelling on occupation: 3 beds, dishwasher, mattresses, fridge, kitchen table, chairs, drawers for children's clothes, chest of drawers, clothing, shoes, 2 televisions and 2 laptops. Evidence

was given that much of the furniture was new however the Appellant Tenants, following questioning from the Tribunal, stated that they had not to date, submitted receipts to vouch for expenditure. Evidence was given that after a couple of days in the dwelling, the children started to cough and were brought to the GP. The Appellant Tenants alleged that the coughing resulted from mould in the dwelling as the children were taken on a fishing trip and the coughing ceased, however once they were back in the dwelling the coughing recommenced. Evidence was given that as a result, the Appellant Tenants Partner moved their children out of dwelling to her mother's house, due to concerns for their health. Evidence was given that the Respondent Landlord was informed of the mould in the dwelling and the associated coughing. The Appellant Tenants gave evidence that the Respondent Landlord seemed surprised at this and said the house was new. Evidence was given that the Appellant Tenants came to the conclusion that they needed to vacate the dwelling and on 13 March 2019, notice was given to the Respondent Landlord, when they contacted the Respondent Landlord by telephone. Evidence was given that they attended at the Respondent Landlord's offices and he said there was no problem with vacating the dwelling. Evidence was given that the Respondent Landlord then gave them a piece of paper called a "termination of lease" which was signed by the Appellant Tenants. Evidence was given that the Appellant Tenants then went back to the dwelling to find the locks changed. They said that they contacted the Respondent Landlord and said the key did not work. Evidence was given that his response was that "the lads are off until tomorrow morning and not able to help until then". Evidence was given that the Appellant Tenants "did not know how he knew we were going to terminate, as the time it took us to get from work in Dublin, to his office in Carrickmacross, he changed the locks, so I think this had happened before and this is the reason why he changed locks". Evidence was given that the Appellant Tenants stayed in a hotel that night and came back to the dwelling the next morning, however there was no one at the dwelling. Evidence was given that the Appellant Tenants attended the office of the Respondent Landlord again however they waited, and he did not appear. Eventually they made contact and requested their belongings back however to date they have not had their belongings returned to them nor the deposit of €3,000.00. Evidence was given that in addition, the Respondent Landlord had sent them an invoice for the amount for €16,500 for balance of rent for 11 months for the dwelling. Evidence was given that the monetary loss of belongings is €25,000, however no receipts were furnished prior to or at the hearing by the Appellant Tenants.

6. Matters Agreed Between the Parties

No matters were agreed.

7. Findings and Reasons:

Having considered all of the documentation before it and having considered the evidence presented to it by the Parties, on the balance of probabilities, the Tribunal's findings and reasons thereof, are set out hereunder.

7.1 Finding:

The Tribunal finds that the Respondent Landlord is in breach of his obligations under Section 12(1)(d) of the Residential Tenancies Act, 2004 (as amended) ("The Act"), in relation to the dwelling at, Longfield House, Longfield, Carrickmacross, Co Monaghan.

Reason:

The Tribunal concludes having heard the unchallenged evidence of the Appellant Tenants, that €3,000 cash was paid by way of security deposit on the date the dwelling was viewed, that the sum should be returned to the Appellant Tenants. This is in circumstances where there is no evidence before the Tribunal of any loss on the part of the Respondent Landlord, to entitle him to retain all or part of the security deposit held, in accordance with the Act.

7.2 Finding:

The Tribunal finds that the Respondent Landlord unjustly deprived the Appellant Tenants of the tenancy in relation to the dwelling at, Longfield House, Longfield, Carrickmacross, Co Monaghan and accordingly, in the circumstances the Respondent Landlord shall pay damages of €1,000.00 to the Respondent Tenants.

Reasons:

The Tribunal concludes, having heard the undisputed evidence of the Appellant Tenants, that the Respondent Landlord unjustly deprived the Appellant Tenants of the tenancy in circumstances where, having received notification from the Appellant Tenants that they wished to vacate the dwelling, the Respondent Landlord immediately changed the locks to the dwelling, depriving the Appellant Tenants of access to the dwelling or their belongings. The Tribunal is of the view, that given the circumstances of the nature of the immediate termination of the tenancy, that the sum of €1,000 should be paid to the Appellant Tenants, by the Respondent Landlord, by way of damages for the stress and inconvenience caused to them. In addition, the Tribunal heard unchallenged evidence that the Respondent Landlord has refused to return to the Appellant Tenants, their belongings in the dwelling, causing a loss to them. Again, the Tribunal, having heard unchallenged evidence in relation to this, is of the view that the sum of €5,000.00 is an appropriate sum of damages to be awarded in the circumstances, given that the Appellant Tenants remain unable to access their belongings in the dwelling.

8. Determination:

Tribunal Reference TR0519-003760

In the matter of Mihai Miron, Mihaela Miron, Monika Zbunek, Gheorghe Miron (Appellant Tenants) and Noel Martin (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlord shall pay to the Appellant Tenants the sum of €9,000.00 being €3,000 by way of deposit to be returned and €6,000 damages for unlawful termination of tenancy and for loss of belongings, within 28 days of the date of issue of this Determination Order of the Board.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 21/08/2019.

Signed:

Claire Millrine Chairperson

For and on behalf of the Tribunal.