

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0521-004958 / Case Ref No: 0720-63544

Appellant Landlord:	Brendan Rooney
Respondent Tenant:	Andy Burton
Address of Rented Dwelling:	Apartment 7, 13 O'Connell Avenue, Dublin 7, D07HP0N
Tribunal:	Dervla Quinn (Chairperson) James Egan, Finian Matthews
Venue:	Ormond Meeting Rooms Telephone Conference Tribunal
Date & time of Hearing:	06 September 2021 at 2:30
Attendees:	For the Appellant Landlord: Home Estates and Lettings Agents, Tribunal Representative For the Respondent Tenant: Andy Burton, Respondent Tenant
In Attendance:	Recording technician

1. Background:

On 28/07/2020 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 09/03/2021. The Adjudicator determined that In the matter of Andy Burton [Applicant Tenant] and Brendan Rooney [Respondent Landlord], the Residential Tenancies Board, in accordance with Section 97 of the Residential Tenancies Act, 2004, determines that:

1 - The Respondent Landlord shall pay the sum of €2,850 to the Applicant Tenant, within 28 days of the date of issue of the Order, which said sum represents a sum awarded to the Applicant Tenant in damages as a consequence of the Respondent Landlord having failed to comply with his legal obligation under S12(1)(b) of the Act, in respect of the tenancy of the dwelling at Apartment 7, 13 O'Connell Avenue, Dublin 7,

2 - I find that the Applicant Tenants claim that the Notice of Termination dated the 6th day of January 2021 is invalid is upheld.

Subsequently the following appeal was received:

The RTB constituted a Tenancy Tribunal and appointed James Egan, Dervla Quinn and Finian Matthews as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Dervla Quinn 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 06/09/2021 the Tribunal convened a hearing at Ormond Meeting Rooms, Dublin.

2. Documents Submitted Prior to the Hearing Included:

RTB File.

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

The Chairperson introduced herself and the Tribunal members and asked the parties present to identify themselves. Ms Stapleton confirmed that she was duly authorised to represent the Appellant Landlord in this matter.

The Chairperson confirmed with the Respondent Tenant that he had received from the RTB the case file and that he had read and understood the Tribunal procedures. The Landlord's agent stated that she had not seen the Tribunal procedures, or the case files circulated by the RTB as she had only been made aware that she was to attend the Tribunal hearing at the last minute.

The Chairperson explained the procedure which would be followed; that the agent representing 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 would 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. She 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.

The parties then stated their affirmation before beginning their evidence.

5. Submissions of the Parties:

The Landlord's agent stated that the rent for the Dwelling was €1460 per month but that this had been incorrectly stated in the lease to be €1400. She stated that a corrected lease agreement had been circulated to the Tenant. The Tribunal noted that there was no copy of a lease in the case files. The Landlord's agent stated that she did not have a copy of the case files before her and that she was not due to take the dispute case today. She stated that the Dwelling was for the sole occupancy of the Tenant but that there were extra people

living in the Dwelling. She stated that the Landlord had agreed that the Tenant's son could visit from time to time but that there were two extra females living in the Dwelling, one in the kitchen and one in the sitting room. She stated that the photographs showed the bad condition of the Dwelling which was covered in toys and mattresses. She stated that when the Dwelling was first let there was a brand-new couch and a table and chairs. She stated that the couch was gone along with the chairs and that all that was left was a fridge a bed and a table.

The Tribunal asked the Landlord's agent when she became aware that the Tenant had vacated? She replied that the keys had still not been returned and that she had received no notice of the Tenant leaving. She stated that they had attempted on a number of occasions to have works carried out on the Dwelling. She stated that a new roof had been put on the Dwelling. She stated that on a number of occasions repair people had attended to work on the Dwelling but that they had refused to enter as a result of the state of the Dwelling. The Tribunal asked the agent whether or not she had any proof of this by way of messages from the repair people. The agent replied that she had a file prepared but that it had not been submitted to the RTB.

The Landlord's agent stated that the Tenant had stopped paying rent for seven months. That the HAP payments of €990 had continued but that the Tenant's payment of €460 per month had stopped and that the Landlord was entitled to the sum of €3220 for the seven months. She stated that the Landlord had only become aware in June of 2021 that the Tenant had left the Dwelling.

The Tribunal asked the agent to detail what inspections had been carried out on the Dwelling during the course of the letting. The Landlord's agent stated that she had inspected in January of 2021 and that she had emailed the Tenant on 24 February 2021 to ask him when he was leaving. The Tribunal asked if the agent had any trouble getting access to the Dwelling? The agent replied that there was no problem when she was with the repair people. She stated that the last communication from the Tenant was on 20 May 2021 in which he stated that he would be leaving on 7 June 2021. She confirmed that none of these communications were in the case files submitted to the RTB. She stated that a number of repair people had refused to attend the Dwelling due to the large amount of stuff. She stated that she had not submitted receipts for works that were carried out to the Dwelling.

The Tenant questioned the Landlord's agent on her evidence that the Dwelling was jam packed with stuff. He stated that he was entitled to have stuff, that the floor was cracked, that he had to do a lot of moving around to clean up the damp and wet on the floor. He stated that nobody lived with him except his daughter who stayed a few days a week and that his girlfriend stayed sometimes. He stated that the couch did break and that he had replaced it, so the new couch was his couch. He stated that the original couch had broken because of the floor and that the Landlord's agent's workers had taken it away by agreement. The Landlord's agent stated that the couch was brought new on 8 May 2020 and that she had the receipt but that the receipt was not in the RTB files. The Tenant stated that the chairs and furniture were not very good, that the chairs were broken and had been dumped outside as could be seen in the photo. He stated that he had tried to get in contact with the Landlord's agent about the condition of the Dwelling, that it was in such a poor condition that it should be condemned. He referred to the communication from the Landlord's agent in which she stated that if he did not like the Dwelling he could leave. He stated that he was emotionally devastated, that he had tried to have good communications

and that the Landlord was not a good landlord. He stated that he had tried unsuccessfully to get the keys back to the Landlord but that the case had then gone to the RTB. The Tribunal asked the Tenant how did he inform the Landlord that he had left? He replied that the Landlord had served a notice of termination.

The Tenant stated that he had moved out in February of 2021. The Landlord's agent stated that she was not aware the Tenant had vacated until June of 2021.

The Landlord's agent asked the Tenant did he recall that in October 2020 a new kitchen was installed, the Dwelling was painted, a new shower door and plastic walling were put in and that a carpet fitter had refused to go in because of the condition of the Dwelling? The Tenant replied yes but that work had not been done to the inside of the shower. He stated that because of Covid he had wanted to be put up in a different place while the works were carried out as the works would take some time. The Landlord's agent asked the Tenant did he recall the number of times that she had tried to visit? The Tenant replied that the Landlord's agent had always had access. The Landlord's agent stated that the amount of the Tenant's belongings had caused ventilation problems. The Tenant did not agree with this. The Landlord's agent stated that four different roof contractors had checked the roof and that there was nothing wrong with it. She stated that the Landlord had spent €3291 on the roof repairs. The Tenant replied that this was not a large amount to spend on a new roof.

In closing the Landlord's agent apologised to the Tribunal as the process was not as she would have normally done it, that she had tried hard to sort out the issues caused by the Tenant and the condition of the property. She stated that repair people could not enter the property as they did not feel comfortable and that as soon as she could she got the work done. She stated that the Tenant was not totally willing to work with her, that she did not want to see him move but that he had stopped paying rent.

In closing the Tenant stated that the agents owned a lot of properties, that they did not work with him, that they did not listen and that he did not have a good rapport with them, that they only did the repairs they wanted to do, that he was paying €125 a month for electric heating, that he did not want to move but that there was damp everywhere, that the agents did not want to work with him, that he had a responsibility to his daughter and that the Landlord's actions were morally wrong

Before ending the hearing, the Tribunal asked the parties if they were satisfied that they had said everything they wished to say and, on the parties confirming that they had nothing further to add, the Chairperson ended the hearing.

6. Matters Agreed Between the Parties

The address of the Dwelling is Apartment 7, 13 O'Connell Avenue, Dublin 7.

The tenancy began on 5 September 2019.

The Tenant is no longer in the Dwelling.

The Tenant paid a deposit of €1460 which is retained by the Landlord.

7. Findings and Reasons:

1. The Tribunal is satisfied from the evidence submitted by the Tenant that the Landlord is in breach of his obligations pursuant to section 12(1)(b) of the Act to carry out to - (i) the structure of the dwelling all such repairs as are, from time to time, necessary and ensure that the structure complies with the standards for houses for the time being prescribed under section 18 of the Housing (Miscellaneous Provisions) Act 1992, and (ii) the interior of the dwelling all such repairs and replacement of fittings as are, from time to time, necessary so that the interior and those fittings are maintained in, at least, the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed. The Landlord shall pay the sum of €2550 damages to the Tenant within 28 days of the date of receipt of this determination order.

Reasons for finding.

The Tribunal notes that the dispute came by way of a complaint made by the Tenant to the RTB regarding the condition of the Dwelling which complaint set out issues in relation to a number of problems: damp and mould, a leaking roof, gutters taking in too much water, heating problems, faulty plugs, bulging shower tiles caused by excessive damp and mould. In support of these complaints the Tenant submitted a number of photographs which highlighted the issues raised and in particular showed plug sockets in a dangerous condition (page 6 of case file 1). The Tribunal notes that it was the evidence of the Landlord's agent that the issues in the Dwelling were caused by the Tenant's actions. However, by her own admission, the Landlord's agent did not submit any supporting evidence by way of receipts for works done, receipts for items purchased or statements from repair persons regarding any lack of access to the Dwelling. The photographs of the Dwelling submitted on behalf of the Landlord showing a lot of personal items on the floor of the Dwelling do not assist the Tribunal on the issue of the condition of the Dwelling.

The Tribunal is not bound by the terms of the adjudication but pursuant to section 104(7) of the Act, the Tribunal may have regard to the adjudicator's report. In the circumstances of this dispute the Tribunal is satisfied that the sum of €150 per month found by the adjudicator by way of damages is an appropriate sum for the damages caused to the Tenant as a result of the Landlord's breach of obligations under section 12 of the Act. The tenancy commenced on the 5th day of September 2019 and the Tenant's evidence was that he had vacated by February of 2021. This represents a period of 17 months which comes to a sum of €2550 for damages which sum is payable to the Tenant by the Landlord within 28 days from the date of receipt of this determination order. In light of the duration of this dispute which began with the Tenant's application to the RTB on 28 July 2020, the Tribunal finds the period of 28 days to be a reasonable time frame for the payment to the Tenant of the damages of €2550.

2. A tenant is obliged, pursuant to section 16(a) of the Act, to pay the rent provided for under the tenancy. However the claim by the Landlord for arrears of rent of €3220 is not properly before the Tribunal and no findings are made on this issue.

Reasons for finding.

The circumstances which gave rise to the matter before the Tribunal were set out in the Tenant's application to the RTB and were first considered at an adjudication hearing, namely breach of landlord obligations and validity of notice of termination. The Tenant has vacated the Dwelling and the issue of the validity of the Notice of Termination served by the Appellant Landlord is no longer relevant to this dispute. There is not an exhaustive list

of what issues can be considered by a Tribunal. The one fundamental requirement however, is that the parties to a dispute are afforded the right to fair procedures by the Tribunal, in particular the right to notice of the claim against them and the right to put forward their case or defend their position. The issue of non payment of rent was not included by the Tenant in his dispute application. The adjudication considered the Tenant's evidence as to whether or not he was overcharged for rent but did not consider any issues of non payment of rent over 7 months as argued by the Landlord's agent in her submissions to the Tribunal. The Landlord's agent did not submit any supporting documentation in the form of bank statements or a rent book. The Tribunal cannot properly consider such matters as to do so would be a breach of the parties right to fair procedures.

3. The Landlord is obliged, pursuant to section 12(1)(d) to return or repay promptly any deposit paid by the tenant. The parties agreed that a deposit of €1460 was paid and is retained by the Landlord. The Tribunal makes no findings on this issue as it is not properly before the Tribunal.

Reasons for finding.

As stated above, the circumstances which gave rise to the matter before the Tribunal were set out in the Tenant's application to the RTB and did not include any reference to the deposit paid. The issue of the deposit was not considered by the adjudicator. The Tribunal cannot properly consider such matters as to do so would be a breach of the parties right to fair procedures.

8. Determination:

In the matter of Brendan Rooney (Appellant Landlord) and Andy Burton (Respondent Tenant), the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act, 2004, determines that :

The Appellant Landlord shall pay the sum of €2,550 to the Respondent Tenant, within 28 days of the date of issue of this Order, which said sum represents a sum awarded to the Respondent Tenant in damages as a consequence of the Appellant Landlord having failed to comply with his legal obligation under S12(1)(b) of the Act, in respect of the tenancy of the dwelling at Apartment 7, 13 O'Connell Avenue, Dublin 7.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 08/09/2021.

Signed:



Dervla Quinn Chairperson

For and on behalf of the Tribunal