

**Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0521-004961 / Case Ref No: 0221-67868**

<b>Appellant Tenant:</b>	Séamus McCarthy
<b>Respondent Landlord:</b>	William O'Riordan
<b>Address of Rented Dwelling:</b>	Hillview, Ballymacoola, Mogeely, Cork, P25W522
<b>Tribunal:</b>	Dervla Quinn (Chairperson) Dairine Mac Fadden, Michael Vallely
<b>Venue:</b>	Virtual Remote Hearing
<b>Date &amp; time of Hearing:</b>	19 October 2021 at 10:30
<b>Attendees:</b>	For the Appellant Tenant: Séamus McCarthy, Appellant Tenant  For the Respondent Landlord: William O'Riordan, Respondent Landlord
<b>In Attendance:</b>	Recording Technician

**1. Background:**

On 12/02/2021 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 04/05/2021. The Adjudicator determined that In the matter of Seamus McCarthy [Applicant Tenant] and William O'Riordan [Respondent Landlord], the adjudicator, in accordance with Section 97 of the Residential Tenancies Act, 2004, as amended, determines that:

The Applicant Tenant's claim regarding an alleged unlawful eviction under the Act in respect of the tenancy of the dwelling at Hillview, Ballymacoola, Mogeely, Co. Cork, is not upheld.

Subsequently the following appeal was received:

The RTB constituted a Tenancy Tribunal and appointed Dairine Mac Fadden, Dervla Quinn and Michael Vallely 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").

On 20/09/2021 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 19/10/2021 the Tribunal convened a Virtual Remote Hearing.

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

RTB File.

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

None.

## **4. Procedure:**

The Chairperson began the hearing by introducing herself and the Tribunal members to the parties and asked the parties present to identify themselves. The Chairperson confirmed with the parties that they had received the relevant papers, the case files and the Tribunal procedures from the RTB in relation to the case. The Parties confirmed that they had read and understood the procedures. The Chairperson explained the procedure which would be followed; that the party who applied for the matter to be appealed to a Tribunal (the Appellant Tenant) would be invited to present his case first; and that there would be an opportunity for cross-examination by the Respondent Landlord. The procedure would then be reversed, the Landlord would be invited to make his presentation, be cross examined by the Tenant and that the Tribunal would question both of 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 stated their affirmation and began their evidence.

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

Tenant's evidence.

The Tenant referred the Tribunal to page 5 of the case file in which he had set out a timeline of what took place. He stated that he did not usually stay in the Dwelling over the weekends and was away from the Friday to the Sunday night. On the night of Sunday 13 December about 8 pm he drove into the Dwelling and the Landlord's car came up behind him preventing him from leaving. He stated that another man was in front of the house and that he was told by that man that he was making a recording. Another man was inside the house. He stated that he called the Gardai who told him that a car had already been dispatched. He stated that a Garda car arrived within 20 minutes, that the Gardai spoke at length to the Landlord and the Garda then told him that he was not getting access to the house. He stated that he then entered the house with the two Gardai, got a few of his belongings that he needed for work such as his laptop and that he then left. He stated that he was given no chance to speak and that the Landlord verbally abused him and demanded to know when he was taking his belongings from the Dwelling. He stated that he had already messaged the Landlord that he would not be leaving until 18th of December. He stated that he gave the details of the removal van that he had arranged to the Gardai. He stated that he was forced to stay in temporary accommodation that night. He stated that

on the Monday 14th December he contacted the RTB and the office of Threshold and told them what had happened and that he was unable to access his belongings to include his medication. He stated that he was given supervised access by the Landlord's agent on the Tuesday and Wednesday for two hours. He stated that when he had moved in the house was empty and that everything in the house was his and that he needed time to get it all out and that as a compromise it was agreed he could keep some items of his belongings in the garage. He stated that when he went to the house with his friends a stand-off occurred, that his belongings had all been put in 30 bags, that his furniture had been dismantled. He stated that it was agreed he could store items in the garage which he then did and that he put a padlock on the garage. He said that the Landlord's agent then told him everything in the garage would be thrown out if he didn't take it out immediately. The Gardai were called at which stage it was agreed he could leave the items there until 21st December and on that day he moved everything out with the help of some friends. The Tenant stated that he had previously had a good relationship with the Landlord but when the situation deteriorated the Gardai had advised him to block the Landlord's number. The Tenant then queried how the Landlord had got the address of the Tenant's parents. He stated that he was responsible for the payment of the rent not his parents. The Tribunal noted that any alleged breach of data laws was not a matter that could be raised at a residential tenancy's tribunal. The Tenant stated that he intended to voluntarily vacate the Dwelling on 18 December and that he had informed the Landlord that he would not be moving out on 10 December. He stated that he was well aware he was in breach by a few days of the adjudicators' order to vacate.

The Tribunal questioned the Tenant about what he was able to collect from the Dwelling on the evening of 13th December? The Tenant replied that he could only grab his laptop, that he was in no fit state and grabbed whatever he could. The Tenant clarified that the date on which he left the property was 13 December and the Landlord confirmed that this was correct. The Tribunal asked the Tenant how many people other than the Gardai were present on the evening of 13 December. The Tenant replied that there was the Landlord and two others and three cars. In reply to questioning from the Tribunal the Tenant stated that he had arranged a van to attend to remove his belongings and the van came on the Friday 18 December. He stated that he had no access to dismantle and prepare his furniture for removal, that he had taken the Monday and Tuesday off work to pack up his things. He stated that he had secured alternative accommodation through the County Council at the end of January 2021 and that he had stayed with family until that time. He stated that he understood the Landlord's frustration and that he had never disputed the rent arrears and that his grievance was with the manner in which he was moved from the house.

#### Landlord's evidence

The Landlord was afforded the opportunity to question the Tenant on his evidence but chose to present his own evidence to the Tribunal. He stated that he was an accidental landlord of one property which he had inherited from his parents and that that property had been his family home. He stated that he had decided to rent it out and had agreed to rent it to the Tenant. He referred to the previous RTB dispute reference 63647 and that the Tenant was to vacate by the end of the day of 10 December 2020. He stated that he had passed the matter to his agents as the Tenant would not respond to him. He stated that the week before the Tenant was to move out the Tenant sought to extend the vacate date to 18 December and that he had refused this request as he needed to get the property back by the morning of 11 December. He stated that when he attended on 11 December all the

blinds were drawn and it was not possible to see if the Tenant had moved out. He then entered the Dwelling and saw that all the Tenant's belongings were still there. The Tribunal questioned and the Landlord confirmed that at this point it was clear to him that the Tenant had not moved out. He stated that it appeared to him that the Tenant was trying to change the locks on the doors. He stated that this caused him to be alarmed and frustrated and that he knew that he now had a problem. He stated that the Tenant had insisted on communication through email but that he would not reply to emails so the Landlord contacted the Gardai who told him that it was a civil issue but that they would attend if called to the property. He stated that he felt he had to approach the matter as quickly as possible as another covid lock down was predicted. He stated that he needed possession of the property and that the Tenant owed €6000 in rent arrears. He stated that if another lockdown came into force he might be waiting a further six months to get possession.

He stated that he got two of his friends to come with him and they waited from 5 to 10 pm on the Saturday and then came back on the Sunday 13th December. He stated that the property was not the Tenant's principal private residence and that he lived elsewhere. He confirmed to the Tribunal that he waited for the Tenant on the Sunday and the Tenant arrived at 8.58 pm. He said that the Tenant started screaming and shouting at him, so he rang the Gardai in Middleton. When the Gardai arrived he showed them the Determination Order from the adjudication. He said that the Gardai spoke to the Tenant who then got into his car for a moment then got out of the car and gave the Gardai the keys to the property. The Gardai gave the keys to the Landlord and he checked that they were the correct keys which they were. He stated that the Tenant was then given time to get what he needed from the property. He stated that he was in deep shock at the condition of the Dwelling which had been his family home. He stated that the Tenant had said he would move out but that he had consistently lied about rent payments. He stated that after the Tenant left on the evening of 13 December he left the rest of the matter to his agent to deal with. He stated that his agents had facilitated the Tenant getting access to move his belongings. He stated that each time the Tenant turned up in the following week he was on his own with his hands hanging and only stayed for a short time. He stated that Monday 21st December was the eventual vacate date. He stated that he had done everything he could to assist the Tenant in moving out. He stated that the Tenant only brought friends to help him on the last day. He stated that he had tried to do everything by the book as he knew if he put a foot wrong, he was in trouble.

When asked by the Tribunal he confirmed that he was absolutely aware when he entered the property on 11 December that the Tenant had not moved out. He stated that he was under pressure to get possession of the house during a time when the pandemic was raging. He stated that he had a "drop dead date" of 11 December from the adjudicator's order. He confirmed that the Dwelling was unfurnished when the Tenant moved in. The Tribunal asked about the clearing of the Dwelling and the Landlord replied that he had left the clearing in the hands of his agents. He stated that the Tenant was making no effort to remove his belongings and that he was of the view that the Tenant was hanging on in the hope of another level 5 lockdown being ordered. The Landlord confirmed that he had attended on the evening of 13 December with two of his friends. The Tribunal asked the Landlord if he felt that the Tenant had any choice but to hand the keys over to the Gardai? The Landlord stated that he did not accept this and that the Gardai would not have been needed only that the Tenant had refused to engage with the Landlord. The Tribunal noted that an order for possession from the RTB on the conclusion of a dispute process did not give a landlord the right to enter a dwelling and retake possession, that the correct process

was through the District Court. The Landlord replied that that might have taken him another 6 to 7 months and that he was not aware of that process.

Tenant's questions:

The Tenant asked the Landlord had he not been notified by the Tenant that he would not be able to leave until 18 December? The Landlord replied that he had refused this request to extend the date. The Tenant asked the Landlord how he had known that the Tenant was not there on weekends? The Landlord replied that he lived nearby. The Tenant asked the Landlord why he was not given an opportunity to get into the property to pack his belongings? He also asked the Landlord to confirm that he was in the property on the Friday. The Landlord confirmed he was there on the Friday as he thought that this was the day he would get vacant possession instead of which it took until 21 December for the Tenant to complete the moving of his belongings. The Tenant asked why the Landlord had entered the property on Saturday 12th December when the Tenant had messaged him that he would not be leaving until the 18th? The Landlord replied that he was not agreeing to extend the vacate time. The Tenant stated that his friend was verbally abused.

Closing statements.

Tenant. The Tenant stated that the only issue he had was that he felt that the removal of him from the property was wrong and that the correct procedures were not followed.

Landlord: The Landlord stated that the whole matter had been a very bad experience for him. He stated that he never wanted to break any of the rules, that he just wanted his house back, that his heart was broken over the six months, that he wanted someone who would deal fairly with him, that he had to deal with the covid situation, that he knew the Tenant was not going to be homeless, that he could do no more and had nothing further to say.

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**

- I. The address of the Dwelling is Hillview Ballymacoola, Mogeely, County Cork.
- II. The letting ended on 11 December 2020. It was later clarified that the Tenant left the Dwelling on the evening of Sunday 13 December 2020.
- III. The letting began on 21 June 2019.
- IV. The issue of rent arrears and overholding had been before a previous adjudication hearing reference no DR0820 63647.
- V. The adjudicator had found that the Tenant was in arrears of rent, that the Tenant was overholding and should vacate the Dwelling by 10 December 2020. The adjudication had not been appealed and was binding on the parties.
- VI. The Tenant had lodged a dispute with the RTB on 12 February 2021 on the issue of an alleged illegal eviction.
- VII. An adjudication took place on 4 May 2021.

VIII. The Tenant had appealed the decision of the adjudicator and it was the appeal on the issue of an alleged illegal eviction that was before this Tribunal.

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

### **Finding:**

An unlawful eviction occurred here where the Landlord denied the Tenant access to his rented dwelling and by permitting one of his agents, to enter the Dwelling on the evening of 13 December 2020 when the Tenant was still in occupation and also by allowing the Tenant access for a short time only and limiting him to gather only a few personal items. The Tenant has suffered as a result of this and is entitled to damages of €1,200 which sum is payable to the Tenant within 30 days of the date of the issue of this order.

### **Reasons.**

The timeline of events that took place between 11 December 2020 and 21 December 2020 were not disputed by either party in so far as the Tenant could not access the Dwelling from the evening of 13 December 2020 other than under the supervision of the Landlord's agent for the purpose of collecting his possessions and that he had fully vacated the Dwelling by 21 December 2020. The Tenant's actions in surrendering the keys of the Dwelling to the Gardai on the evening of 13 December 2020 cannot, in the circumstances in which he found himself, amount to a voluntary surrender of possession of the Dwelling.

Where a landlord is found to have carried out an unlawful eviction, he/she may be ordered to allow the tenant re-entry into the dwelling and or required to pay damages up to and including €20,000. The Tribunal notes that the Tenant has secured accommodation through the County Council from the end of January 2021 and that he was able to live with his family up to that date. The Tribunal also takes notice of the fact that the Tenant was in receipt of a determination order that he vacate the Dwelling by 10 December 2020, that he had sought and not obtained the Landlord's consent to extend this vacate date to 18 December 2020 and that he had plans in place to pack up and vacate the Dwelling in the days leading up to 18 December 2020. The Tribunal believes that the sum of €1,200 is the appropriate sum for damages in these particular circumstances.

The Landlords had an obligation under s. 12(1)(a) of the Act to allow the Tenant peaceful and exclusive occupation of a dwelling. Also, in accordance with s. 58 of the Act, a tenancy may only be terminated in accordance with Part Five of the Act. If there is a failure of a party to comply with a notice of termination, the remedy for a landlord is to bring a complaint to the RTB and seek enforcement of the notice. It is not their right to take the law into their own hands and take steps to prevent a tenant from accessing his home, summarily terminating a tenancy and, often, making a tenant homeless. The actions of the Landlord in this case constitutes a serious breach of his obligations under the Act. In light of the fact that this dispute was lodged by the Tenant in February of 2021, the Tribunal finds that a payment time of 30 days is reasonable in the circumstances.

## **8. Determination:**

In the matter of Séamus McCarthy (Appellant Tenant) and William O'Riordan (Respondent Landlord), the Residential Tenancies Board, in accordance with Section 108(1) of the Residential Tenancies Act, 2004, determines that:

The Respondent Landlord, shall pay to the Appellant Tenant, the sum of €1,200 damages within 30 days of the date of the issue of this Order, being damages for the losses caused to the Appellant Tenant as a result of the unlawful eviction by the Respondent Landlord of the Appellant Tenant from the Dwelling at Hillview, Balllymacoola, Mogeely, County Cork.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 21/10/2021.

**Signed:**

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line.

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**Dervla Quinn Chairperson**

For and on behalf of the Tribunal