

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0522-005499 / Case Ref No: 0122-75152

Appellant Landlord:	Ausra Stasiulyte
Respondent Tenant:	Sigita Kaspore
Address of Rented Dwelling:	1A Cherryfield Lawn, Clonsilla, Blanchardstown, Dublin 15, D15HN36
Tribunal:	Karen Ruddy (Chairperson) Roderick Maguire, Dairine Mac Fadden
Venue:	Tribunal Room, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	02 December 2022 at 10:30 a.m.
Attendees:	Ausra Stasiulyte, Tribunal Appellant Sigita Kaspore, Tribunal Respondent Fiona McGrattan, Threshold, Respondent's Representative
In attendance:	RTB appointed stenographer Benedikta McSharry, Lithuanian interpreter Philip Adamenko, Latvian interpreter

1. Background:

On 24/01/2022 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 25/04/2022. The Adjudicator determined that:

"In the matter of Sigita Kaspore (Applicant Tenant) and Ausra Stasiulyte (Respondent Landlord) the Adjudicator in accordance with Section 97(4)(a) of the Residential Tenancies Acts 2004 to 2021, determines that:

- The Respondent Landlord shall pay the total sum of €13,600.00 to the Applicant Tenant, within seven days of the date of issue of the Determination Order, being damages of €15,000.00 for the consequences of the Respondent Landlord's breach of obligations under Sections 12, 33 and 58, having deducted by way of set off the Applicant Tenant's rent arrears of €2,000.00 in breach of Section 16(a)(i) of the Act, having allowed for the Respondent Landlord's lawful retention of the entirety of the Applicant Tenant's security deposit of €600.00 pursuant to Section 12(4)(a) of the Act, in respect of the tenancy of the dwelling at 1A Cherryfield Lawn, Flat 1, Clonsilla, Dublin 15, D15HN36."

Subsequently the following appeal was received from the Landlord on 27/05/2022. The appeal was approved by the RTB on 08/06/2022.

The RTB constituted a Tenancy Tribunal and appointed Karen Ruddy, Roderick Maguire and Dairine Mac Fadden as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Karen Ruddy to be the chairperson of the Tribunal ("the Chairperson").

On 20/09/2022, 15/10/2022 and 01/11/2022 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 02/12/2022 the Tribunal convened a hearing at Tribunal Room, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case files.

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. She informed the parties of the presence of the RTB appointed recording technician. The Chairperson confirmed with the parties that they had received from the RTB the case files and that they had read and understood the Tribunal procedures. The Chairperson explained the procedure which would be followed, that the party who appealed the adjudicator's decision (the Appellant) would be invited to present her case first, and that there would be an opportunity for cross-examination by the Respondent. The procedure would then be reversed, and the Respondent would present her case, followed by cross-examination, and that 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 recording technician 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 [reference section 123(3) of the 2004 Act].

The parties stated their affirmation before beginning their evidence to the Tribunal. The two Interpreters also took the interpreter's oath prior to commencement of the hearing.

5. Submissions of the Parties:

Appellant Landlord's evidence:

The Appellant landlord stated that the agreement with the Respondent tenant was for a rent a room scheme and that there was a mutual understanding that the dwelling comprised part of the house. She said the dwelling was serviced by the same electricity system and water supply as her house. She said the dwelling does not have a different address from

hers. She explained that they only registered it as a tenancy once Threshold advised them to do so. Up until then she said they were operating a “rent a room” scheme.

She indicated that the arrangement commenced when a mutual friend asked for a room for the Respondent tenant. She said she told the Respondent tenant that the room was for her parents and so she could only use it short term. She said then covid happened and that was how the Respondent tenant ended up staying in the dwelling longer.

She told the Tribunal that the dwelling was originally used as a sauna room but was remodelled to make a small rental property. She said it was connected to their house and that all utilities are also connected. She said it was converted maybe 10 years ago.

She indicated that the Respondent’s tenancy commenced in March/April 2019. The oral agreement made between the parties was that the Respondent tenant would pay €1000 per month in rent, but this included all utilities. She denied that they cut off utilities when the Respondent tenant stopped paying rent but then agreed that they had installed a pre pay electricity box in just the last few months of the tenancy after the Respondent tenant failed to pay the rent. She indicated that the new arrangement was put in place so that the Respondent tenant would pay for her own electricity.

She emphasised that her house and the dwelling shared the same Eircode.

She stated that they did not disconnect the electricity, they just separated it after the Respondent tenant had failed to pay for a few months. Upon questioning by the Tribunal members, she agreed that they separated the dwelling from their electricity supply. She said she has young children and a husband on disability and therefore she could not afford to pay electricity for the Respondent tenant who had stopped paying rent.

She had agreed that the Respondent tenant had a baby in September 2021 but she could not remember when she had separated the electricity supply. She said she had sent the Respondent tenant an email to warn her that the “money box” was going in.

She denied that the Respondent tenant had any problem with the water supply. She could not say how much the Respondent tenant owes in arrears of rent but guessed it could be as much as €3,000, maybe more.

She said the Respondent tenant had started to make all sorts of allegations against them to Threshold. She said the Respondent tenant blocked her phone calls and would only communicate through Threshold. She said the Respondent tenant claimed that cars were being parked in her way to deliberately obstruct her access to the dwelling with her baby buggy. She initially claimed that the cctv cameras had always been installed at the dwelling, upon further questioning she agreed that they had installed additional cameras during the tenancy because of the number of people calling to the dwelling. She stressed that they were worried about their valuable property which was stored beside the dwelling and wanted to be able to keep an eye on it. When it was pointed out to the Appellant landlord that it was recorded in the adjudicator’s report that she had told the adjudicator that cctv cameras were installed because she claimed men were coming to the dwelling and that she had been concerned for her safety, she then agreed that one of the cameras was installed during the tenancy.

She could not explain why she told the adjudicator a different version of events to the version she originally told the Tribunal.

When asked about the circumstances surrounding the Respondent tenant leaving the dwelling, she said Gardai arrived one day and the Respondent tenant just left with them.

She said the Gardai came to her house just to ask her to open the doors of the dwelling for them. She said they retrieved some of the Respondent tenant's belongings and that is all she knew.

She said the Respondent tenant had asked to stay in the dwelling because she had no place to live. They had agreed orally on €1,000 per month including all utilities. Also, the tenant said that she would only stay until she found another place to live and the Landlord intended to put family into the dwelling. The plans then changed because of covid.

She said after a while the Respondent tenant asked for HAP forms to be signed but she had been unwilling to do that as she wanted to keep the dwelling for use by her own family. She said it was then all the difficulties started.

She said every time she tried to speak to the Respondent tenant, the Respondent tenant started alleging that she was being threatened. She said she then stopped trying to communicate with her and thereafter the relationship became very tense.

She told the Tribunal that once when they were on holidays, she received a call from Threshold that the toilet in the dwelling was blocked. She said she contacted a friend to have a look and the issue was fixed. She said they had bought a new heating system but the Respondent tenant refused to co-operate with the installation. She said it had to be installed in winter time when it was cold. She said the Respondent tenant had refused to go stay with her brother to facilitate the installation.

She clarified that the cctv cameras were always there and had been installed when they moved in many years ago. However, after guests of the Respondent tenant started coming to their house looking for the tenant and knocking on the wrong door, they had decided to install another camera outside the house. She said they have expensive equipment stored outside and they were afraid something would go missing. She agreed that the new camera is opposite the tenant's entrance but said it is also opposite her husband's possessions being stored there.

She indicated that she was not sure exactly how the tenancy came to an end. She said that the Gardai might have been called to come by the Respondent tenant. She said the Gardai took the Respondent tenant away. She said the Gardai came to ask them to open the door to the tenant's dwelling so that they could get her stuff and that was it. She said then Threshold took over the case for the Respondent tenant.

She said things might have worked out between the parties but that the Respondent tenant had threatened to burn her house down with all of her children in it and this made her very upset. She agreed again in her evidence that the electricity to the dwelling had been cut off but said this was because they had installed the money box and that the tenant must have failed to put money into that pre-pay meter. She indicated that they had informed the Respondent tenant beforehand. She said she had also informed the Respondent tenant that she could not stay in the dwelling any longer because of the mess she had made of it.

She then spoke about the condition of the dwelling and referred to photographs taken after the Respondent had vacated the dwelling.

She denied that she tried to rent the dwelling while the Respondent tenant was still living there, and said the man she brought to view the dwelling was actually a man she had hired to carry out repairs to the dwelling.

She said she had asked the Gardai if the Respondent tenant was coming back but they did not answer her. She said it is not possible to disconnect the electricity box.

Upon cross examination she admitted that she has been renting two studios for a number of years, only one of which is actually physically connected to her home and the other one, where the Respondent tenant lived, was not connected.

Closing submission - the Appellant landlord told the Tribunal that everything might have been fine if the Respondent tenant had behaved normally and respectfully towards her.

Respondent Tenant's evidence:

The Respondent tenant gave evidence that she could not confirm the Eircode and was not aware if the dwelling had a separate Eircode from the Appellant landlord's house. She confirmed that the tenancy commenced in April 2019 and she had been introduced to the Appellant landlord through a friend. She said that the Appellant landlord actually has two studio apartments available to rent and they are not a converted garage but separate studios. She said she was asked to pay €1000 every month in cash, and this arrangement included utilities. She said at that time she was working two jobs - one in a factory and the other in cleaning. She said she worked 7 days a week. She said she always paid her rent on time and in cash.

She said when she became pregnant, she continued working up to when she was 38 weeks pregnant and she then went on maternity leave. She said she took leave from work on the 14th September 2020. She said the Appellant landlord asked to speak with her and told her to go to a refuge for homeless people after she had her baby. She said the Appellant landlord brought a man to her dwelling to show it to him as he was going to rent it after her.

She said they spoke in Lithuanian but the Appellant landlord explained to her that this was what was going to happen. She said the Appellant landlord then came to her dwelling again on the 23rd September 2020 with a solicitor and asked her to sign the contract. She said she agreed to sign it. (Case file 1 page 74).

She said after giving birth she returned to the dwelling but the electricity had been disconnected. She said she contacted Threshold after the issues arose with utilities.

She thought that the last date she paid rent for was in November 2020. She said while she had received a Notice of termination for rent arrears from the Appellant landlord, she said Threshold had explained to her and to the Appellant landlord that the Notice was invalid. She agreed that she had missed two months rent payments and so she owed €2,000 in arrears of rent. She said she had applied for HAP but the Appellant landlord refused to sign the forms.

She said all of the issues in the tenancy arose from November 2020 after the Appellant landlord installed the "pay as you go" electricity box. She said the box was turned off whenever the Appellant landlord wanted "to punish her". She said the Appellant landlord's husband could interfere with the wires of the machine and so they would punish her by switching the money box off. She said that when they did this the electricity did not work even when she put coins into the meter.

She said during the time when her new born son was just a few weeks old, the electricity was cut off on many occasions. She said she was without electricity for three full months. She said she went to charge her phone at Blanchardstown SC and she used the baby room in the SC to wash her baby. She said when her son was one month old, he started crying inconsolably and she took him to hospital. She was afraid the dampness of the dwelling had caused him to develop asthma. She said her caseworker in Threshold, asked her to

check that there was no outage of electricity on her road. She had to go a neighbour to check and discovered that they had electricity.

She said that while she “was ok” with the payment box being installed initially, Gardai had observed that there was no power going to the electricity box. She said it was installed around November 2020. She said the electricity supply to the dwelling was switched off regularly, both before and after the payment box was installed.

The Respondent tenant referred to Case file 2 which shows a locked meter box and she said the Appellant landlord put the lock on it after it was installed. She said the Appellant landlord also at times removed the fuse from the box and disabled it. She said this happened regularly, especially on bank holidays, at weekends and at Christmas. She said the Appellant landlord harassed her by switching it off.

She said in January she went to the Latvian embassy for her son’s passport. She said when she returned at 1pm there was no electricity. She said she put the baby to bed and went to the Appellant landlord to find out why it was not on. She said the Appellant landlord refused to answer the door. She said she was shocked and upset and at 1.14pm she returned back to the dwelling and rang the Gardai. She said when the Gardai came, she showed them the dwelling and the locked coinbox on the electricity payment box and they noted that there was no power to it. She said the Gardai told her to pack her belongings and they contacted Threshold for her. She said she was brought to Blanchardstown Garda Station and then to O’Shea’s hotel in Dublin. She said she stayed there for 1 or 2 days and she was then allocated to a second hotel from the 10th January 2021 to 7th March 2021. She said she had her own room & a private shower there.

She said she was then allocated to her current accommodation. She said overall the hotel staff were pleasant to her and she has good memories of them. She said she suffered panic attacks, from worry and stress for her child.

She said she is now a fearful person and is still traumatised. She said she recalls living with a small child with a candle for light. She said she was in a state of shock and was depressed all of the time. She was afraid for her child’s safety. She said she was being observed all of the time while living in the dwelling by the cctv set up by the Appellant landlord. She said when she saw the cameras initially, she covered it with a scarf but the Appellant landlord’s husband threatened to cut her head off if she ever covered it again.

She said she now has homeless status for a period of 2 years.

Upon cross examination by the Appellant landlord, she confirmed that she often put money into the meter to pay for electricity but even then, the electricity would not work.

She said the Appellant landlord had been renting two separate studios for the past 15 years for money/cash. She said one room was connected to their house but the other one, where she lived, was a separate unit comprising the dwelling.

Evidence of Fiona McGrattan from Threshold:

She gave evidence that from October 2020 the Respondent tenant had engaged with Threshold. She said many internal meetings were held by them regarding the safety of the Respondent tenant and her son. She said as the country was in full lockdown at the time there was a moratorium on evictions. She said the position of the County Council was that the Respondent tenant had to remain in the dwelling. She said the County Council refused to find the Respondent tenant emergency accommodation even when they in Threshold

recommended that she be moved immediately. She said the Respondent tenant was denied emergency accommodation.

She said the Respondent tenant was right to contact the Garda. The Garda report stated that she could not be left in her current accommodation. She said from December 2020 to January 2021 they had received approximately 10 complaints from the Respondent tenant that there was no electricity supply to the dwelling. She said the Gardai assisted the Respondent tenant and removed her from the property. She said that Fingal County Council then reluctantly provided emergency accommodation. She said that in addition to no electricity supply, the other issues in the dwelling were that there was no hot water, no proper heating and the dwelling was damp and leaking. She said in her opinion the Respondent tenant has suffered from post-traumatic stress owing to the conditions in which she and her baby had been forced to live.

6. Matters Agreed Between the Parties:

The address of the Dwelling is 1A Cherryfield Lawn, Clonsilla, Blanchardstown, Dublin 15, D15HN36.

The tenancy commenced on the 1st April 2019.

The Respondent tenant paid a security deposit of €600 at the commencement of the tenancy and this deposit continues to be retained by the Appellant landlord.

The tenancy ended on the 8th January 2021.

The rent payable was €1,000 per month, which included utilities.

Notice of Termination dated the 4th of Nov 2020 was served on the Respondent tenant by the Appellant landlord on the 10th November 2020.

7. Findings and Reasons:

Finding 1:

The letting of the dwelling at 1A Cherryfield Lawn, Clonsilla, Blanchardstown, Dublin 15, D15HN36, as agreed between the Appellant landlord and the Respondent tenant in April 2019 constitutes an agreement to lease the dwelling.

Reasons:

Having considered the submissions made by the parties and in particular, the claim by the Appellant landlord that she offered the dwelling for rent under the “rent a room” scheme, the Tribunal finds that the letting in this case constitutes a tenancy and what was actually in place was an oral periodic tenancy agreement. The parties are both therefore entitled to the protections provided by the Residential Tenancies legislation. In reaching a decision on the issue the Tribunal considered the evidence of the parties regarding the intention of the parties at the commencement of the tenancy and the lack of any relevant documentation at the commencement of the tenancy in April 2019. Notwithstanding the submissions of the Appellant landlord, the Tribunal notes that the Appellant landlord granted exclusive occupation of the dwelling to the Respondent tenant in exchange for the payment of €1,000 per month in rent, which included all utilities. The Respondent tenant performed her duties under the oral contract as a tenant, she had paid rent under the contract and she relied on the provisions of the Residential Tenancies Act 2004 in her position as a tenant.

The Tribunal was not convinced in any way by the Appellant landlord's argument that the dwelling was part of or connected to her house. The evidence clearly demonstrated that the Respondent tenant had a separate entrance used by her to access the dwelling. The Appellant landlord herself gave evidence that the electricity supply had been separated from their electricity supply and the Respondent tenant's utilities had been made subject to a payment box which was a unilateral alteration of the oral agreement. The Appellant landlord had ultimately agreed that the dwelling was a separate studio, standing apart from her own property, which she has rented out for many years. Whether or not those tenancies have been registered with the RTB is not a matter for consideration by this Tribunal. The important matter is that it is noted that the Appellant landlord did register the tenancy of this dwelling, but said that she only did so when she was advised to do so by Threshold.

Therefore, the Tribunal finds that the tenancy/letting is not exempt from the provisions of the RT Act 2004 as the letting agreement constituted a valid oral tenancy.

The Appellant landlord in this case has not provided sufficient evidence to convince the Tribunal that what existed in this case was a rent a room arrangement and not a tenancy.

The tribunal finds that the Respondent tenant had a Part 4 tenancy within the meaning of the Act the tenancy having commenced on the 1st April 2019.

Finding 2:

The Respondent tenant shall pay the sum of €2,000 to the Appellant landlord, being the sum agreed by her as owed to the Appellant landlord for arrears of rent in respect of the letting at the dwelling at 1A Cherryfield Lawn, Clonsilla, Blanchardstown, Dublin 15, D15HN36.

Reasons:

The Respondent tenant is to be commended for her honesty in admitting that the sum of €2,000 is owed to the Appellant landlord in arrears of rent. The Appellant landlord did not prove any rent arrears to the Tribunal and just stated that she thought there was maybe €3,000 owed by the Respondent tenant in rent arrears. The Tribunal notes that having not proved any rent arrears by means of a signed rent book, bank statements or other means, the Appellant landlord would not have been entitled to recover the arrears if the Respondent tenant had not admitted that she stopped paying her rent in November 2020 and owes two months' rent at €1,000 per month.

The Tribunal finds that the Respondent tenant had an obligation to pay rent to the Appellant landlord and she failed to pay rent as it fell due and that the sum of rent arrears is €2,000.

Section 12(4)(a) of the Act provides that "no amount of the deposit concerned shall be required to be returned or repaid if, at the date of the request for return or repayment, there is a default in" rent and or Section 16(f) damage and those sums exceed the deposit held by the landlord; in this case the parties have proven rent arrears that exceed the deposit held by the Appellant landlord and so the Appellant landlord's is entitled to offset the entire of the Respondent tenant's deposit, with that deposit being applied to the rent account to defray, in part, the rent arrears award.

The parties agree that the Respondent tenant paid a security deposit of €600 at the commencement of the tenancy and that the security deposit is now forfeit and set off

against the amount outstanding in rent arrears and the sum owed in rent arrears is reduced accordingly to €1,400.

Finding 3:

The Appellant landlord carried out an illegal eviction of the Respondent tenant in respect of the tenancy at 1A Cherryfield Lawn, Clonsilla, Blanchardstown, Dublin 15, D15HN36.

Reasons:

The Tribunal finds that there was an unlawful termination of the tenancy in circumstances where the parties had agreed a rate of rent which included use of utilities including electricity and water. The Tribunal accepts that the Appellant landlord changed the method of electricity supply to the dwelling which prevented the Respondent tenant having use of the electricity which was included in the rent rate. This constituted a breach of the Appellant landlord's obligations to the Respondent tenant.

The Tribunal accepts, on the balance of probabilities, that the Appellant landlord did interfere with the supply of utilities to the dwelling. The Appellant landlord's interference with the supplies of electricity and hot water resulted in the dwelling falling below minimum standards for rented dwellings. The Tribunal accepts that the Appellant landlord's actions made the dwelling uninhabitable and constituted a gross disturbance of the Respondent tenant's enjoyment of the property. The Tribunal accepts that these actions were designed to harass and intimidate the Respondent tenant into leaving the dwelling. The Appellant landlord's actions were even more egregious considering that she was aware that the Respondent tenant had only recently given birth to a baby and that the baby was residing with the Respondent tenant in the dwelling.

The Tribunal notes the Garda report in relation to the condition in which they found the Respondent tenant and her baby living, and accepts that the Respondent tenant was evacuated from the uninhabitable dwelling by an Garda Síochána on 8th January 2021.

The Tribunal finds that the Appellant landlord's actions during the tenancy were wrongful actions that led to termination of the tenancy unlawfully. The Tribunal accepts the Respondent tenant's evidence that she suffered loss, expense and inconvenience as a result of the Appellant landlord's conduct. The Respondent tenant was made homeless on the 8th January 2021 and was forced to live in emergency accommodation. The Tribunal finds that this was made all the more traumatic by virtue of the fact that the Respondent tenant had so recently given birth to a baby.

The Tribunal finds the manner in which the Respondent tenant was treated by the Appellant landlord (in a clear attempt to harass and intimidate her into leaving the tenancy) to be a very serious matter. No attempt whatsoever was made by the Appellant landlord to act in compliance with the requirements for termination of tenancy under the Residential Tenancies Acts. The Respondent tenant has been deprived of the benefit of her Part 4 tenancy in the most unfair fashion. The Tribunal finds that the Appellant landlord interfered with the dwelling's utility supplies in order to bring about or expedite the end of a tenancy. The Tribunal is satisfied that the Appellant landlord interfered with the utilities to the dwelling in a manner that is in breach of the landlord's obligations under Section 12 of the Act and in a manner that resulted in the dwelling not meeting the minimum standards prescribed in the Housing (Standards for Rented Houses) Regulations 2019. The Tribunal finds that the Appellant landlord's conduct amounted to a termination of the tenancy that was both wrongful and illegal.

The Tribunal also notes the Respondent tenant's other submissions in respect of the landlord's interference with her peaceful enjoyment of the dwelling by using cctv cameras to watch her dwelling, and refusal of HAP and Rent Supplement and that these potentially contributed to the difficulties leading to the end of the tenancy. The Respondent tenant's claim of unlawful termination of tenancy has been proven on the balance of probabilities.

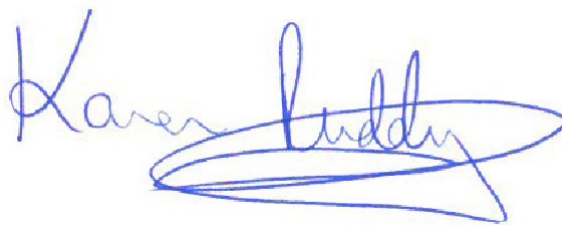
With respect to damages flowing from the unlawful termination, the Tribunal considered the Respondent tenant suffered loss, expense and inconvenience as a direct result of the unlawful termination and breaches of the Act which are very serious matters indeed. The Respondent tenant was rendered homeless and was forced into emergency accommodation along with her new-born baby. Damages are assessed as being in the higher/severe range and so the Tribunal considers €15,000 to be a fair award of damages to the Respondent tenant.

8. Determination:

In the matter of Ausra Stasiulyte (Appellant Landlord) and Sigita Kaspars (Respondent Tenant), 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 €13,600.00 to the Respondent Tenant, within 28 days of the date of issue of the Determination Order, being damages of €15,000.00 for the consequences of the Appellant Landlord's breach of obligations and the carrying out of an illegal eviction, having deducted by way of set off the Respondent Tenant's rent arrears of €2,000.00, and having allowed for the retention of the entirety of the Respondent Tenant's security deposit of €600.00, in respect of the tenancy of the dwelling at 1A Cherryfield Lawn, Clonsilla, Dublin 15, D15HN36.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 14/12/2022.



Signed:

Karen Ruddy, Chairperson

For and on behalf of the Tribunal.