

## **Residential Tenancies Board**

### **RESIDENTIAL TENANCIES ACT 2004**

#### **Report of Tribunal Reference No: TR0623-006392 / Case Ref No: 0423-84412**

|                                    |   |
|------------------------------------|---|
| <b>Applicant Tenant:</b>           | Ava Moloney, Jeffrey Ryan   |
| <b>Respondent Landlord:</b>        | Pat Kenny   |
| <b>Address of Rented Dwelling:</b> | Glenstal, Murroe, Limerick, V94PR3K   |
| <b>Tribunal:</b>                   | Maureen Cronin (Chairperson)<br>Brian Murray, Michelle O' Gorman                  |
| <b>Venue:</b>                      | Virtual   |
| <b>Date &amp; time of Hearing:</b> | 08 November 2023 at 2:30 p.m.   |
| <b>Attendees:</b>                  | Ava Moloney, Tribunal Applicant Tenant<br>Pat Kenny, Tribunal Respondent Landlord |
| <b>In attendance:</b>              | RTB appointed stenographer/logger.  |

#### **1. Background:**

On 07/04/2023 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 Mediation which took place on 16/06/2023.

Subsequently the following appeals were received:

Tenant : received on 23/06/2023. The grounds of the appeal: Validity of notice of termination (if you are disputing the validity of a termination notice issued), Breach of landlord obligations ; approved by the Board on 10/07/2023.

The RTB constituted a Tenancy Tribunal and appointed Brian Murray, Maureen Cronin, Michelle O' Gorman as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Maureen Cronin to be the chairperson of the Tribunal ("the Chairperson").

On 07/10/2023 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 08/11/2023 the Tribunal convened a hearing.

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

RTB File

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

No documents were submitted at the hearing.

#### **4. Procedure:**

The Chairperson asked the parties present at the virtual hearing to identify themselves and to say in what capacity they were attending the Tribunal. The Chairperson confirmed that the parties had received the relevant papers from the RTB. She confirmed that they had also received the RTB document entitled "Tribunal Procedures" and had read and understood it.

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 possible; that the representatives for the party who appealed, the Applicant Tenants, would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present his case, and that there would be an opportunity for cross-examination by the Applicant Tenants. The Chairperson explained that the parties would be given an opportunity to make a final submission. She reminded the parties that the hearing was a de novo hearing.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official stenographer present. She reminded the parties present 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 six months imprisonment or both.

The Chairperson also reminded the parties 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. Prior to commencing evidence, the Chairperson reminded the parties that it was open to them to reach an agreement. The parties declined to discuss matters and the hearing proceeded. The parties giving evidence were affirmed.

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

Applicant Tenants' evidence

The first-named Tenant (hereinafter the Tenant) gave evidence on behalf of both Tenants. She said the rent was €1,600 monthly and there was a written lease but the Landlord did not give the Tenants a copy. She said that the Tenants paid €200 as a deposit at the start of the tenancy and that they did not pay any rent after that. She said that the Landlord told them that they could pay whenever they had it. She said that the Landlord served two notices of termination on the Tenants. She said the first notice of termination was invalid as it was not sent to the RTB. She said that was when she understood that the Landlord was not registered. She said that the Tenants got a warning notice about rent arrears on 6 April 2023 and she said that they did not have time to pay the arrears.

The Tenant said that in April 2023 that the Landlord had locked the gate with a lock and chain so that the Tenants could not leave the property. She said that they called the Gardai and one Garda spoke to the Landlord and the lock was removed.

The Tenant said they got another Notice of Termination served on 10 May 2023. She said it was for the Landlord to carry out substantial refurbishment. She said she asked the Landlord for proof about a building contractor and then he told the Tenants that he wanted the house for his daughter. She said that the Notice of Termination said the Tenants had to vacate on 7 June 2023. She said that on 8 June 2023 while they were away from the house, that she got a text from the Landlord saying that he was changing the locks. She

said that all her possessions and medication were left in the house. She said that the Tenants slept in their car for a month or two as they could not get emergency accommodation. She said that both Tenants are living with her family now.

In response to Tribunal questions, the Tenant said that there were problems with the toilets in the house and that she told the Landlord but he refused to fix them. She said that at another time when the Tenants were absent from the house, that when they came back there were signs that somebody had been in the house, that the television was smashed, there were empty drink cans, and some of her underwear was missing. She said the Landlord was the only other person who had keys to the house.

Cross examination by the Landlord

No questions.

Landlord's evidence

The Landlord said that after the Tenants moved in on 12 January 2023 and they never paid a deposit and never paid any rent during the tenancy. He said that the Tenants always gave a sob story about difficulties with their car or other problems. He said that was why he decided to terminate the tenancy. He said the rent was €1,700 rent monthly and 6 months was owing. He said that Tenants had two dogs that they kept in the house all the time and that there was dog dirt everywhere. He said it cost him an awful lot of money to get the house cleaned.

Asked by the Tribunal if he had access to the house while the Tenants were living, the Landlord said that he never went into the house when the Tenants were absent. He said he could see from the outside that the house was in an awful state. He said there was nothing wrong with the toilets that the Tenants were just not flushing them.

Asked by the Tribunal how had he known about the problems if he was never in the house, but served the Notice of Termination on 10 May 2023 for substantial refurbishment, the Landlord said all the curtains were pulled off and he could see into the property and he could see that it was in an awful mess.

The Landlord also said that although he served a warning for rent arrears on 13 April 2023, he did not serve any notice of termination for rent arrears. He said that he tried to get a payment plan agreed with the Tenants but they paid no attention to it. The Landlord said he gave the Tenants a termination notice with 28 days' notice for the tenancy to end on 7 June 2023. He said he served it on 10 May 2023. He said the reason for termination was that he intended to carry out substantive refurbishments on the property.

Asked by the Tribunal about the events on the 8 June 2023, the Landlord said that the Tenants were gone and he just changed the locks as he said that they had their notice of termination. He said that they never came back until later that night. Asked about what happened the Tenants' possessions, the Landlord said he had cleaners in the house and they bagged up everything and kept them in the shed out the back. He said that he arranged several times for the Tenants to go with a Garda to collect their possessions and eventually a friend of theirs came and collected everything.

The Landlord said that he only wanted his money back, that he can't sleep at night, lost his job, and had difficulties with the bank because of the arrears. He said that there was anti-social behaviour from the Tenants, that his neighbours were complaining about them. Asked by the Tribunal if the house was rented again, the Landlord replied that he is living in the house now as his daughter returned from America and she was moving into his flat.

### Cross-examination of the Landlord by the Tenant

The Tenant questioned the Landlord that he was in house when the Tenants were absent and someone smashed their television, the Landlord denied he was in the house and said that he is not around that area all the time and that it could have been anyone who wrecked the television in the house, suggesting it was someone connected to the second-named Tenant. He said he had nothing to do with it. The Tenant referred to a text from the Landlord in Case File 2 in which he admitted being in the house.

The Tenant also put it to the Landlord that she saw an advertisement for the house available for rent within a few weeks after the Tenants vacated the Landlord responded that this was not true, that it was not rented. The Tenant disputed that the Landlord had left their possessions safely in bags inside a shed and that when their possessions were eventually collected, they had been left outside in the garden for some time. Asked by the Tribunal if the property was available for renting on 29 June 2023, the Landlord said it was but he did not go ahead with it because his daughter was coming back in September and he said that he withdrew the house from renting.

### **6. Matters Agreed Between the Parties:**

1. The address of the dwelling was Glenstal, Murroe, Limerick, V94PR3K4.
2. The tenancy commenced on 12 January 2023 and ended on 8 June 2023.
3. A Warning Notice for rent arrears was served on the Tenants on 7 April 2023.
4. A Notice of Termination was served on the Tenants on 10 May 2023.

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

Finding 1. The Applicant Tenants are in breach of their obligation to pay rent in accordance with section 16 (a) of the Act and they owe the Respondent Landlord the sum of €8,109.04 in arrears of rent as of the date of the Tribunal hearing on 8 November 2023.

#### Reasons

The first-named Tenant gave evidence that the rent was €1,600 payable monthly. The Landlord gave evidence that the monthly rent was €1,700. On the balance of probabilities, the Tribunal accepts the Landlord's evidence. The Tenant gave evidence that she paid €200 to the Landlord at the start of the tenancy as a deposit and that no other sums were paid to the Landlord. The Landlord disputed this. However, there is a text in Case File 2 at page 14 in which the Landlord states that he got no money "bar 200".

The obligation to pay rent is set out in section 16(a) of the Residential Tenancies Act 2004 as amended ("the Act") which requires a tenant to:

"pay to the landlord or his or her authorised agent (or any other person where required to do so by any enactment)—

- (i) the rent provided for under the tenancy agreement on the date it falls due for payment.

The Tribunal notes that this tenancy was not a Part 4 tenancy as the duration was less than 6 months, from 12 January 2023 until the tenancy was ended unlawfully by the Landlord on 8 June 2023. As such the Landlord could have terminated the tenancy without giving any reason. However, the Landlord served a Warning Notice for rent arrears on the Tenants

with 13 April 2023 as the date of service, stating the arrears to be €6,800 and giving 28 days for the arrears to be paid. The Landlord did not provide any evidence that the Warning Notice was served on the RTB. The Tenants did not pay the arrears within the 28 days.

On the basis of the oral and written submissions, the Tribunal accepts that the Applicant Tenants have paid no rent from the start of the tenancy on 12 January 2023 until the tenancy was ended by the Landlord on 8 June 2023. Given the absence of clarity on the rent, the Tribunal accepts that the rent was €1,700 and calculates the arrears as follows: €1,700.00 x 4 months (12 January 2023 to 11 May 2023) plus €1,509.04 (calculation of daily rate  $1,700 \times 12 = €20,400$  divided by 365 = €55.89 x 27 days for 12 May 2023 to 8 June 2023), in total €8,309.04. The Tribunal also accepts the Tenant's evidence that she paid the Landlord €200.00 at the start of the tenancy. The Tribunal therefore determines that the sum of €8,109.04 is owed by the Tenants to the Landlord.

Finding 2 - The Notice of Termination with a date of service of 25 October 2022 served by the Respondent Landlord on the Applicant Tenants, in respect of the tenancy of the dwelling is invalid.

#### Reasons

As stated above, this tenancy was not a Part 4 tenancy and could have been terminated without giving a reason. However, the Landlord gave evidence that he served a Notice of Termination with the date of service as 10 May 2023 by personally handing it to the Tenants. He also submitted in Case File 1 an email to the RTB with the Notice of Termination attached on the same date, 10 May 2023. Although the Landlord did not mail the Notice of Termination to the correct RTB address, nonetheless the Tribunal accepts that it was sent to the RTB on the same date it was served on the Tenants as the legislation requires.

The Notice stated the reason for termination was that the Landlord intended to carry out substantial refurbishment at the dwelling. The works cited as intended to be carried out were "full inspection of dwelling, recovery of any damaged goods, thorough cleaning of property".

The Tribunal finds that this Notice of Termination is invalid as it does not comply with the statutory requirements for termination for substantial refurbishment. Among the compliance failures, the Tribunal notes that the works cited in the Notice do not constitute substantial refurbishment. Also, there was no mention of whether planning permission was needed or not, and no certificate from a registered professional that the property needed to be vacant as the works would pose a risk to the health and safety of the occupants.

The Notice of Termination with a date of service of 10 May 2023 served by the Landlord on the Tenants is invalid.

Finding 3 - The Tribunal finds that the Respondent Landlord carried out an unlawful termination of the tenancy.

#### Reasons

A tenancy agreement can only be terminated in accordance with the provisions set out in the Residential Tenancies Act of 2004 (as amended). In particular, section 58(1) of the Act prohibits the termination of a tenancy by a landlord by means of re-entry.

In other words, a landlord must follow the procedures provided by the Act (as amended) if a he or she wants to end a tenancy. If a tenant does not comply with a valid notice of

termination and remains in the property after the notice expires, the landlord must refer a dispute to the RTB to get vacant possession. In this case, the Notice of Termination served on 10 May 2023 was invalid.

The Tenants' evidence was that from the changing of the locks on 8 June 2023 they could not access the property and they had to sleep in their car for over a month as no emergency accommodation was available. The Tenants were denied access to the dwelling and their personal possessions and the first-named Tenant's medication left in the dwelling. They said that it was several weeks before a friend could collect their possessions left at the property.

The Tribunal is satisfied that the Landlord unlawfully changed the locks thereby unlawfully ending the tenancy on 8 June 2023 while the Tenants were absent but still entitled to lawfully occupy the dwelling until the tenancy had been lawfully ended. The Tribunal is satisfied that the Tenants incurred significant hardship and inconvenience as a result of the unlawful termination of their tenancy by the Landlord. The Tribunal finds that the Tenants are entitled to a total sum of €5,000. in damages in respect the consequences for her of the unlawful termination of the tenancy.

Finding 4 - The Landlord's claim for breach of tenants' obligations in relation to the condition of the house at the time of the unlawful eviction of the tenants is not upheld.

#### Reasons

The Tribunal has considered the Landlord's evidence including videos submitted by the Landlord in advance of the hearing that the property was left in a very dirty state at the end of the tenancy.

Where a landlord is concerned about the condition of a property, he can under section 16(c) request access to inspect the property. There was no evidence the Landlord requested access to inspect, nor any evidence that he served a warning notice on the Tenants about the condition of the property. In addition, this tenancy was abruptly terminated, and the Tenants were not notified of their alleged breach. Also, the Landlord said that it cost him a lot of money to clean the property. However, there was no evidence of any expenditure on cleaning or repairs, and no evidence of receipts before the Tribunal. There was also evidence in the casefiles that the house was back on the rental market within a few weeks of the unlawful termination of the tenancy. The Landlord's claim is not upheld.

Finding 5 - The Landlord's claim that the Tenants engaged in anti-social behaviour is not upheld.

#### Reasons

The Tribunal considered the Landlord's evidence that the Tenants were engaged in anti-social behaviour, in that he received complaints from neighbours about the Tenants. Apart from that statement, the Tribunal notes that there was no other evidence of any activity by the Tenants that might constitute anti-social behaviour within the meaning of the Act. The Landlord's claim is not upheld.

### **8. Determination:**

In the matter of Ava Moloney and Jeffrey Ryan (Applicant Tenants) and Pat Kenny (Respondent Landlord), the Tribunal, in accordance with s. 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Applicant Tenants shall pay the total sum of €3,109.04 to the Respondent Landlord, in 12 equal consecutive installments at the rate of €259.12 per calendar month on the 28th day of each month, in the immediately succeeding month commencing the next month after the issue of the Determination Order. This sum represents rent arrears of €8,109.04 having deducted the sum of €5,000.00 awarded to the Applicant Tenants for the unlawful termination of the tenancy of the dwelling at Glenstal, Murroe, Limerick, V94PR3K.

2. The enforcement of the Determination Order for such payment of €3,109.04 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments made by the Applicant Tenants to the Respondent Landlord on each due date until such time as the total sum of has been paid in full.

3. For the avoidance of doubt, any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Respondent Landlord.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 14/11/2023.

Signed:



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**Maureen Cronin, Chairperson**

For and on behalf of the Tribunal.