

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0718-003117 / Case Ref No: 0618-45398

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| Appellant Tenant: | Osamuyi Ogbemor |
| Respondent Landlord: | Mary Dolores Hubbard |
| Address of Rented Dwelling: | 40A Stradbrook, Stradbally Road, Portlaoise , Laois, |
| Tribunal: | Andrew Nugent (Chairperson) Claire Millrine, Vincent P. Martin |
| Venue: | Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2 |
| Date & time of Hearing: | 01 November 2018 at 2:30 |
| Attendees: | For the Appellant: Osamuyi Ogbemor (Appellant Tenant) For the Respondent: Clement Herron (Respondent Landlord's Agent) Brídín Fogarty (Respondent Landlord's Agent) |
| In Attendance: | Stenographers |

1. Background:

On 25 June 2018 the Tenant made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 78 of the Residential Tenancies Act, 2004 (as amended) ("the Act"). The matter was referred to an Adjudication which took place on 13 July 2018. The Adjudicator determined that:

1. The tenancy of the dwelling at 40A Stradbrook, Stradbally Road, Portlaoise, Laois terminated on 21 June 2018.
2. The Applicant Tenant's application, regarding illegal eviction / breach of landlord obligations in respect of the tenancy of the dwelling at 40A Stradbrook, Stradbally Road, Portlaoise, Laois, is not upheld.

Subsequently an appeal was received from the Tenant.

The RTB constituted a Tenancy Tribunal and appointed Andrew Nugent, Claire Millrine, Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Andrew Nugent to be the chairperson of the Tribunal ("the Chairperson").

On 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 1 November 2018 the Tribunal convened a hearing at Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

Not Applicable

4. Procedure:

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the Parties that they had received the relevant papers from the RTB in relation to the case and that they 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; that there would be an opportunity for cross-examination by the Respondent's agent; that the Respondent's agent would then be invited to present his case, and that there would be an opportunity for cross-examination by the Appellant.

The Chairperson explained that following this, both Parties would be given an opportunity to make a final submission.

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present and he reminded the Parties 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 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.

Lastly, the Chairperson stated the Tribunal would be willing to consider a short adjournment for the purposes of allowing the Parties to try and negotiate a settlement or agreement of the dispute should the Parties so wish. This opportunity was accepted but ultimately no agreement was reached and accordingly the Parties intending to give evidence were sworn in and the hearing commenced.

5. Submissions of the Parties:

Appellant Tenant's Case:

Evidence of Osamuyi Ogbebor:

In setting out the background to the matters before the Tribunal, the Appellant Tenant gave evidence that he had challenged, by way of bringing a dispute to the Residential Tenancies Board, the validity of a Notice of Termination dated 30 January 2018. He stated that prior to the determination of this dispute, a further Notice of Termination dated 28 March 2018 had been served on him. As a result, he gave evidence that, at the hearing of the dispute in relation to the first Notice of Termination, the second Notice of Termination had been furnished to the adjudicator, and it had been agreed that the validity of

the second Notice of Termination would also be determined. The Appellant Tenant stated that he had received the Determination Order in respect of the said dispute after 17 September 2018, which determined that the Second Notice of Termination (noted in the Determination Order as being served on 30 March 2018) was invalid.

In respect of the matters before the Tribunal, the Appellant Tenant gave evidence that he returned to the dwelling at approximately 9pm on 22 June 2018. He further gave evidence that he noticed the lock to the front door of the dwelling had been changed and that the Respondent Landlord's agent's card was on the door, stating "locks changed do not enter" (referred to at page 3 of Case File 1). He stated that he called the police but was advised that it was a civil matter. Accordingly, the Appellant Tenant, gave evidence that he waited until the following Monday, 25 June 2018, before he contacted the Residential Tenancies Board for advice.

The Appellant Tenant gave evidence that he had received a text message from the Respondent Landlord's agent on 26 June 2018 requesting that he collect his belongings from the dwelling (referred to at page 38 of Case File 1). On questioning from the Tribunal, the Appellant Tenant confirmed that he had been unable to gain entry to the dwelling for a period of one month. He stated that during this time he had slept on couches in two different houses and that he had only the use of one set of clothes. Additionally, the Appellant Tenant accepted that he had not contacted the Respondent Landlord's agent initially and had only done so after a period of one month because he needed to gain access to the dwelling in order to recover travel documents. He confirmed that a key to the dwelling had been left out for him to enable him to retrieve the required documents and some clothes. He stated that on his return from the trip abroad, he resumed occupation of the dwelling and did not return the key to the Respondent Landlord's agent.

The Appellant Tenant gave evidence that his rent for the dwelling is up to-date save for one month's payment which he stated was to reflect the period of time that he was not able to gain access to the dwelling. He confirmed he had received a letter from the Respondent Landlord's agent dated 26 April 2018 but stated that he had not responded as he was awaiting the outcome of the earlier hearing of the dispute in relation to the Notices of Termination.

On cross-examination, the Appellant Tenant confirmed that, upon contacting the Respondent Landlord's agent by text message on 21 July 2018, it had only taken a few hours until he was provided with the keys to the dwelling.

By way of final submission, the Appellant Tenant submitted that the Respondent Landlord had not followed the correct procedure in her, or her agents', attempt to terminate the tenancy and that he had been illegally evicted from the dwelling. He submitted that the changing of the locks to the dwelling had been carried out in an attempt to evict him from the dwelling. Furthermore, he submitted that the only issue before the Tribunal was in respect of determining the question of whether an unlawful termination had taken place as the validity of previous Notices of Terminations had already been determined and had not been challenged. Lastly, he asked the Tribunal to consider the fact that he suffered greatly as a result of the alleged illegal eviction, as he had been required to sleep on his friends' couches and couldn't get access to his belongings.

Respondent Landlord's Case:

Evidence of Clement Herron:

The Respondent Landlord's agent, Mr. Herron, gave evidence that the dwelling was a top-floor apartment in the private ownership of the Respondent Landlord. He stated that the dwelling had been bought by the Respondent Landlord in late 2017, from receivers appointed over the dwelling. He also gave evidence that his office had been appointed by the receivers to sell the dwelling and that it had been agreed that the dwelling would be sold subject to a valid Notice of Termination having been served. In this regard, Mr. Herron gave evidence that a Notice of Termination had been served on the Appellant Tenant in January 2018. However, Mr. Herron stated that the potential purchaser's solicitor had pointed out that this Notice of Termination was invalid and accordingly, a Second Notice of Termination dated 28 March 2018 was served on the Appellant Tenant.

Following the sale of the dwelling to the Respondent Landlord, Mr. Herron gave evidence that the Respondent Landlord had retained the professional services of his office to look after the dwelling on her behalf. Accordingly, he stated that he wrote to the Appellant Tenant on 26 April 2018 (referred to at page 22 of Case File 1) wherein he referred to the tenancy terminating on 21 June 2018. He gave evidence that he had not received a reply from the Appellant Tenant. Therefore, as the Appellant Tenant had not disputed the fact that the tenancy was terminating on 21 June 2018, as set-out in the letter of 26 April 2018, Mr. Herron gave evidence that on 22 June 2018 he had engaged a locksmith to change the locks to the dwelling. He stated that he had only carried out this action as he deemed the dwelling to have been abandoned. He gave evidence that previously he had encountered extreme circumstances where dwellings had been left abandoned indefinitely with adverse consequences. On questioning from the Tribunal, Mr. Herron stated that he could see nothing obvious in the dwelling belonging to the Appellant Tenant which suggested that he was still in occupation of the dwelling. Mr. Herron gave evidence that he had received a text message from the Appellant Tenant on 21 July 2018 and in reply, he stated he offered the Appellant Tenant storage facilities for his belongings and had furnished him with the keys to the dwelling in order for him to collect the documents required for his trip aboard.

On cross-examination, Mr. Herron confirmed that the reasons he believed the dwelling to have been abandoned were that there had been no contact with the Appellant Tenant for a period of 28 days and that the food in the refrigerator in the dwelling was past its 'best before' date when he gained entry to the dwelling on 22 June 2018. He also confirmed that when he entered the dwelling on 22 June 2018 the Appellant Tenant's clothes, furniture and TV were still in situ.

By way of final submission, Mr. Herron submitted that neither the Respondent Landlord nor her agents had acted outside the law and that the actions carried out, had been done so in good faith. He submitted that, on observing his business card on the door of the dwelling, the Appellant Tenant should have made contact with his office. Furthermore, he submitted that the actions of the Appellant Tenant were unfair and were causing stress and annoyance to the Respondent Landlord and he stated that he believed the dispute lodged by the Appellant Tenant was frivolous and vexatious and was being done with a view to prolong the cheap rent he was paying for the dwelling.

Evidence of Brídín Fogarty:

The Respondent Landlord's agent, Ms. Fogarty, stated the adjudicator in the within dispute, had determined that the Notice of Termination dated 28 March 2018 was valid. She also gave evidence that personnel engaged by the Respondent Landlord's agents in

June 2018 to fix identified problems in the dwelling had not been able to make contact with the Appellant Tenant or gain access to the dwelling.

6. Matters Agreed Between the Parties

- (i) The Appellant Tenant moved into the dwelling on 24 November 2014.
- (ii) The Appellant Tenant remains in occupation of the dwelling.
- (iii) The dispute before the Tribunal was solely in relation to whether an unlawful termination of the tenancy (illegal eviction) had occurred.

7. Findings and Reasons:

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

7.1 Finding: The Tribunal finds that the tenancy of the dwelling was unlawful terminated by the Respondent Landlord. In the circumstances, the Tribunal awards damages to the Appellant Tenant in the sum of €1,000.

Reasons:

1. The Tribunal notes that the validity of the Notice of Termination served on 28 March 2018 has already been adjudicated on and was found to be invalid. The Tribunal further notes that this adjudication decision was not appealed and that it was agreed by the Parties that the sole issue before the Tribunal was in respect of whether an unlawful termination (illegal eviction) had occurred. In this regard, it was submitted that the Appellant Tenant was deemed to have abandoned the dwelling and that the action carried out, in respect of the changing of the locks to the dwelling, was therefore lawful. Pursuant to Section 37 of the Act, a tenancy will be deemed to have terminated by a tenant if (a) a tenant vacates the dwelling but serves a Notice of Termination which failed to give the required period of notice and the tenant is in arrears of rent, or; (b) the tenant vacates the dwelling having failed to serve a Notice of Termination and is in arrears of rent for a period of 28 days or more. The Tribunal is satisfied, from the evidence of the Parties submitted at the hearing and from the documentation submitted prior to the hearing, that neither of the stated situations arose in the within dispute. Therefore, the Tribunal finds, on the balance of probabilities, that the Appellant Tenant was not deemed to have terminated the tenancy and accordingly, finds that an unlawful termination of the tenancy of the dwelling occurred.

2. In the circumstances, the Tribunal finds that it is appropriate to award damages in the sum of €1,000 in favour of the Appellant Tenant arising from the unlawful termination of the tenancy of the dwelling. In awarding the sum of €1,000, the Tribunal accepts that the Appellant Tenant was caused some upset, distress and inconvenience by virtue of not having access to the dwelling and his belongings. The Tribunal also accepts that the Appellant Tenant was required to sleep on his friends' couches during the period of time (one month) that he was unable to access the dwelling. However, in making the said award, the Tribunal also takes into account the fact that the Appellant Tenant did not contact the Respondent Landlord's agents from 22 June 2018 to 21 July 2018. In this regard, the Tribunal finds that the Appellant Tenant failed to mitigate his loss. In making

the said award, the Tribunal also takes into account, the fact that the Appellant Tenant regained entry to the dwelling after a period of one month and continues to reside there. In the said given circumstances the Tribunal considers the said award of damages to be appropriate, just and proportionate.

8. Determination:

Tribunal Reference TR0718-003117

In the matter of Osamuyi Ogbebor (Tenant) and Mary Dolores Hubbard (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

- (i) The Respondent Landlord unlawfully terminated the tenancy in respect of the dwelling at 40A Stradbrook, Stradbally Road, Portlaoise, Laois.
- (ii) The Respondent Landlord shall pay the total sum of €1,000 to the Appellant Tenant within 28 days of the date of issue of the Order being damages for the unlawful termination of the tenancy of the dwelling at 40A Stradbrook, Stradbally Road, Portlaoise, Laois.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 20/11/2018.



Signed:

Andrew Nugent Chairperson

For and on behalf of the Tribunal.