

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0720-004375 / Case Ref No: 0320-61044

Appellant Tenants: Clodagh Walsh, Gary Farrell

Respondent Landlord: Pat Brennan

Address of Rented Dwelling: Barrow House, Athy Via Laois , Kildare, R14D899

Tribunal: Fintan McNamara (Chairperson)
Finian Matthews, Claire Millrine

Venue: Telephone conference tribunal - Ormond Rooms

Date & time of Hearing: 20 May 2021 at 10:30

Attendees: Gary Farrell, Dispute Appellant
Clodagh Walsh, Dispute Appellant
Pat Brennan, Respondent Landlord
Mr Quinn BL, Tribunal Representative

In Attendance: DTI stenographers

1. Background:

On 05/03/2020 the Tenant made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 76 of the Act. The matter was referred to an Adjudication which took place on 15/06/2020. The Adjudicator determined that:

"In the matter of Gary Farrell & Clodagh Walsh [Applicant Tenants] and Pat Brennan [Respondent Landlord], the adjudicator, in accordance with Section 97 of the Residential Tenancies Act, 2004, as amended, determines that:

1. The Respondent Landlord shall pay the total sum of €1,394.50 to the Applicant Tenants within 28 days of the date of issue of the Determination Order, being damages of €1,000 for the consequences of unlawfully terminating the Applicant Tenants' tenancy, plus the retained deposit of €600, having deducted the sum of €205.50 in rent arrears, in respect of the tenancy of the dwelling at Barrow house, via Athy, Co. Kildare."

Subsequently the following appeal was received from the Tenants on 07/07/2020. The grounds of the appeal: Unlawful termination of tenancy (Illegal eviction), Deposit retention, Standard and maintenance of dwelling, Breach of landlord obligations. The appeal was approved by the Board on 16/07/2020.

The RTB constituted a Tenancy Tribunal and appointed Finian Matthews, Claire Millrine and Fintan McNamara as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Fintan McNamara to be the chairperson of the Tribunal ("the Chairperson").

On 28/04/2021 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 20/05/2021 the Tribunal convened a Telephone conference hearing at the Ormond Rooms, Dublin.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case files.

3. Documents Submitted at the Hearing Included:

none

4. Procedure:

The Chair introduced the Tribunal members and himself and asked the parties identify themselves. The Chair confirmed with the parties that they had received from the RTB the relevant case files and the Tribunal procedures. The Chair explained the procedure which would be followed; that the party who appealed (the Appellants) would be invited to present their 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 its case, followed by cross-examination, and that the Tribunal would question the parties on their evidence.

The Chair stressed that all evidence would be taken on affirmation and be recorded by the official stenographer present. He 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 Chair 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 only appealed to the High Court on a point of law. The parties were affirmed before being invited to begin their evidence.

5. Submissions of the Parties:

The Appellant Tenant in his evidence stated that the dwelling was well taken care of and that he had received a very favourable reference from the Respondent Landlord when he was trying to find alternative accommodation. He claimed to have arranged to have the septic tank emptied on three occasions and paid a local farmer €70 for this service on each occasion. He said that he painted and power hosed the house every year but was not claiming for this work. He said he repaired the boiler at a cost of €350 and was only refunded €100 by the Respondent Landlord, but he failed to produce any evidence in the form of receipts for this work. He said that they had to put up with a faulty tumble drier which the Respondent Landlord refused to repair, instead the Respondent Landlord had stated that the drier was a luxury item.

He said that after the first year of the tenancy the Respondent Landlord said he might want to move into the property and that over the remainder of the tenancy he continued to say this but nothing concrete was ever decided. He said that Ms Walsh, his partner, was very stressed by the Respondent Landlord's constant demands that they leave the property and had to go on prescribed medication for anxiety and stress.

On cross examination from Mr Quinn BL the Appellant Tenant stated that he paid rent of €625 which fell due on the 14th of every month. He said they had secured the accommodation because the Respondent Landlord stated he wanted reliable tenants and he had known the Respondent Landlord for some time in advance of renting the accommodation. He said they were on friendly terms then.

The Appellant Tenant confirmed that he was satisfied that the Notice of Termination was valid and had not raised any issues about it with the RTB.

He claimed that it took him four hours to remove his belongings from the dwelling on the 23rd February 2020. He stated that on the 23rd February he had received a phone call from the Respondent Landlord inviting him to do "three rounds". He said this happened on a Sunday and on the evening when he had finished work he went to meet the Respondent Landlord at the dwelling. He said his partner and their child were in the dwelling and when the respondent landlord came there was a serious altercation and the respondent knocked him to the ground. He said his partner and their child stayed at his mother's house that night while he remained in the rented accommodation.

When asked if his father had made an intercession for him with the Respondent Landlord for an extra month in the dwelling, he replied that he had no knowledge of this. He did confirm that his father farmed the land adjacent to the dwelling and that he had worked part-time in the past with his father. The Appellant Tenant confirmed that he had moved to his new address on the 17th February but declined to state the address which he said was 20 miles from his parent's home.

He confirmed that the notice of termination issued on the 11th September had a termination date of the 11th March 2020. He strenuously asserted that all rent was fully paid up to date, that he had contacted the Respondent Landlord on the 14th February but as the Respondent Landlord had to go to a funeral the rent, by arrangement, was not paid until the 17th February.

In her evidence Mr Farrell's partner, Clodagh Walsh, stated that the Respondent Landlord, by arrangement, came regularly every month to collect the rent and sometimes she paid the rent if Mr Farrell was not there. She said she handed the Respondent Landlord the rent on the 17th February. She stated that because of the incessant pressure from the Respondent Landlord to move from the dwelling, she had suffered from extreme stress and her medication had to be strengthened. She referred to a doctor's letter in the case file as evidence that she was on medication.

Submission of the Respondent Landlord:

The Respondent Landlord explained that he informally notified the appellants on the 3rd June 2019 that he wished to terminate their tenancy and move into the dwelling. He said that the last rent payment was on January 14th 2020 and denied the Appellant Tenant's claim that a month's rent was paid on the 17th February, 2020. He said that Gerry Farrell senior, the Appellant Tenant's father, had bought the adjacent land on the 25th September 2005. He pointed out that this land was the property of his late auntie Kitty who had left him a site where he had built the dwelling.

He claimed that in August 2019, when he was mowing the lawn Gerry Farrell senior approached him and suggested he buy another house and leave the appellants in situ. When he rejected the suggestion he said that Mr Farrell senior said that all good things

must come to an end. Subsequently the Appellant Tenants informed him that they were entitled to a formal written notice of termination which he duly issued.

He said that he was told in February that the Appellant Tenants had found a new dwelling. He explained that apart from the closing months of the tenancy there had never been a cross word between the parties, the rent was paid regularly and on time except for the last month's rent. He said that on the 23rd February 2020 when he called to the house all the blinds were pulled down and it seemed unoccupied. He entered the dwelling and said this was an action which he now sincerely regretted. He claimed the house was devoid of any possessions, not even a television, and that there were just a few rubbish bags there. He claimed that it was left in a very bad state but he was not making a claim for damages. He said he had asked the appellants to leave the house as they had found it and was very annoyed because of the condition they had left it in. He said that after making phone contact on the 23rd February, Gary the Appellant Tenant had crossed the boundary fence within 10 minutes and appeared very aggressive and intimidating. He said Gary had touched his nose with his forehead and accused him of trespassing on the property. However, he strongly asserted that neither of them hit each other.

He said the lights were on in the house but he did not see any child there that evening. He claimed that when the Appellant Tenants moved in the oil tank was full but five months into the tenancy Clodagh claimed to be feeling cold. He explained that he went to examine the heating and found that apart from one radiator all the others were switched off and he claimed that the heating was and is working perfectly. He also said that there may have been dirt getting into the system because he believed the tenants had tilted the oil storage tank.

6. Matters Agreed Between the Parties

The parties agreed the address of the dwelling. They agreed that the deposit of €600 was held by the landlord and that the rent was 625 per month.

7. Findings and Reasons:

There was conflicting evidence presented to the Tribunal whose findings are as follows:

Finding no. 1: The notice of termination served dated 11th September 2019 was valid and terminated the tenancy of the dwelling on 11th March 2020.

Reason: The notice of termination dated 11th September 2019 provided a reason for termination in accordance with paragraph 4 of the table to section 34 of the Act. The notice was accompanied by the requisite statutory declaration. Given the duration of the tenancy, the notice was required to provide 180 days of notice, 182 days were given. The notice otherwise complied with section 62 of the Act. In the circumstances, the notice of termination dated 11th September 2019 was valid and the tenancy of the dwelling was terminated on 11th March 2020. The Appellant Tenant confirmed that he had no issues with the notice and was happy with the 180 days he was afforded to vacate the dwelling.

Finding no. 2: The Respondent Landlord breached his obligation to allow the Appellant Tenants peaceful and exclusive occupation of the dwelling by entering the dwelling on 23rd February 2020 and unlawfully terminated the tenancy of the dwelling on 24th February 2020 by changing the locks.

Reason: Section 12(1)(a) of the Act states: "In addition to the obligations arising by or under any other enactment, a landlord of a dwelling shall allow the tenant of the dwelling to enjoy peaceful and exclusive occupation of the dwelling".

Section 58 of the Act states that:

"(1) From the relevant date, a tenancy of a dwelling may not be terminated by the landlord or tenant by means of a notice of forfeiture, a re-entry or any other process or procedure not provided for by this Part."

On 23rd February 2020, the Respondent Landlord came to the dwelling and when he saw that the blinds were down he assumed it was unoccupied and the Appellant Tenants had found a new property. He entered the dwelling, an action which he said he deeply regretted.

The Respondent Landlord was not entitled to enter the dwelling on 23rd February 2020. The tenancy had not yet terminated and the Appellant Tenants had not notified him that they had vacated.

Finding no 3 : The Tribunal finds that the Appellant Tenants are entitled to damages in the amount of €1,000 in respect of the unlawful termination of the tenancy.

Reason: The Tribunal is satisfied, on the evidence before it, that the Appellant Tenants suffered distress, anxiety and inconvenience as a result of the unlawful termination of the tenancy by the Appellant Landlord. The Tribunal, having taken into account the manner in which the tenancy was terminated and the over-all circumstances considers that the appropriate quantum of damages to award in the circumstances of this case is €1,000.

In exercise of its powers, therefore, under section sub-section (2)(d) of section 115 of the Act the Tribunal directs that damages in respect of the unlawful termination of the tenancy in the amount of €1,000 shall be paid by the Respondent Landlord to the Appellant Tenants.

Finding no.4 The Appellant Tenants were not in rent arrears in respect of the tenancy of the dwelling.

Reason: The monthly rent was €625. The Respondent Landlord claimed that the last month's rent was not paid but the appellants vigorously asserted that it was paid on the 17th February as the Respondent Landlord who had to attend a funeral was unavailable to come to collect the rent as he usually did on the 14th of each month. Both parties agreed that each time the rent was paid in cash and the landlord produced neither a rent book or evidence in bank statements which he is legally obliged to do under the rent book regulations. The Tribunal accepts that as the Appellant Tenants never missed a payment and on the balance of probability the Appellant Tenants did not default on the last rent payment.

Finding no. 5: The Appellant Tenants claim for damages on the grounds that the Respondent Landlord failed to maintain the dwelling and carry out necessary repairs is not upheld.

Reason: The Appellant Tenants have asserted that the Respondent Landlord was in breach of his obligations under the tenancy agreement and the Act with respect to maintenance of the dwelling. They claimed that the septic tank needed to be emptied each year and the boiler was faulty and that a plumber had to come to do repairs. However the Respondent Landlord claimed that there was no problem with the heating system. Moreover, the Appellant Tenants produced no receipts for any repair work done.

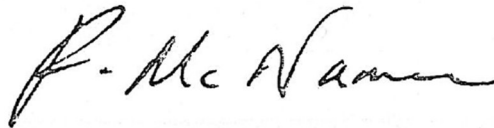
8. Determination:

In the matter of Clodagh Walsh and Gary Farrell (Appellant Tenants) and Pat Brennan (Respondent Landlord) the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act 2004 determines that:

1. The Appellant Tenants' application in respect of their tenancy in the dwelling at Barrow House, via Laois, Athy, Co. Kildare, R14D899 for damages arising from the Respondent Landlord's failure to properly maintain the dwelling under Section 12 of the Act is not upheld.
2. The Respondent Landlord shall pay the total sum of €1600 to the Appellant Tenants within 28 days of the issue of the determination order, being damages of €1000 for the consequences of unlawfully terminating the Appellant Tenants' tenancy and the retained security deposit of €600 in respect of the tenancy in the dwelling at Barrow House, via Athy, Co. Kildare, R14D899.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 26/05/2021.

Signed:



Fintan McNamara Chairperson

For and on behalf of the Tribunal.