Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0722-005562 / Case Ref No: 0321-68502

Appellant Tenants:	Gillian Curran, Harald Schaefer
Respondent Landlord:	James Treacy
Address of Rented Dwelling:	Apartment 13, Penrose Court, Penrose Lane, Waterford City, Co. Waterford, X91K504
Tribunal:	Eoin Byrne (Chairperson) Dervla Quinn, Roderick Maguire
Venue:	Virtual hearing via Microsoft Teams
Date & time of Hearing:	16 November 2022 at 2:30 p.m.
Attendees:	For the Appellant Tenants: Harald Schaefer (for and on behalf of both Appellant Tenants). For the Respondent Landlord: James Treacy (Respondent Landlord).
In attendance:	RTB appointed stenographer/logger.

1. Background:

On 16 March 2021, the Tenants made an application to the Residential Tenancies Board ("the RTB") pursuant to s. 76 of the Residential Tenancies Act 2004, as amended ("the Act"). The Landlord made a similar application on 28 February 2022. The matter was referred to an adjudication which took place on 19 April 2022. The adjudicator determined that:

"1. The Notice of Termination with a date of service of the 20 January 2021, served by the Respondent Landlord on the Applicant Tenants in respect of the tenancy of the dwelling at Apartment 13, Penrose Court, Penrose Lane, Waterford City is valid.

2. The Applicant Tenants shall pay the sum of €853 to the Respondent Landlord within 42 days of the date of issue of the Determination Order as being rent arrears and for breach of tenant obligations pursuant to section 16 (a) of the Act and having deducted the justifiably retained security deposit of €563 in respect of the above dwelling.

3. The Applicant Tenants shall pay the total sum of €350 to the Respondent Landlord within 42 days of the date of issue of the Determination Order as being damages in excess of normal wear and tear caused to the dwelling and for breach of tenant obligations pursuant to section 16 (f) of the Act in respect of the above dwelling."

Subsequently a valid appeal was received from the Tenants by the RTB on 4 July 2022 and thereafter approved by the Board. The RTB constituted a Tenancy Tribunal ("the Tribunal") and appointed Eoin Byrne, Dervla Quinn and Roderick Maguire as Tribunal

members, pursuant to ss. 102 and 103 of the Act and appointed Eoin Byrne to be the chairperson of the Tribunal ("the Chairperson").

On 26 October 2022, the parties were notified of the constitution of the Tribunal and provided with details of the date, time and access details for the hearing. On 16 November 2022, the Tribunal convened a virtual hearing at 2:30pm using Microsoft Teams.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case file.

3. Documents Submitted at the Hearing Included:

N/A - as a virtual hearing, there was no further documentation submitted.

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. In particular, he outlined 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 their case first, that there would be an opportunity for cross-examination by the Respondent, that the Respondent would then be invited to present his case, and that there would then 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. He 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 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 €4,000 or up to 6 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 Chairperson advised the parties of the benefits of reaching an agreement and advised them that any agreement reached would be capable of being confidential while retaining the enforceability of an order of the RTB. The Chairperson indicated that, if the parties wished to discuss matters among themselves, the Tribunal would rise and allow them to discuss matters. The parties did not avail of this opportunity.

All parties intending to give evidence were sworn in. The Tribunal asked the parties what matters could be noted as agreed. The list of matters referred to below were noted as agreed. The Appellant Tenant present confirmed that he appeared for and on behalf of both Appellant Tenants.

5. Submissions of the Parties:

Appellant Tenants' case:

The Appellant Tenant present outlined that the Respondent Landlord worked with another man named MB [as he was not present, the Tribunal refers to him only by his initials], who was responsible for a number of actions in the case.

The Appellant stated that the radiators in the dwelling had not worked properly and that a repair was attempted which resulted in much higher energy usage in the dwelling. He outlined that only one electric radiator worked and he nonetheless had very high energy bills. He also indicated that MB told him to deal directly with the Appellant Landlord in respect of issues like that. He indicated that the boiler was not fixed for over half a year and that the water for the shower was not properly heated, which, he stated, could cause disease. He further outlined that before the electrician visited the dwelling, his energy bills were low, but that afterwards they were higher. He also contended that, on occasion, post to the dwelling was going missing.

In respect of rent arrears, he outlined that he became unemployed during coronavirus but had to pay the rent. He further outlined that he did not attack other people who were living in the property. He indicated that Ms. Curran had health issues and that the Respondent Landlord attempted to have other people move in to the apartment who were not appropriate.

He further indicated that there was an incident where he had to change the locks. He outlined that on one day, he was lying in bed and heard voices in the other room, and went in where he saw two people taking the Appellant Tenants' belongings from the dwelling, at which stage he made them leave the dwelling and changed the locks. He indicated that another person was present on that occasion, to become a tenant of the dwelling, and that person became violent and had to be removed when the Gardai visited the dwelling.

In respect of the Gardai visiting the dwelling on other occasions, he accepted that it had occurred, but indicated that the knife taken from him was a work tool.

In respect of the damage to the dwelling, he accepted that he had damaged the front door, as his partner was unwell and he needed to gain access to the dwelling. He also indicated that he had telephoned the Gardai on a number of occasions in order to have his partner assisted in getting to hospital.

In respect of the first termination notice, he accepted that he had signed the rent arrears warning letter of 24 September. He also accepted that he had lost his tone a little during that meeting, as he was unhappy about the situation in the dwelling.

He also outlined that he believed what the Respondent Landlord's employee had claimed was defamatory. He further indicated that he wanted to know why CCTV of the alleged incidents was not available. He also asserted that without a lawyer, he could not defend himself fully against the allegations in the present case.

In respect of the first notice of termination for rent arrears, he again contended that there were issues with high electricity bills and that this was caused by an electrician hired by the Respondent Landlord, resulting in high energy usage. He also outlined that he did not pay rent as he had been served with a notice of termination and he needed to save money to pay for a new tenancy.

He further outlined that he had left the dwelling for a short period for a job in Ballymahon but it did not work out. He indicated that there was never any agreement for his partner to take over as the tenant and that he only raised that afterwards. He contended that the payment of €800 was towards the arrears. He accepted that he had not paid rent in October or November but stated that that was because of the notice of termination. He also outlined that his partner had had issues with her health during that period and that this caused difficulties.

He stated that someone also turned off the water to the dwelling and that the identifying number for his apartment was removed. He outlined that they were unable to shower for a number of days as a result.

He indicated that on the day the tenancy ended, both Appellant Tenants had left the dwelling to have a shower elsewhere, and returned to find that the dwelling had already been taken over by other people. He indicated that the people who took over the apartment had boarded the windows and dumped their belongings. He also outlined that the Gardai arrived and told him that if he did not leave, they would arrest him. He continued to state that after that, a number of his items were damaged and he lost the correct power adapter for his laptop. He indicated that they took a taxi to his partner's parent's home and brought a number of belongings there. He further indicated that a number of belongings were damaged as a result of the incident on that date.

In respect of the alleged damage to the dwelling, he outlined that some items had been damaged as a result of either him or his partner falling on them. He stated that the couch was old and already damaged by cats, and further outlined that some of the damage was caused by another occupant of the dwelling, not him or his partner.

In respect of the window in the front door, he accepted that he had broken it, but indicated that was because his partner was unwell, and he had to smash the window to access the dwelling. He also outlined that letters were being stolen from his mailbox.

Respondent Landlord's case:

The Respondent Landlord indicated that the notice of termination was the most important aspect of the case. He also outlined that there were rent arrears.

He indicated that he had sent the notice of termination by post and by email, and relied upon the evidence showing An Post receipts.

In respect of the behaviour in question, he stated that he had received a number of complaints from the management company over the Appellant Tenants' behaviour, including that the Garda Armed Response Unit was called out. He indicated that he contacted Waterford Garda Station and they disclosed a log of incidents to him. He indicated that as part of his own long-term lease with the management company, he had obligations to ensure quiet and safe enjoyment of the development for other occupants.

In respect of rent arrears, he relied upon the documentation submitted, and the warning letter and notice of termination. He asserted that Mr. Schaefer then moved out but Ms. Curran remained in the dwelling and they agreed for her to pay €800 rent for December, but that she would nonetheless have to vacate by 5 January. He outlined that Mr. Schaefer then moved back into the dwelling and that there were further complaints of anti-social behaviour. He contended that both notices of termination served were valid. He accepted that rent had been paid for a prolonged period, regularly until March 2020 and then irregularly thereafter, perhaps related to covid and Mr. Schaefer's unemployment.

In respect of the condition of the dwelling, he outlined that the pictures showed a number of issues, in that there were cats in the dwelling, there was a broken light switch, the front window was broken, and there was a hole in the wall. He stated that the dwelling should have been returned in the condition it was in at the start of the tenancy, wear and tear excepted. He accepted that the issues with the sofa were a judgment call but that the mattress in the dwelling was unusable.

In respect of the complaints around repairs, he accepted that there were some repairs needed to items such as the boiler but that he had carried out a number of repairs and the Appellant Tenants were asking for unrealistic matters, such as repairs owing to air escaping under skirting boards. He asserted that the dwelling was rented as is. He further outlined that retaining €100 for expenses over changing locks could only have been done with permission and that had not occurred. He further contended that, in any event, the anti-social behaviour issues trumped any issues in respect of rent arrears.

In respect of the rent arrears, he outlined that they were in the region of €1,416, with the deposit to be accounted for after that. He accepted that he had retained the deposit, as the arrears were higher than the amount of the deposit and because of the condition of the dwelling.

In respect of the termination of the tenancy, he stated that a new tenant had visited the dwelling and that he had sent an email to Mr. Schaefer, who appeared to accept that anti-social behaviour was a valid reason to terminate the tenancy. He asserted that he had agreed to rent the dwelling to another person and that there appeared to be an altercation when that person viewed the dwelling. He also outlined that he had heard from his maintenance person that the Appellant Tenants had their belongings with a friend in another apartment in the development. He accepted that after the incident, the Appellant Tenant was informed that his belongings had been left outside the dwelling in bags and were collected by the Appellant Tenant. He also indicated that he was not sure what the position was in respect of electricity and water being disconnected.

He indicated that he did not know exactly what had happened and perhaps it was the case that the new tenant was not happy with the Appellant Tenants remaining in the dwelling and that may have been the cause of the issue.

In respect of the alleged high electricity bill, he asserted that it could have been caused by estimated readings being followed by an actual bill, with higher actual readings causing higher bills and higher apparent usage.

He relied upon the evidence from the Garda in respect of the number of visits to the dwelling. He also asserted that Ms. Curran's behaviour was the responsibility of both Appellant Tenants.

He outlined that the lease between the parties provided for a rent of €563 for the room in question, or €800 for the full apartment, but that between December 2020 and January 2021, the Appellant Tenants refused access to the dwelling to other persons, and that this was relevant in calculating the arrears.

Closing submissions:

The Appellant Tenant present addressed the matters raised by the Respondent Landlord in his evidence. He claimed that the mattress in question was not new and was in poor condition. He further outlined that when someone else wanted to view the apartment, under the level five covid restrictions then in place, he needed to be given proper notice and this

was not done. He also indicated that for a prolonged period to begin with, there were no alleged anti-social behaviour issues, and that those issues only arose later. He contended that he had a Part Four tenancy in the dwelling and that he was happy with the proceedings before the Tribunal.

The Respondent Landlord had nothing further to add, beyond his evidence and submissions already made.

6. Matters Agreed Between the Parties

The parties agreed that the address of the dwelling was Apartment 13, Penrose Court, Corner of Penrose Lane and Anne Street, Waterford. They agreed that the tenancy commenced on 1 June 2018, that the rent for the room in question was €563 per month, or, if the whole apartment was rented, €800 per month, that a deposit of €563 was paid at the commencement of the tenancy, and that the Appellant Tenants are no longer in occupation of the dwelling. They also agreed that a notice of termination was issued on 20 January 2021, being received on 21 January 2021, and providing for a termination date of 29 January 2021, albeit that the Appellant Tenants disputed the validity of that notice.

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 therefor are set out hereunder.

Finding 1: The Tribunal finds that the notice of termination dated 20 January 2021, and received on 21 January 2021, was valid.

Reasons: First, in respect of the actual notice of termination, the Tribunal is satisfied that it technically complied with all the requirements of s. 62 of the Act, and that it was served on the Board on 21 January 2021. However, the appropriate date for the date of service is 20 January 2021; that was the date the notice was posted to the Appellant Tenants. There can also be no dispute as to the fact that both were aware of the notice of termination and that there was only one tenancy of the dwelling; notices were served on both Appellant Tenants, as contained in the RTB case file. As noted in the adjudicator's report, this was accepted by the Appellant Tenant present at that hearing, Harald Schaefer.

Also, the notices indicated the date of service as follows: "This notice is served by email and also posted to you on 20 January 2021". While it was not served by email on the RTB by email until the following day, this is a slip in service that cannot be seen to prejudice the notice; sufficient notice was nonetheless provided. The relevant fact is that the Respondent Landlord was, for the reasons outlined below, entitled to give a seven-day notice. The termination date provided was 29 January 2021. As such, even from 21 January 2021, the notice provided eight days' notice. Accordingly, that issue cannot be seen to prejudice the notice. The notice was also otherwise in compliance with the Act, aside from the issue in respect of serving one day later on the Board. It was signed by the Respondent Landlord, provided the details required by s. 62 of the Act, and was delivered by post, a permitted method of service under s. 6 of the Act. Accordingly, the Tribunal is satisfied that it is appropriate to apply the provisions of s. 64A of the Act in respect of these issues, such that these issues do not invalidate the notice.

The question for determination by the Tribunal is thus whether the Respondent Landlord was in fact entitled to serve the notice of termination that was served, giving seven days' notice. The reasons given by the notice were, among other matters, "on going anti-social behaviour", that the Gardai "have been called to the property on a number of occasions", that aggressive behaviour "has been observed inside and outside the apartment" and that other tenants "are concerned for their safety and cannot peacefully enjoy their own property".

While not expressly stated in those terms, the notice must be read as saying that the Appellant Tenants were responsible for "behaviour that causes or could cause fear, danger, injury, damage or loss to any person living, working or otherwise lawfully in the dwelling concerned or its vicinity and, without prejudice to the generality of the foregoing, includes violence, intimidation, coercion, harassment or obstruction of, or threats to, any such person", in particular as it states that other tenants are concerned for their safety, as a result of anti-social behaviour.

The question is whether such behaviour has been proven in this case. The Tribunal is satisfied that it has been. Whatever the reasons for it, Mr. Schaefer accepts breaking a window in the dwelling, during an incident with his partner. He also accepted that the Gardai had visited the dwelling and that he had possession of a knife on that occasion.

Evidence from a worker for the Respondent Landlord indicates that the Appellant Tenant was aggressive in November 2021 and that he feared for his safety. He was lawfully in the vicinity of the dwelling and was made to feel fear by the actions of the Appellant Tenants.

Similarly, as is noted from the email of 19 January 2021 from the management company to the Respondent Landlord, there were a number of complaints made in respect of aggressive behaviour from the Appellant Tenants. Further, the incident log supplied from the Gardai shows a number of visits to the dwelling.

While the Tribunal accepts that a large amount of this evidence is hearsay, the Tribunal is also satisfied of its reliability, in particular where the Appellant Tenant present at the hearing accepted that there were a number of visits from the Gardai and accepted that he had broken the window in the dwelling.

Regardless of the reasons for those incidents, and in particular regardless of whether these were caused as a result of medical issues, the Tribunal must consider the impact and effect of the behaviour. Simply because behaviour is not criminal (under para. (a) of the definition of "behave in a way that is anti-social") that does not mean that the behaviour does not cause fear, danger, damage, injury or loss to a person in the vicinity of the dwelling. The Tribunal accepts that the behaviour of the Appellant Tenants in this case, prior to the service of the notice of termination, fell under that definition.

As such, the Tribunal is satisfied that the Respondent Landlord was entitled to serve the notice of termination when served. The Tribunal is satisfied that it was valid.

However, where the dwelling has now been vacated by the Appellant Tenants, there is no requirement for any express order to this effect. In respect of the earlier notice of termination, there is no indication that notice was also served on the RTB, as required. As such, the Tribunal cannot find that it was valid. While the warning letter was served on the RTB, the evidence does not indicate that the notice of termination was also served on the RTB.

Ultimately, the Tribunal was required to reach a determination in respect of the validity of the notices of termination, but only in order to consider the events which followed, as the validity of the notice of termination and the behaviour of the parties is relevant in assessing any damages which may be due arising from the termination of the tenancy or other breaches of obligation, and in particular the events of February 2021. As such, where one notice was valid, that is the only relevant consideration.

Further, in respect of the CCTV in this case, the Tribunal does not accept that the absence of CCTV evidence is a relevant issue or is procedurally unfair on the Appellant Tenants. There is no indication as to who was in control of the CCTV and whether it could have been obtained by either party; in any event, the Appellant Tenant present at the hearing himself acknowledged in his evidence that he had broken a window and perhaps lost his cool on occasion and, as such, when coupled with the other evidence in the case, is evidence on which the Tribunal must find that the Appellant Tenants' behaviour was in breach of paragraph (b) of the definition of "behave in a way that is anti-social". CCTV of particular incidents will not change this and cannot determine what was said and by whom; the Tribunal does not accept that the absence of this CCTV resulted in any procedural unfairness. Further, it was open to the Appellant Tenants to engage legal representation if they so wished. Again, the fact that they did not does not render the process in this case unfair.

Finding 2: The Tribunal finds that the Appellant Tenants were in arrears of rent of €1,455.61 as of the date of the termination of the tenancy, being 20 February 2021, such that the Respondent Landlord was entitled to retain the deposit of €563.

Reasons: The Tribunal is satisfied that the Appellant Tenants had a prolonged period prior to the termination of the tenancy and their ultimate vacation of the dwelling where they did not pay rent. Under s. 16(a) of the Act, a tenant is under an obligation to pay rent, as and when it falls due. There is no dispute in this case as to the non-payment of rent. The only question is as to the exact figure due.

In respect of the calculation of this figure, the Tribunal accepts that prior to 10 October 2020, there were arrears of €100. From the rent due on 10 October 2020 to the termination of the tenancy, the Respondent Landlord received €1,100, by way of one payment of €800 in December 2020 and three payments of €100 in February 2021. This is not in dispute.

Issues in respect of energy usage levels are not relevant in the determination of this aspect of the dispute. In any event, for the reasons detailed below, the Tribunal does not accept that the Appellant Tenants have shown any breach of obligations in this respect. The same is true in respect of any alleged failure to repair the door in the dwelling. As such, the issues raised do not provide a defence to the claim for rent arrears. The Appellant Tenants remained under an obligation to pay rent throughout the tenancy.

However, the Tribunal does not accept that the rent was ever validly reviewed or increased from €563 to €800 per month. There is no evidence of any rent review or any notice of rent review being served in this case. The Tribunal was not provided with a copy of a lease showing any entitlement to charge a higher rent for the whole apartment. In the absence of a valid rent review, in compliance with Part Three of the Act, or in the absence of a lease showing an agreement to rent the entire apartment for a fixed rent, as opposed to a single room, the Tribunal cannot accept that the Respondent Landlord was entitled to charge a rent of higher than €563 per month for any part of the tenancy in this case.

The Tribunal does not accept that there was ever a concluded agreement for Ms. Curran to take over the tenancy of the dwelling in full or that the payment of €800 in this respect can be seen as anything other than a payment towards the arrears. The lack of clarity in this respect, and in many other respects in the communication between the parties and the formalities of their arrangements, are such that the Tribunal cannot accept that there was a change in the relationship. Such informality generally makes the job of the Tribunal more difficult; this case is an example of the difficulties that can arise. In any event, even if Mr. Schaefer temporarily vacated the dwelling, the tenancy continued with Ms. Curran, and the rent could not be reviewed in the manner outlined in this case. As such, rent arrears shall be calculated at €563 per month.

Rent was nonetheless due to cover the period of four months and eleven days (inclusive) from 10 October 2020 to 20 February 2021. The monthly rent, as noted, was €563 at all times. Four months' rent is thus €2,252. The daily rent is calculated as €563 x 12 / 365 = €18.51. Eleven days' rent is thus €203.61. The total due was thus €2,455.61 for that period. Adding the €100 existing arrears gives a figure of €2,555.61. Subtracting the €1,100 paid gives a net figure of arrears of €1,455.61.

The Respondent Landlord retained the deposit of €563 in this case. Under s. 12(4) of the Act, a landlord may retain a deposit if, among other reasons, at the termination of the tenancy, there are arrears of rent in excess of the deposit. That is the position in this case. The net position is thus that there are arrears of €1,455.61 minus €563, equalling €892.61. The payment of this shall be considered below.

Finding 3: The Tribunal finds that the Appellant Tenants were in breach of their obligations, in causing damage to the dwelling beyond normal wear and tear during the tenancy, in particular in respect of damage to a wall in the dwelling, along with damage to electrical items, such that the Respondent Landlord is entitled to damages of €500 in this respect.

Reasons: Under s. 16(f) of the Act, a tenant is under an obligation not to cause damage to a dwelling beyond normal wear and tear, having regard to the extent of the occupation of the dwelling and the duration of the tenancy.

Normal wear and tear cannot include matters such as smashed glass, broken electrical sockets, or holes in the wall, in particular where a dwelling is rented to two adults. While, perhaps, a hole in a plasterboard wall could be explained by a mistake, the pattern of damage in the present case shows significant damage throughout the dwelling. None of the damage to the walls, the electrical fitting or the window can be explained by normal wear and tear. As such, the Respondent Landlord has shown that these items were damaged beyond normal and tear, and that there must be loss in respect of the cost of repairing those items.

However, a need to replace furniture, in particular where that furniture is of a certain age, is to be expected during a tenancy. In the present case, there is no evidence (such as an agreed inventory, or photographs) in respect of the condition of fixtures and fittings in the dwelling at the commencement of the tenancy. The onus is on the Respondent Landlord to show that there was damage to the dwelling beyond normal wear and tear, and that he suffered loss as a result.

In the absence of any such evidence as to the condition of the furniture and other items at the commencement of the tenancy, and the limited lifespan of items such as sofas and mattresses, the Tribunal cannot make any award in the favour of the Respondent Landlord in respect of those items.

Similarly, in respect of the cleanliness and condition of the dwelling at the end of the tenancy, the Tribunal must note the manner of the termination of the tenancy, and the fact that the Appellant Tenants had no opportunity to clean the dwelling. As such, no allowance can be made for any expenses incurred in cleaning the dwelling, when the Appellant Tenants were summarily denied possession of the dwelling, as a result of the actions of the Respondent Landlord.

Further, while it is a breach of obligations for the Appellant Tenants to change the locks in the dwelling, those working on behalf of the Respondent Landlord changed the locks again to deny the Appellant Tenants occupation of the dwelling. As such, where the Respondent Landlord would thus have changed the locks at the termination of the tenancy in any event, the expense incurred in this respect cannot be seen as a loss flowing from the breach of obligations of the Appellant Tenants in changing the locks. Accordingly, no allowance is made in respect of the changing of the locks by the Appellant Tenants.

Similarly, the Respondent Landlord has claimed that the Appellant Tenants were in breach of obligations in refusing to allow access to the dwelling. However, in order to be in breach of such an obligation, the Appellant Tenants must be provided with a date and time in order to allow access to the dwelling, in order that it may be agreed in advance. The Respondent Landlord has not shown any specific requests to access the dwellings. Mr. Schaefer's evidence was that he did not receive appropriate notice of inspections or visits to the dwelling. As such, the Tribunal can only conclude that there was no breach of obligations. The onus was on the Respondent Landlord to show a breach of obligations. Beyond a bare assertion of a refusal to allow access, there is no evidence that access was refused.

While the Respondent Landlord has not provided estimates or receipts in respect of the cost of repairing the damaged window, wall or light switch, the Tribunal must estimate a minimum cost of repairing those items. Having regard to the probable need to use three separate tradespeople (in particular, a glazer, an electrician and a general handyman), and the usual minimum callout fees for such tradespersons, the Tribunal awards €500 damages in this respect. Again, the Tribunal shall assess the overall position below, in respect of payment of this sum.

Finding 4: The Tribunal finds that the Respondent Landlord was also in breach of his obligations in respect of the events leading up to the termination of the tenancy, and in particular in retaking possession of the dwelling on 20 February 2021, such that the Appellant Tenants suffered loss and are entitled to damages in the amount of €2,000.

Reasons: Under s. 12(1)(a) of the Act, a landlord is under an obligation to allow a tenant peaceful and exclusive occupation of a dwelling. Under s. 58 of the Act, a tenancy may not be terminated other than by the means provided for under Part Five of the Act. Under s. 76 of the Act, any party to a tenancy or former tenancy may refer a dispute to the Board.

In the present case, there was a dispute between the parties as to the notice of termination. There was also a dispute as to whether the Appellant Tenants remained in occupation of the dwelling. As is uncontroverted, persons working on behalf of the Respondent Landlord attempted to have another tenant take up occupation of the dwelling while the Appellant Tenants remained in occupation of the dwelling, around 12 February.

If the Respondent Landlord or his representatives had been in any doubt as to whether the Appellant Tenants remained in occupation of the dwelling, they were no doubt aware after the incident of 12 February. The Appellant Tenants could only have left those acting on the part of the Respondent Landlord in no doubt as to the fact that they were still in occupation

of the dwelling. It was not reasonable to assume that the Appellant Tenants had vacated, in particular in light of the incident on 12 February.

Accordingly, notwithstanding the fact that a valid notice of termination had been served, the Respondent Landlord's remedy at that stage was to bring an application to the Board for dispute resolution. His remedy was not to unilaterally and summarily evict the Appellant Tenants. If the Respondent Landlord wanted to enforce the notice of termination, the appropriate way to do so was via the means provided for under the Act, in particular in bringing a dispute to the Board and having that enforced.

Instead, those working on behalf of the Respondent Landlord entered the dwelling and summarily evicted the Appellant Tenants. This was a breach of the Respondent Landlord's obligations under s. 12(1)(a) of the Act and a termination other than in accordance with the Act. While the Respondent Landlord may have had an "understanding" that the Appellant Tenants were residing elsewhere, he should have been aware this was incorrect after the incident of 12 February, when it was made clear that the Appellant Tenants were still residing in the dwelling. The Respondent Landlord appears to have assumed that the Appellant Tenants had vacated the dwelling; there is no basis for such an assumption.

As such, the actions of those working on behalf of the Respondent Landlord, in entering the dwelling, changing locks, and boarding windows, must be seen as a severe breach of obligations on the part of the Respondent Landlord. The Respondent Landlord is bound by the actions of those working on his behalf, regardless of his exact level of knowledge in this respect.

The next question is to determine the level of loss suffered by the Appellant Tenants as a result. The Tribunal accepts that some belongings were lost, including items such as a laptop cable; this is understandable, given the summary nature of the eviction in this case. To expect any tenant to fully itemise all items lost in such circumstances would be to set too high a bar on a tenant, where the Appellant Tenants in this case were summarily evicted.

The Tribunal must also consider, however, the fact that the Appellant Tenants had been served with a valid notice of termination and the precarious nature of their right to reside in the dwelling, pending any dispute being brought. The Tribunal must also consider the fact that the Appellant Tenants were able to bring a number of their belongings from the dwelling to one of their parents' houses. Similarly, while there is some evidence that the Appellant Tenants presented themselves to homeless services, there is minimal evidence as to the nature of the inconvenience suffered as a result of the actions in this case.

However, the Tribunal must consider that any summary eviction will cause considerable distress to any person on the receiving end of such an action. The Tribunal also accepts that some items belonging to the Appellant Tenants went missing as a result. The maximum jurisdiction of the Tribunal in respect of such disputes is €20,000. In this case, there are some factors tending towards a higher figure of damages, including the fact that the termination happened a week after the Appellant Tenants had made it clear they were still in occupation of the dwelling, such that the eviction must have caused them considerable distress. However, against that, minimising the amount of damages to be awarded, the Tribunal must consider the fact that the Appellant Tenants were aware their right to remain in the dwelling was precarious and in particular in light of the absence of evidence as to distress caused in sourcing alternative accommodation or otherwise suffering loss as a result of the actions of the Respondent Landlord in this case. These issues must minimise

the damages to be awarded. Damages can thus be awarded for a small amount of lost personal belongings, and for the actual distress caused by the nature of the eviction on the day in question, but no damages can be awarded for any ongoing loss. As such, any damages must be towards the lower end of the Tribunal's jurisdiction.

Having consider the nature of the distress caused and the manner of the eviction in this case, the Tribunal is thus satisfied that the Appellant Tenants are entitled to damages in the amount of €2,000.

For the avoidance of any doubt, the Tribunal is not satisfied that there was any other breach of obligations by the Respondent Landlord. While the Appellant Tenants raised issues surrounding post and surrounding energy bills, and a delay in repairs to certain items, he has not shown that there was any breach by the Respondent Landlord. The claims are little more than speculative. There is no objective evidence to show any interference with the electrical supply or other reason for high costs. There is no evidence showing complaints about items needing replaced or repaired, such as emails or texts between the parties asking for matters to be repaired, and accordingly the Tribunal cannot make any award in respect of any other alleged breaches of obligation. Further, while the Appellant Tenant contended that the water for the dwelling was cut off, there is no indication that this was carried out on behalf of the Respondent Landlord or that it was carried out with any ulterior motive. As indicated by the Appellant Tenant, he had disagreements with occupants of other apartments in the dwelling; while the Tribunal cannot speculate, ultimately there are a number of people who could have disconnected the water supply, and the Appellant Tenant has not shown that it was carried out by anyone associated with the Respondent Landlord.

Accordingly, the overall position is as follows: (a) the Appellant Tenants must pay €892.61 in respect of rent arrears, having made allowance for the retained deposit, (b) the Appellant Tenants must also pay €500 in respect of damage to the dwelling beyond normal wear and tear, and (c) the Respondent Landlord must pay the sum of €2,000 in damages for breach of his obligations under the Act. This gives a net position of €607.39 that must be paid by the Respondent Landlord to the Appellant Tenants.

Given the size of this sum and the right of the Appellant Tenants to a prompt remedy, the Tribunal is satisfied that this sum should be paid by way of one payment, to either Appellant Tenant, within 21 days of the date of issue of the determination order of the Board in this case. Any issues between the Appellant Tenants as to their respective apportionment of liability or entitlement to damages are a matter between them and not for the Tribunal.

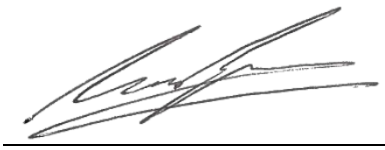
8. Determination:

In the matter of Gillian Curran and Harald Schaefer, Appellant Tenants, and James Treacy, Respondent Landlord, the Tribunal, in accordance with s. 108(1) of the Residential Tenancies Act 2004, determines that:

> The Respondent Landlord shall pay the total sum of €607.39 to the Appellant Tenants, by way of one single payment to either Appellant Tenant, within 21 days of the date of issue of the determination order of the Board, being damages of €2,000 for breaches of landlord's obligations, having deducted €500 in respect of damages due for breaches of the Appellant Tenants' obligations and damage to the dwelling beyond wear and tear, and having also deducted €892.61 in respect of rent arrears, the arrears being €1,455.61 but the Respondent Landlord having justifiably retained the deposit of €563, in respect

of the tenancy of the dwelling at Apartment 13, Penrose Court, Penrose Lane, Waterford City, Co. Waterford, X91K504.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 25/11/2022.

Signed: 

Eoin Byrne, Chairperson
For and on behalf of the Tribunal.