

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0722-005564 / Case Ref No: 0322-76126

Appellant Landlord:	Silenceford Limited
Respondent Tenant:	Zoe Woods
Address of Rented Dwelling:	17 The Cove, Aghatubrid, Glandore, Co. Cork, P81VK06
Tribunal:	Anne Leech (Chairperson) Healy Hynes, Karen Ruddy
Venue:	Virtual
Date & time of Hearing:	30 August 2022 at 2:30 p.m.
Attendees:	For the Appellant Landlord: Tom Scriven and Declan Cronin, authorised representatives For the Respondent Tenant: Zoe Woods and her representative, Joe Dunne of Threshold
In attendance:	RTB appointed stenographer/logger

1. Background:

On 16th March 2022 the Tenant made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 78 of the Act. The matter was referred to an Adjudication which took place on 25th May 2022. The Adjudicator determined that:

"1. The Respondent Landlord shall pay the total sum of €7,550.00 to the Applicant Tenant within 28 days of the date of issue of the Determination Order, being damages of €6,000.00 for the consequences of unlawfully terminating the Applicant Tenant's tenancy of the dwelling at 17 The Cove, Aghatubrid, Glandore, Cork, P81 VK06, in addition to €1,550.00 towards the Applicant Tenant out of pocket expenses.

2. The Respondent Landlord shall pay the total sum of €1,000.00 to the Applicant Tenant within 28 days of the date of issue of the Determination Order, being damages for breach of landlord obligations pursuant to section 12(1)(b) of the Act by failing to maintain the dwelling in respect of the above tenancy to include the €640.00 the Applicant Tenant spent maintaining the dwelling and the €200.00 worth of damage to her property."

Subsequently an appeal was received on behalf of the Landlord.

The RTB constituted a Tenancy Tribunal and appointed Healy Hynes, Karen Ruddy, Anne Leech as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Anne Leech to be the chairperson of the Tribunal ("the Chairperson").

On 2nd August 2022 the Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the virtual hearing.

On 30th August 2022 the Tribunal convened a Virtual hearing at 14.30pm on Microsoft Teams.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case files.

3. Documents Submitted at the Hearing Included:

None.

Prior to the hearing: 2 Tribunal case files.

4. Procedure:

The Chairperson asked the parties at the virtual hearing of the Tribunal to identify themselves and to identify in what capacity they were present at the Virtual Hearing. 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, she outlined that the Tribunal was a formal procedure but that it would be held in as informal a manner as possible, that the Appellant Landlord would be invited to present its case first, that there would be an opportunity for cross-examination by/on behalf of the Respondent Tenant who would then be invited to present her case and that there would then be an opportunity for the Appellant Landlord to cross-examine her. The Chairperson explained that following this, both parties would be given an opportunity to make final submissions. She informed the parties that the hearing was a de novo hearing.

The Chairperson stressed that all evidence would be taken on affirmation and would be recorded by the official stenographer and she informed 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 RTB 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 informed 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 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 exit the virtual hearing and allow them to proceed with their discussions. The Chairperson checked and it was confirmed for her that the representatives for the Appellant Landlord had the authority to give evidence on behalf.

The parties intending to give evidence then made an Affirmation.

5. Submissions of the Parties:

Summary of submissions of the parties:

For the Appellant Landlord: Tom Scriven ("first named representative"):

Breach of Landlord obligations:

The first named representative gave evidence that he informed the Respondent Tenant verbally and in writing on 20th October 2021 he wanted to inspect the second dwelling as he said he had heard from other tenants in the apartment block that there was an intolerable smell in the second dwelling and that the dog of the Respondent Tenant had destroyed the place. He gave evidence that he received no response to his text and email. He continued that in January 2022 the Respondent Tenant informed him that neither the electrics nor the plumbing were working in the second dwelling. He said he immediately arranged for an electrician to attend the second dwelling as the electrician was working for him on a nearby development. He claimed the electric sockets were checked and it was discovered the problem was that bulbs were not in lamps and light fittings. He said his electrician worked this out by getting a bulb from his van and putting it into one of the fittings.

In respect of the plumbing, the first named representative gave evidence that there was water under the floor boards. He claimed the origin of the problem rested with the Respondent Tenant as he claimed the second dwelling was in perfect condition before she took occupancy of it. He said he was alarmed when the Respondent Tenant told him that previously she had engaged a man with no qualifications to carry out a repair to the shower. He claimed the repair work was illegal with the plumbing going directly into a hot water tank. He said there was no need for that work as there was another shower which she could have used. He said he arranged for his plumber to inspect the second dwelling which he said was uninhabitable due to the water under the floor boards. He said he could not believe the Respondent Tenant had let the situation get that far. He gave evidence that he asked her to pay for the remedial work. He referred to a number of Whatsapp messages between him and the Respondent Tenant on the matter. He said that he had carried out no previous inspections of the second dwelling and during the tenancy he quickly arranged for the electric cooker to be repaired at the request of the Respondent Tenant.

Termination of Tenancy:

The first named representative gave evidence that on 29th January 2022 (12.43pm) he gave the Respondent 30 days notice terminating the tenancy by way of a Whatsapp message. He confirmed there was no other written notice to terminate. He gave evidence that he thought this would "frighten her into submission". When questioned by the Tribunal as to what he meant by this, the first named representative responded that he wanted her out of the second dwelling and not to return. He was referred by the Tribunal to his subsequent Whatsapp messages to the Respondent Tenant (RTB case file 1 pages 5) regarding termination of the tenancy. He agreed he had repeated his demand on the same day at 13.06pm, 13.08pm and at 13.11pm (when he texted that he would follow up with a written termination), which he confirmed to the Tribunal that he did not do. He said he had wanted her out of the dwelling as she had caused the water damage and would not pay to repair it.

The first named representative continued his evidence that the Respondent Tenant left the second dwelling at the end of February which was beyond the 30 days notice he had given when he informed her he was terminating the tenancy. He said she moved somewhere

local and he tried to contact her in early March 2022 to have her remove her belongings from the second dwelling. He said he also sent her a Whatsapp message on 2nd March 2022 about this. He said he needed the second dwelling totally empty for the workmen. He said that at the end of March 2022 he cleared out all of her remaining possessions and put them in a skip which was taken away by Bantry Skip Hire. He said he had nothing belonging to her. He said the workmen started at the end of March/early April 2022. He said the plumbing was fixed and the floor was dried out all of which was completed in June/July 2022. He said the second dwelling was not decorated as he said he was selling it. He said he continued to retain the Respondent Tenant's security deposit of €950.

The second named representative gave evidence at this stage. He confirmed that the Respondent had moved into the second dwelling in December 2020 and that the written lease was amended accordingly but not the terms and conditions of it which he said remained the same. He said it became necessary for the Respondent Tenant to leave the second dwelling so that repair work could be carried out to it with a view to her returning when the remedial work was finished to resume her tenancy. He said he confirmed this in writing to her by letter dated 11th February 2022 (RTB case file 1 page 14). He said that she had had heated discussions with the first named representative who had been frustrated by the situation and had sent the Whatsapp messages of 29th January 2022. The second named representative said he gave her the letter of 11th February 2022 to reassure her of her tenancy. He said that on completion of the plumbing repair work it would also be necessary to let the floor dry out which could take one month to six weeks with a good de-humidifier. He claimed there were no other properties in the apartment complex available to rent. He said they could find no alternative accommodation for her. He said they did not receive HAP when the Respondent Tenant moved out of the second dwelling as she had cancelled it.

When queried by the Tribunal about his letter to the Respondent Tenant of 11th February 2022, the second named representative gave evidence that the offer to re-enter to continue her lease of the second dwelling still stood even though it was for sale. He said notices to terminate other dwellings in the apartment complex had not yet been served. He said the apartment complex was put up for sale in January 2022. He said she had not been evicted. When asked by the Tribunal if she had been contacted to resume her tenancy the second named representative said they were not able to contact her as she had moved out of the area and was now living in Scotland. He claimed she knew the works had been completed and that she had seen them. When asked by the Tribunal to prove this the second named representative was unable to do this. He said that as she had stopped communicating with them when she moved to Scotland he assumed she was no longer interested in returning to live in the dwelling. When questioned as to why the second dwelling was available for re-occupation if the décor had not yet been completed, he responded that it would take approximately two days for the décor work to be done.

The second named representative was questioned further by the Tribunal about his letter of 11th February 2022 and his response to emails sent to him by the Respondent Tenant in early March 2022 regarding the storage of her belongings (RTB file 1 pages 17 to 22). He said that he had informed her to deal with the first named representative on the matter as the latter was her point of contact.

When questioned again by the Tribunal regarding his actions in terminating the tenancy as set out in his evidence, the first named representative said the Respondent Tenant had not been evicted, that the lease was ongoing and that the offer to resume the tenancy still stood

even though the apartment complex was for sale. He claimed he was unable to contact her when she was in Scotland, even by email, to tell her the works were finished. He said he had not returned her security deposit as she was a sitting Tenant. He said the sale of the apartment complex was imminent, that some bidders had been excluded and that it was now down to two bidders.

When questioned by the Respondent Tenant's representative from Threshold as to how the offer to resume the tenancy was viable if the apartment complex was close to being sold, the first named representative responded that he felt the Tribunal was telling him she had to be let back in under the law. The Chairperson then informed him that it was for the Tribunal to decide the case based on the facts and the law.

Respondent Tenant:

The Respondent Tenant gave evidence that she had initially rented Apartment no. 17 The Cove and moved into it in June 2020. She said that in December 2020 she moved into another apartment of the Respondent Landlord at a corner of the apartment complex. She said she was not aware, until she heard the evidence of the second named representative, that the written lease had been amended. She said she never received a copy of it.

The Respondent Tenant gave evidence that in or about March 2021 she telephoned the first named representative to notify him that water had accumulated under the floor of the second dwelling. She said in response the first named representative shouted at her, blamed her for the problem and told her to sort it out. She said she asked a man (who had previously assisted her with something for the second dwelling) to have a look at it. She said the man found damp under the shower base, a hole in the waste pipe and extensive black mould. She said he repaired the problem and some other minor matters (broken cooker, hatch repair and door seal replacement) at a cost of €640. She said the water repair was fine for a few months and the floor seemed to be drying out. However, the problem returned and the Respondent Tenant said she contacted the first named representative who came to inspect the problem and informed her again that she was at fault. He said he would send a plumber to look at the problem. She said this was sometime in October 2021. She said she heard nothing further from the first named representative about when the plumber would attend. She said that she sent him a Whatsapp message in November 2021 asking for advance notice of the plumber and she received no response. She said she got the name of a plumber from some neighbours and Peter Dorrington of West Cork Plumbing and Heating came to do an inspection of the second dwelling in late January 2022. She said she sent a Whatsapp message to the first named representative on 29th January 2022 to inform him that she had given his email address to the plumber. She said the first named representative's response was that she was responsible as she had broken it. She said he subsequently sent her a Whatsapp message giving her 30 days notice to vacate the second dwelling.

The Respondent Tenant referred to Mr. Dorrington's report at page 9 of Tribunal case file 1 which he emailed to the first named representative on 30th January 2022. Mr. Dorrington said in his report he had found a pipe on the hot water cylinder that had corroded and was constantly leaking on to the floor. He stated it was not the fault of the Respondent Tenant and that the problem was possibly due to the quality of the cold water supply or a defect in the materials of the cylinder. He said damage of mould and dampness caused by the problem made parts of the second dwelling uninhabitable.

The Respondent Tenant gave evidence that the second named representative contacted her about arranging a plumber to fix the problem which would necessitate her leaving the second dwelling. She said she had wanted to stay in it while the remedial work was to be done, however she said her young son was sick and on an inhaler because of the mould and damp. She said she formed the impression from the second named representative that he was going to find her alternative accommodation. When questioned by the Tribunal about the Whatsapp messages from the first named representative on 29th January 2022 purporting to terminate the tenancy, the Respondent Tenant replied that she felt from his messages the tenancy was over. She said she felt re-assured that it was not when she received the letter dated 11th February 2022 from the second named representative. She gave evidence that no alternative accommodation was provided for her and her young son by or on behalf of the Appellant Landlord. She said she left the second dwelling in late February 2022 and stayed temporarily with some friends in the locality. She said she left some of her possessions in the second dwelling on the understanding that she would be returning to reside in it. She said she also put some possessions into storage and only took what was necessary to stay in the temporary accommodation. She said the second named representative would not tell her when she might be able to move back into the second dwelling on completion of the remedial works and that ultimately he told her to deal with the first named representative. She referred to the Whatsapp messages sent to her by the first named representative between 2nd and 8th March 2022 regarding the termination of the tenancy and the claim that she was responsible for the damage. She gave evidence that she could not see any work being done to the second dwelling when she was based in her temporary accommodation. She said she thought then that she might never be returning to live in it. She said that at this time a temporary work opportunity came up in Scotland with accommodation and she said she went there with her child and essential possessions in mid-March 2022. She said the work did not materialise and that she has and continues to reside in Scotland with her child. She said it was her wish to return to live in West Cork as she said she had some connections with the area. She said she did not know what work had been carried out to the second dwelling until she heard the evidence given by the Appellant Landlord's representatives. She said her life had been disrupted and her son was sick, all due to the actions on behalf of the Appellant Landlord. When questioned by the Tribunal, the Respondent Tenant said that her email address and contact telephone number had not changed when she left Ireland so there was no reason why she was uncontactable as claimed by the representatives of the Appellant Landlord.

The Respondent Tenant said she wanted damages to cover ongoing storage of her possessions in Ireland (€130 per month), temporary accommodation in Scotland for four months @ €405 per month (which is now paid by social welfare), recoup of the €640 she had paid to the first man who had discovered the damage in the second dwelling and had carried out other minor repairs, €150 for removal costs when she left the second dwelling, €200 she had paid for temporary accommodation, €1,000 for high electricity and heating costs incurred due to the problem in the second dwelling and €2,500 which she estimated was the depreciated value of her possessions in storage which she said would need to be replaced.

In closing submissions, the representatives of the Appellant Landlord conceded that the damage was not the fault nor responsibility of the Respondent Tenant.

In closing submissions, the representative for the Respondent Tenant said that the Appellant Landlord had failed to maintain the second dwelling which was a breach of

Section 12(1)(b) of the Residential Tenancies Act 2004 as amended, as well as being a breach of S. 4 & 5 of the Housing Regulations 2019. He submitted the tenancy was invalidly terminated and the Respondent Tenant was entitled to damages for an illegal eviction.

6. Matters Agreed Between the Parties:

- The address of the first rented dwelling was 17 The Cove, Aghatubrid, Glandore, Co. Cork, P81 VK06, the lease of which commenced on 1st April 2020 with the Tenant having moved into it in June 2020.
- The rent was €950 per month.
- A security deposit of €950 was paid by the Respondent Tenant at the commencement of the tenancy which is held by the Appellant Landlord.
- In December 2020 the Respondent Tenant moved out of the first rented dwelling and moved into a second dwelling which was a corner apartment in the same apartment block known by the Respondent Tenant as 18B The Cove and called 19 The Cove (“the second dwelling”) by the Appellant Landlord.
- The tenancy continued in the second dwelling and the same rent was payable.
- The Respondent Tenant no longer resides in the second dwelling, having moved out in late February 2022, pursuant to a notice of termination she received from the Appellant Landlord.
- The issues before this Tribunal concern the second dwelling, which issues are the validity of a notice of termination dated 29th January 2022, unlawful termination of tenancy (illegal eviction) and breach of Landlord obligations to maintain the dwelling.

7. Findings and Reasons:

Having considered the documentation of the parties contained in the RTB case files and having considered the evidence presented to it by them, the Tribunal's findings and reasons therefor are set out hereunder:

Finding 1: The Tribunal finds that the Respondent Tenant was illegally evicted from the second dwelling in late February 2022 and awards her damages of €7,000.00 from the Appellant Landlord.

Reasons:

Section 33 of the 2004 Act provides that a tenancy which has been in existence for in excess of six months, known as a Part 4 tenancy, may not be terminated by a Landlord save in accordance with the provisions of S.34 of the 2004 Act. The process of termination commences by the service of a valid Notice of Termination on a Tenant. S.62(1) of the 2004 Act sets out the information that must be contained in a Notice of Termination for it to be valid. Pursuant to S.62, a valid Notice of Termination must: be in writing; be signed by the Landlord/his Agent; specify the date of service of it; state the reason for the termination; specify the termination date; state that any issue as to the validity of the notice or the right of the Landlord to serve it must be referred to the Board under Part 6 within 28 days from the date of receipt of it.

The Tenancy in this case commenced in April 2020 and the Respondent Tenant moved into the first rented dwelling in June 2020. Even though she moved into the second dwelling in December 2020, it was her understanding that the tenancy continued on the same basis and the second named representative of the Appellant Landlord confirmed this in his evidence. Therefore, as the tenancy of the second dwelling was in excess of six months, it could only be terminated pursuant to the procedure set out above.

From the evidence, the first named representative of the Appellant Landlord purported to terminate the tenancy by his Whatsapp message of 29th January 2022 (12.43pm) giving her 30 days notice. In subsequent Whatsapp messages to the Respondent Tenant he repeated his demand on the same day at 13.06pm, 13.08pm and at 13.11pm. He texted that he would follow up with a written termination which he confirmed to the Tribunal he did not do. He said he had wanted her out of the second dwelling as she had caused the water damage and would not pay to repair it.

The Tribunal finds that the purported termination of the tenancy was invalid from the start and unlawful as it did not follow the statutory procedure set out above.

The Tribunal notes and accepts the evidence of the Respondent Tenant that as a consequence of the unlawful termination of the tenancy she and her young son left the second dwelling in late February 2022 and moved into local temporary accommodation with friends which she had arranged. Her position at that time was precarious in that she did not know if or when she was coming back to live in the second dwelling. She wanted certainty for her situation and for her personal effects and furniture. From the evidence, it was clear she did not have this certainty as she was informed in writing on 11th February 2022 by the second named representative that she would be permitted to return, while at the same time the first named representative had informed her the tenancy was terminated. She was given no subsequent clarity on her position by the second named representative at the end of February/early March 2022 as he divested himself from the situation by directing her to communicate with the first named representative whom he knew wanted her out of the second dwelling. Her evidence was that while in the temporary accommodation she could not see any work being done to the second dwelling. She thought then that she might never be returning to live in it and she took a temporary work opportunity in Scotland with accommodation where she went with her child and essential possessions in mid-March 2022 and where she remains even though the work opportunity did not ultimately materialise.

The Tribunal does not accept the evidence of the two representatives that they tried to make contact with the Respondent Tenant about asking her to return to the second dwelling which they claim had been fixed. They produced no evidence of this, with the second named representative making a baseless claim that the Respondent Tenant had seen the completed works. The Tribunal does not accept the evidence of the two representatives that the lease is still in being and that the second dwelling is ready for re-occupation by the Respondent Tenant. This does not seem credible in circumstances where they gave evidence that the apartment complex containing the second dwelling is for sale with termination notices to be served on the other tenants and, at the same time, the décor of the second dwelling has not been completed.

The Tribunal notes the venom of the first named representative in his oral evidence and in particular his Whatsapp messages in March 2022 regarding the Respondent Tenant's possessions with his threats to pursue her for damages. His evidence that he thought his Whatsapp termination would "frighten her into submission" was threatening and

aggressive. There was also venom in his Whatsapp messages when he purported to terminate the tenancy on 29th January 2022 and blamed her for the problems of the second dwelling. All the communications took place even though the Appellant Landlord's representatives had put the apartment complex (containing the second dwelling) up for sale in January 2022.

In all the circumstances, the behaviour and treatment of the Respondent Tenant was dishonest and misleading, egregious and inhumane. She and her young son were left with no home, no security of accommodation, only a few possessions and they subsequently left Ireland.

The Tribunal accepts the evidence of the Respondent Tenant that she is financially at a loss due to the unlawful actions by/on behalf of the Appellant Landlord. The Tribunal finds that she is also at a loss of the benefit of four years accommodation by virtue of her Part 4 tenancy. While the Respondent Tenant's claims are not specifically vouched by her, in all the circumstances of the case, the Tribunal awards her:

- €150 Van hire to remove belongings from the second dwelling;
- €100 for local temporary accommodation to the second dwelling;
- €1,620 for temporary accommodation over 4 months @ €405;
- €780 for storage of possessions to date for 6 months @ €130;
- €350 for electricity bills;
- €nil for alleged damage to stored possessions as it is impossible to calculate;
- €4,000 for the loss of the remaining 4 years of the Part 4 tenancy to which the Respondent Tenant was entitled by law to have, which would have given her security of accommodation during that time.

The total to be paid by the Appellant Landlord to the Respondent Tenant is €7,000.00.

Moreover, as a consequence of the unlawful termination of the tenancy, the Tribunal directs the Appellant Landlord refund to the Respondent Tenant her security deposit of €950.

Finding 2: The Tribunal finds that the Appellant Landlord was in breach of obligation pursuant to Section 12 (1)(b) of the Residential Tenancies Act 2004 to carry out repairs and to maintain the second dwelling.

Reasons:

A Landlord is obliged by S.12 (1)(b) of the Residential Tenancies Act 2004 to carry out repairs to a rented dwelling. The Tribunal is satisfied from the oral and documentary evidence that the Respondent Tenant's claim against the Appellant Landlord has been proven. It is clear to the Tribunal that the first named representative of Appellant Landlord did not know, or even if he did know, did not comprehend nor seem to care that the Appellant Landlord had a duty to carry out repairs to the second dwelling. He adopted the position of blaming the Respondent Tenant for the water damage without ascertaining the origins of it while at the same time he suggested that she should pay for repairs. This happened on two occasions and on the first occasion in or about March 2021 he did not attend the second dwelling and he did not send a plumber to investigate or repair. As a consequence, the Respondent Tenant herself endeavoured to remedy the matter at a financial cost to her. This was a clear breach of the Landlord's obligation to carry out repairs. On the second occasion in October 2021 the first named Representative attended

the dwelling however he blamed the Respondent Tenant who yet again arranged for the attendance of a plumber which resulted in her ultimately having to leave the second dwelling. The two representatives of the Appellant Landlord conceded at the conclusion of the Tribunal hearing that the damage in the second dwelling was not the fault nor responsibility of the Respondent Tenant. This concession was made approximately eighteen months from when the matter first arose and in that period the Respondent Tenant paid €640 to a third party to effect repairs and lost the occupancy of the second dwelling with the attendant consequences as set out in her evidence which the Tribunal accepts and which it notes was not challenged by the Appellant Landlord's representatives. The Tribunal awards the Respondent Tenant the €640 she paid for the repairs in March 2021 together with a sum of €1,800 for breach of the Appellant Landlord's obligations to repair.

8. Determination:

In the matter of Silenceford Limited [Appellant Landlord] and Zoe Woods [Respondent Tenant], the Tribunal, in accordance with Section 108 of the Residential Tenancies Act 2004 as amended, determines that:

The Appellant Landlord shall pay the total sum of €10,390 to the Respondent Tenant within 28 days of the date of issue of the Determination Order comprising:

- damages of €7,000.00 for the consequences of unlawfully terminating the Respondent Tenant's tenancy of the dwelling at 18B/19 The Cove, Aghatubrid, Glandore, Co. Cork;
- damages of €2,440.00 for breach of landlord obligations pursuant to section 12(1)(b) of the Act in failing to maintain the second dwelling in the above tenancy;
- refund of the Respondent Tenant's security deposit of €950 for the tenancy.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 27/09/2022.

Signed:



Anne Leech, Chairperson

For and on behalf of the Tribunal.