

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0722-005589 / Case Ref No: 1121-73980

Appellant Landlord:	Claire O'Sullivan
Respondent Tenant:	Jennifer Matthews
Address of Rented Dwelling:	Dawsons Cottage, Booly, Ballymack, Cuffesgrange, Kilkenny, R95K7F9
Tribunal:	Helen-Claire O'Hanlon (Chairperson) Michelle O' Gorman, Hugh Markey
Venue:	Oscar Wilde Suite
Date & time of Hearing:	05 December 2022 at 11:00am
Attendees:	RTB Appointed Recording Technician
In Attendance:	For the Appellant Landlord: Liam Cunningham (Representative for Appellant Landlord) (Day 1 and 2) Anja Norman (Witness) (Day 2 only) For the Respondent Tenant: Jennifer Matthews

1. Background:

On the 17th of November 2021 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 the 12th of May 2022. The Adjudicator determined that: In the matter of Jennifer Matthews [Applicant Tenant] and Claire O'Sullivan [Respondent Landlord], the Residential Tenancies Board, in accordance with Section 97 of the Residential Tenancies Act, 2004, as amended, determines that: 1. The Notice of Termination with an unspecified date of service, served by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of the dwelling at Dawsons Cottage, Booly, Cuffesgrange, Kilkenny is invalid. 2. The Respondent Landlord shall pay the total sum of €700 to the Applicant Tenant within 21 days of the date of issue of the Determination Order, being damages of €700 for the consequences of unlawfully terminating the Applicant Tenant's tenancy of the above dwelling. 3. The Respondent Landlord shall pay the total sum of €665 to the Applicant Tenant within 21 days of the date of issue of the Determination Order, being damages of €615 for the consequences of breach of landlord obligations in respect of the standard and maintenance of the dwelling and €50 for the consequences of breach of landlord obligation to vent the extractor fan. 4. The Respondent Landlord shall pay the total sum of €368.27 to the Applicant Tenant within 21 days of the date of issue of the Determination Order, being over payment of rent. 5. The Respondent Landlord shall refund the security deposit of €930 to the Applicant Tenant within 21 days of the date of issue of

the Determination Order, less any amounts properly withheld in accordance with the provisions of the Act. Subsequently a valid appeal was received from the Landlord. The RTB constituted a Tenancy Tribunal and appointed Michelle O' Gorman, Hugh Markey and Helen-Claire O'Hanlon as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Helen-Claire O'Hanlon to be the chairperson of the Tribunal ("the Chairperson"). On 23rd 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 hearing. On the 15th of September 2022, the Tribunal convened a hearing from the Oscar Wilde Suite, Clayton Whites Hotel, Abbey Street, Ferrybank South, Wexford. The Tribunal members and the representative of the Appellant Landlord were present in person, and the Respondent Tenant and the Recording Technician attended remotely by means of electronic communications technology. The matter did not conclude on that date and was adjourned to the 5th of December 2022. Once again on that date the Tribunal convened a hearing from the Oscar Wilde Suite, Clayton Whites Hotel, Abbey Street, Ferrybank South, Wexford.

2. Documents Submitted Prior to the Hearing Included:

RTB Files

3. Documents Submitted at the Hearing Included:

Correspondence from the Appellant Landlord.

4. Procedure:

On the first day of the hearing, the 15th of September 2022, the Chairperson asked the participants to identify themselves and to say in what capacity they were taking part in the Tribunal. The Landlord's representative, Mr Cunningham, attended in person. The Tenant and the recording technician attended remotely. Once it had been established that the parties could all see and hear each other, the Chairperson outlined some preliminary procedural matters. The Chairperson informed the participants that Tribunal hearings were public hearings. The Chairperson confirmed that the parties had received the relevant papers from the RTB and in particular that they had received, read and understood the "Tribunal Procedures" document. The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the recording technician present. The Chairperson reminded participants that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or up to 6 months imprisonment or both. The Chairperson explained the procedure which would be followed; that the hearing was a de novo hearing; 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, being the Appellant Landlord, would be invited to present their case through the Landlord's representative Mr Cunningham. The Chairperson explained that there would then be opportunity for cross-examination by the Respondent Tenant and then the Respondent Tenant would be invited to present her case and there would be an opportunity for cross-examination on behalf of the Landlord. The Chairperson explained that the Tribunal might

ask questions from time to time and that both parties would then be invited to make a final submission. 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. As such, the Chairperson explained that the Tribunal would make the final determination on issues of fact. The parties giving evidence were thereafter affirmed and the Tribunal proceeded to hear the evidence. The Landlord's representative, Mr Cunningham, gave his evidence and was cross-examined by the Tenant. At that stage, having heard extensive evidence, the Tribunal hearing was adjourned as it was apparent that the hearing would not be concluded within the allotted period of time on that day. The Tribunal hearing was re-convened on the 5th of December 2022. The RTB had written to the parties in the meantime requesting that the parties would attend in person on the adjourned date in order to ensure that the matter would conclude on that date. The Tenant contacted the RTB and outlined reasons why she was not in a position to attend and indicated her wish to attend remotely. The Tribunal was satisfied that the reasons were valid and convened a hearing once again from Clayton Whyte's Hotel in Wexford, with a facility for the Respondent Tenant to attend remotely. On the adjourned date of the 5th of December 2022, the Tribunal members and the recording technician were present in person. The Landlord's representative, Mr Cunningham, also attended in person together with a witness. The Tenant attended remotely. The Tribunal confirmed that the audio-visual equipment was working correctly and that all parties would be able to see and hear the Tribunal and each other. When the Tribunal hearing was opened, the Landlord's representative, Mr Cunningham, approached the Tribunal and stated that he was making an application to have the matter "struck out" on the basis that the Tenant was not in attendance in person. The Tribunal asked him to return to his seat and to make any application he wished the Tribunal to consider. Mr Cunningham submitted a letter from the Landlord and said that he was not participating any further in the Tribunal and reiterated his assertion that the matter should be "struck out". Mr Cunningham and the witness who had accompanied him then left. As this was the Landlord's appeal, and the Landlord's representative had left, the Tribunal had no option at that stage but to deem the appeal abandoned. The Tenant was notified and the hearing was concluded.

5. Submissions of the Parties:

As the Appellant Landlord's Representative refused to participate in the Tribunal hearing on the adjourned date, and left the hearing prior to the conclusion of the evidence, the Tribunal was not in a position to consider submissions. The application to the Tribunal was deemed abandoned, and no submissions were made by or on behalf of the Respondent Tenant.

6. Matters Agreed Between the Parties

None.

7. Findings and Reasons:

Finding No 1: The Tribunal finds that the Appellant Landlord's appeal is abandoned and the decision of the Adjudicator therefore stands as the determination of this dispute.

Reasons: Pursuant to the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020, designated State Bodies may conduct remote hearings. Section 31 of the Act provides that: 31. (1) Notwithstanding anything contained in the enactment concerned, but subject to subsections (2) and (5), a provision of an enactment relating to the holding by a designated body of a hearing shall apply subject to the following modifications and any other necessary modifications: (a) a reference to the holding of a hearing shall be construed as a reference to the holding of such a hearing by remote hearing; (b) a reference to a person being required to attend in person before the designated body shall be construed as a reference to the person being required to participate by remote hearing in a hearing; (c) a reference to a person being required to produce a document to a designated body shall be construed as a reference to the person being required to send by post, transmit by electronic means or otherwise deliver the document to the designated body; (d) the designated body shall be deemed to have the power to make such arrangements, and to adopt such practice and procedures, as are necessary to enable the conduct of a hearing by remote hearing. (2) Subsection (1) shall not apply in respect of a particular hearing where the designated body concerned, of its own volition, or following the making of representations by a person concerned, is of the opinion that the application of the subsection to the hearing would be unfair to the person, or would otherwise be contrary to the interests of justice. Subsection (6) of Section 31 provides a number of definitions including that: "remote hearing" means a hearing in which— (a) the participants are not all in the one place, and (b) one or more of the participants participate in the hearing by means of electronic communications technology. Subsection (3) of Section 31 provides that a relevant Minister may, by order, designate a body for the purposes of Section 31 of the Act of 2020. The Residential Tenancies Board was designated as a "designated body" for the purpose of the 2020 Act pursuant to the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 31) Order 2020 which provides at Section 2: "(2) The following bodies are, for the purposes of section 31 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (No. 13 of 2020), designated and may hold hearings before it by remote hearing: ... The Residential Tenancies Board, established under section 150 of the Residential Tenancies Act 2004 (No. 27 of 2004), as re-named under section 13 of the Residential Tenancies (Amendment) Act 2015 (No. 42 of 2015);" The Tribunal is satisfied that on the first day of the hearing the Appellant Landlord's representative was able to see and hear all persons who were speaking, was able to give his evidence, was heard by the Respondent Tenant, was cross examined by the Respondent Tenant, was able to answer questions in cross-examination and his answers were heard by all parties. The Tribunal is satisfied that there was no unfairness to any of the parties and it was not contrary to the interests of justice to proceed in this way. The Landlord's representative, Mr Cunningham, refused to participate in the hearing on the adjourned date because all parties were not present in person. However, he did not identify any unfairness or prejudice arising from the remote attendance by the Tenant. He had been able to give his evidence, and to hear and answer the Tenant's questions in cross examination on the first date. The Tribunal is cognisant of the entitlement of the Residential Tenancies Board to

make such arrangements, and to adopt such practice and procedures, as are necessary to enable the conduct of a hearing by way of a remote hearing pursuant to Section 31(1)(d) of the Act. Mr Cunningham attended on the first date but he did not wait on the second date to hear the evidence of the Respondent Tenant, to cross examine her, or to make or hear closing submissions to the Tribunal. He simply refused to participate further and left the hearing room. He also submitted a letter from the Appellant Landlord stating that she did not intend to participate further if the Tenant was not in attendance in person. The Appellant Landlord as the moving party did not participate any further in the Tribunal hearing. There was no request that the matter be adjourned or determined on the basis of written submissions; nor was the application withdrawn. Accordingly, the Tribunal is satisfied that it was not appropriate to proceed to hear anything further in the dispute. The appeal is deemed to have been abandoned and the determination of the adjudicator will stand. The Tribunal is satisfied that the Board may follow the procedure pursuant to s. 121(8) of the Act, where the appeal has been abandoned, and make an order in the terms of the Adjudicator's determination, pursuant to s. 121(1)(b) of the Act.

8. Determination:

Tribunal Reference TR0722-005589

In the matter of Claire O'Sullivan (Appellant Landlord) and Jennifer Matthews (Respondent Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Appellant Landlord's appeal, in respect of the tenancy of the dwelling at Dawsons Cottage, Booly, Cuffesgrange, Kilkenny, is deemed abandoned.
2. The decision of the Adjudicator stands. The Board may follow the procedures pursuant to s. 121(8) of the Act and make an order in the terms of the Adjudicator's determination, pursuant to s. 121(1)(b) of the Act.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 14/12/2022.

Signed:



Helen-Claire O'Hanlon Chairperson

For and on behalf of the Tribunal.