

**Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0822-005668 / Case Ref No: 0622-77956**

**Appellant Tenant:** Lisa Garry

**Respondent Landlord:** Thomas Clinton

**Address of Rented Dwelling:** 33 Saint Patricks Cottages, Rathfarnham,  
Dublin 14, D14R5F9

**Tribunal:** Brian Murray (Chairperson)  
Michelle O'Gorman, Michael Vallely

**Venue:** Virtual

**Date & time of Hearing:** 21 February 2023 at 2:30 p.m.

**Attendees:** Lisa Garry (Appellant Landlord)  
Sheila O'Reilly (Threshold)  
Thomas Clinton (Respondent Landlord)  
Peter Woodcock (Woodcock Solicitors)

**In attendance:** RTB appointed Digital Logger

**1. Background:**

On 22/06/2022 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 12/08/2022. The Adjudicator determined: "n/a".

Subsequently the following appeal was received from the Tenant on 21/08/2022. The grounds of the appeal: Unlawful termination of tenancy (Illegal eviction). The appeal was approved by the Board on 30/08/2022.

The RTB constituted a Tenancy Tribunal and appointed Brian Murray, Michelle O'Gorman, and Michael Vallely as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Brian Murray to be the chairperson of the Tribunal ("the Chairperson").

On 15/11/2022 and 23/01/2023 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 21/02/2023 the Tribunal convened a virtual hearing, using MS Teams.

**2. Documents Submitted Prior to the Hearing Included:**

RTB Tribunal case files.

**3. Documents Submitted at the Hearing Included:**

None.

#### **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 Residential Tenancies Board in relation to the case and that they had received the Residential Tenancies Board document entitled "Tribunal Procedures".

The Chairperson explained the procedure which would be followed: that the Appellant Tenant would be invited to present her case first; that there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present his case, and that there would be an opportunity for cross-examination by the Appellant Tenant.

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

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official stenographer present and he reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or imprisonment for up to six months or both.

The Chairperson also reminded the Parties that the hearing was a de novo hearing and 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.

#### **5. Submissions of the Parties:**

Evidence of the Appellant Tenant:

The Appellant Tenant stated that there had been a previous RTB Tribunal hearing dealing with the dispute over the validity of a notice of termination dated 14 October 2021. That notice was found to be valid and the Appellant Tenant stated that a determination order issued on 8 June 2022 which, among other things, determined that the Appellant Tenant had 90 days to vacate the property from 8 June 2022.

The Appellant Tenant stated that on 18 June 2022, she went to a local charity shop with her daughter. She stated that when she returned a couple of hours later, the side gate had been locked which prevented her from being able to drive her car into that space. She stated that she tried to open the front door with the key would not turn. She stated that she then managed to climb over the side gate with her daughter when she noticed that the handle had been removed from the back door. She stated that she tried to contact the Respondent Landlord.

The Appellant Tenant went on to state that she had been on the South Dublin County Council medical priority waiting list for 16 years and that in May 2022, she was offered a property. She stated that there was a delay in being able to move into that property because of an issue with the fire doors.

The Appellant Tenant stated that a Ms Clark in South Dublin County Council advised her to inform the Respondent Landlord that she would be vacating the property as soon as she was in a position to. In addition, the Appellant Tenant stated that Ms Clarke in South Dublin County Council had informed the Appellant Tenant that she was going to pass on the information in respect of the new property to the Respondent Landlord.

The Appellant Tenant stated that South Dublin County Council informed her that it would be probably mid-June 2022 before she was able to move into the property. She stated however that it was not until 22 June 2022 that the Council furnished the appropriate form in relation to her current dwelling which addressed the surrender of the lease at the dwelling the subject matter of this dispute. In this regard, the Appellant Tenant referred the Tribunal to the document at page 23 of Tribunal Case File 4.

The Appellant Tenant stated that on 18 June 2022, she had to go to her parents' house in Gorey as a result of being locked out by the Respondent Landlord. She stated that she filled her car with this much as she could but she left some stuff behind. She stated that she had purchased an alarm system and that her neighbour, Mr Carey, had removed the alarm on 18 June 2022. In that regard, she referred the Tribunal to page 3 of Case File 2 which was an email from Mr Carey setting out his narrative of what he believed occurred on 18 June 2022.

The Appellant Tenant stated that she was able to move into her new property at the end of June and started paying rent there from 30 June 2022.

She stated that at the time of having to move out of the Respondent Landlord's property, her daughter was doing her Junior Certificate examinations. She stated that her school was nearby in Terenure. She stated that her daughter has Asperger's syndrome and the situation was very stressful for her.

The Appellant Tenant went on to state that it took a few days for her to collect goods from the Respondent Landlord's estate agent.

Cross-examination of the Appellant Tenant:

The Respondent Landlord's representative put to the Appellant Tenant that everything happened on 17 June 2022 and not 18 June 2022. The Appellant Tenant did not accept this.

The Appellant Tenant was asked where she was living in the week up to 17 June 2022. She responded that she was living in the dwelling.

It was put to the Appellant Tenant that the Respondent Landlord was going to say in his evidence that when he attended at the property on 17 June 2022, having received an email from South Dublin County Council, that there were no contents in the property other than three black bags. It was stated that the Respondent Landlord was going to give evidence that there were no beds in the property, no couches, TVs, fridges, and pots and pans.

In response, the Appellant Tenant stated that there was a mattress in the property and that the fridge was still there. She stated that the bulk of her possessions were moved the weekend beforehand into storage at her parents' house in Gorey. She stated that she stayed in the house on a mattress because her daughter had to attend school and she had to attend work.

The Respondent Landlord's representative stated that the Respondent Landlord had assumed that the property have been vacated and he put to the Appellant Tenant that she had been out of the property, that she had vacated the property and that the Respondent Landlord was entitled to treat the property is being vacated. In response, the Appellant Tenant did not accept what was put to her.

#### Evidence of the Respondent Landlord:

The Respondent Landlord stated that on Friday, 17 June 2022, he was informed by South Dublin County Council that the Appellant Tenant had been given keys for her new property. He stated that this was told to him over the telephone and by email. In addition, he stated that he was emailed by South Dublin County Council to let him know that the Appellant Tenant had been told to return the keys to him.

He stated that when he was at the dwelling on 17 June 2022, he looked in the window and he could see that there was very little there. He stated that the fridge was present. He stated that all he could observe were three black sacks. He said that there were no mattresses in the property or upstairs in the property.

He stated that he went around to the back of the property and opened the back door and had a look around the garden. He stated that the back door lock was difficult so he decided to repair it and he left the property around lunchtime on 17 June 2022.

He stated that he put a lock on the side gate which was open because he wanted to secure the property.

He said he next visited the property on Monday, 20 June 2022 and he change the lock on the front and back door. In this regard, the Tribunal was referred to page 3 of Tribunal Case File 3 which was a letter from the Respondent Landlord's estate agent and which states that the estate agent met with the Respondent Landlord at the property on 20 June 2022 where the locks on the front and back door were changed.

#### Cross-examination of the Respondent Landlord:

The Respondent Landlord was asked if he ever contacted the tenant to confirm she had left the property. The Respondent Landlord responded that he did not.

The Respondent Landlord was asked whether he had received a text message from the tenant on 18 June 2022 asserting that they had not yet vacated the property. The Respondent Landlord stated that he did not get that text message.

It was put to the Respondent Landlord that he could not have entered the property on 17 June 2022 as the alarm was still in operation and was activated on that date. The Respondent Landlord responded that no alarm was activated to enter the property.

It was put to the Respondent Landlord that South Dublin County Council had informed him that the Appellant Tenant was experiencing delays and would not be able to move into her new property until mid-June. The Respondent Landlord stated that he disputed that.

It was put to the Respondent Landlord that there were still many belongings of the Appellant Tenant's present in the property when he entered it. The Respondent Landlord responded by saying that he did not see them.

#### Closing submission on behalf of the Appellant Tenant:

It was submitted that the Appellant Tenant has 90 days to vacate the property from 8 June 2022. It was submitted that she still had belongings in the property and she did not serve any notice on the Respondent Landlord that she was going to be leaving. It was submitted that the Respondent Landlord never contacted her and the Appellant Tenant had not sent the keys back to him. On that basis, it was submitted that the Respondent Landlord's actions amounted to an illegal eviction as the tenant was still living in the property at the time.

Closing submission on behalf of the Respondent Landlord:

It was submitted that the Respondent Landlord was notified by South Dublin County Council that the Appellant Tenant was rehoused at the end of May and that as far as he was concerned, she had removed her belongings. It was submitted that the Respondent Landlord found nothing at the property except for black bags and he waited until the next Monday until changing the locks.

#### **6. Matters Agreed Between the Parties:**

1. The tenancy commenced on 3 June 2017.
2. Monthly rent was €1,500.
3. The Tenancy terminated on 18 June 2022.
4. There was a previous RTB Tribunal hearing where a Notice of Termination dated 14 October 2021 was found to be valid and the Appellant Tenant had up to 6 September 2022 to vacate the dwelling.

#### **7. Findings and Reasons:**

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

Finding 1:

The Tribunal finds that the Respondent Landlord carried out an unlawful termination of the tenancy.

Reasons:

A tenancy agreement may only be terminated in accordance with the provisions set out in the Residential Tenancies Act of 2004. In particular section 58 (1) of the Act prohibits the termination of a tenancy by a landlord by means of re-entry.

The Respondent Landlord's position was he was entitled to deem the tenancy as having been terminated by the Appellant Tenant in circumstances where the Appellant Tenant had vacated the dwelling.

Section 37 (2) of the 2004 Act states that -

A Part 4 tenancy shall also be deemed to have been terminated by the tenant upon any rent owed by him or her being in arrears for a period of 28 days or more if—

- (a) whether before or after the end of that period, the tenant has vacated the dwelling, and
- (b) no notice of termination has been served by the tenant in respect of the tenancy.

In circumstances where there were no arrears of rent, Section 37 (2) of the 2004 Act is not operative.

In this case, the Tribunal does not believe that the Respondent Landlord was entitled to deem the tenancy as having been terminated as the preponderance of the evidence was that the Appellant Tenant had not vacated the dwelling.

The Tribunal accepts that the Respondent Landlord did not act with any mala fides but rather he was reckless as to whether or not the Appellant Tenant had vacated the dwelling.

The fact of the matter is that the Appellant Tenant did not have to vacate the property for a period of 90 days following the determination order of a previous Tribunal decision that issued on 8 June 2022.

There is a conflict of fact as to whether the Respondent Landlord visited the property on 17 June 2022 or 18 June 2022. However, the Tribunal is satisfied that whichever of those dates is correct, is not determinative of the dispute.

The Tribunal accepts that when the Respondent Landlord attended at the dwelling, it gave an impression at first instance that the Appellant Tenant had removed the vast majority of her belongings. On this occasion, the Tribunal accepts that it might, on balance, have seemed reasonable for the Respondent Landlord to think that the Appellant Tenant may have vacated the dwelling. This is also in the context of the background of indications that the Appellant Tenant was in the process of arranging to move to another property.

However, the Tribunal is satisfied from the evidence furnished to it, that on 18 June 2022, the Appellant Tenant contacted the Respondent Landlord by text message to inform him expressly that she had not yet vacated the property.

The Tribunal is satisfied from the evidence provided that this message was sent to the Respondent Landlord. The Tribunal is also satisfied that from that point onwards, there should have been no doubt in the mind of the Respondent Landlord that the Appellant Tenant had not vacated the property.

At the very least, it should have alerted the Respondent Landlord to contact the Appellant Tenant and make reasonable enquiries as to whether she had vacated the dwelling. However, the Respondent Landlord in his own evidence, expressly stated that he did not contact the Appellant Tenant to confirm whether she had left the property or not.

In all of those circumstances, the Tribunal is satisfied that the Appellant Tenant had not vacated the dwelling and that it was unreasonable for the Respondent Landlord to treat the property as having been vacated.

The Tribunal was satisfied that the locks were changed at some point on or before 20 June 2022 and therefore, this amounted to an unlawful termination of the tenancy.

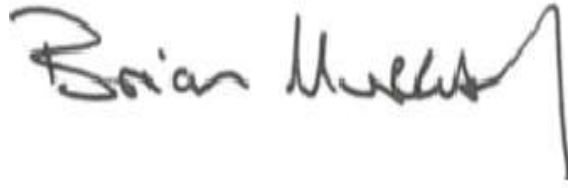
In the particular circumstances of this case and the nature of the breach committed by the Respondent Landlord, the Tribunal felt it was appropriate to award €1,500 damages to the Appellant Tenant, in particular having regard to the nature of the inconvenience caused to the Appellant Tenant by the summary termination of her tenancy.

## **8. Determination:**

In the matter of Lisa Garry (Appellant Tenant) and Thomas Clinton (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004 that:

1. The Respondent Landlord carried out an unlawful termination of the tenancy and the Appellant Tenant is entitled to €1,500 damages in this regard, in respect of the tenancy of the dwelling at 33 Saint Patricks Cottages, Rathfarnham, Dublin 14, D14R5F9.
2. The Respondent Landlord shall pay a total sum of €1,500 damages to the Appellant Tenant within 28 days of the date of issue of the Determination Order.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 22/03/2023.

A handwritten signature in dark ink, appearing to read "Brian Murray", with a long vertical stroke extending downwards from the end of the name.

**Signed:**

**Brian Murray, Chairperson**

For and on behalf of the Tribunal.