

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0919-003984 / Case Ref No: 0519-54045

Appellant Tenant:	Jurig Puckov
Respondent Landlord:	Val Issuer Dac
Address of Rented Dwelling:	Apartment 1, 15 Grove Park, Rathmines, Dublin 6
Tribunal:	Dervla Quinn (Chairperson) Kevin Baneham, Mary Doyle
Venue:	Room 10, Ormond Meeting Rooms, 31-36 Ormond Quay Upper, Dublin 7
Date & time of Hearing:	04 November 2019 at 10:30am
Attendees:	Jurig Puckov, Appeal Appellant, Tenant Peter Dooley, Tribunal Representative, Tenant Kerry O'Brien, Tribunal Representative, Landlord Derek Connolly, Tribunal Representative, Landlord
In Attendance:	RTB appointed translator Recording Technician/stenographer

1. Background:

On 03/05/2019 the Landlord 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 25/07/2019. The Adjudicator determined that:-

"1. The Notice of Termination served on 27 August 2018 by the Applicant/Respondent Landlord on the Respondent/Applicant Tenant, in respect of the tenancy of the dwelling at Apt 1, 15 Grove Park, Rathmines, Dublin 6, is valid.

2. The Respondent/Applicant Tenant and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 14 days of the date of issue of the Order.

3. The Respondent/Applicant Tenant shall pay any rent outstanding from 25 July 2019, being the date of the Adjudication Hearing, at the rate of €450.00 per month, unless lawfully varied, or proportional part thereof at the rate of €14.79 per day, and any other charges as set out in the terms of the tenancy agreement, until such time as he vacates and gives up possession of the above dwelling.

4. The Applicant/Respondent Landlord shall pay the total sum of €500.00 to the Respondent/Applicant Tenant within 21 days of the date of issue of the Order, being damages for breach of landlord obligations in relation to the standard and maintenance of the dwelling, in respect of the tenancy of the above dwelling."

Subsequently, an appeal was received by the RTB from the tenant on 26/08/2019, on the grounds of: "Standard and maintainancy of dwelling, Breach of landlord obligations, overholding and other". The appeal was approved by the Board.

The RTB constituted a Tenancy Tribunal and appointed Dervla Quinn, Kevin Baneham and Mary Doyle as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Dervla Quinn to be the chairperson of the Tribunal ("the Chairperson").

On 12/09/2019 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 10/10/2019 the Parties were notified of the constitution of the rescheduled Tribunal and provided with details of the date, time and venue set for the hearing.

On 04/11/2019 the Tribunal convened a hearing at Room 10, Ormond Meeting Rooms, 31-36 Ormond Quay Upper, Dublin 7.

2. Documents Submitted Prior to the Hearing Included:

RTB Files

3. Documents Submitted at the Hearing Included:

The Tenant had evidence on his mobile phone of his email to the offices of the RTB on 29 September 2019 asking that a different interpreter from the interpreter at the adjudication be made available for the Tribunal hearing. With the agreement of the Landlord, the Tribunal reviewed the email on the Tenant's phone and returned it to the Tenant.

4. Procedure:

The Chairperson asked the Parties present to identify themselves and to state in what capacity they were attending the Tribunal. Mr O'Brien and Mr Connolly confirmed that they were the Landlord's agents and were duly authorized to represent the Landlord at the hearing.

The Chairperson explained the procedure which would be followed: that the party who referred the dispute to the Tribunal, the Appellant, would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present its case, and that there would be an opportunity for cross-examination by the Appellants. She asked the Parties to confirm that they had received the relevant papers contained in the case files from the RTB and that they had received and understood the RTB document entitled "Tribunal Procedures".

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by an official stenographer. She reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal is an offence punishable by a fine of up to €4,000 and/or up to 6 months imprisonment or both. The Parties intending to give evidence were sworn in.

On the reconvening of the hearing on 4 November 2019, the parties were offered the opportunity to explore the possibility of a settlement of the dispute. After a short recess the parties informed the Tribunal that they had not reached a settlement and that they wished the hearing to proceed.

5. Submissions of the Parties:

Submissions of the Tenant on 7 October 2019.

Immediately on taking the oath the Tenant expressed his dissatisfaction with the RTB appointed interpreter who was the same interpreter who had attended the adjudication hearing. The Tribunal stated the appointment of interpreters was a matter for the office of the RTB. The Tribunal acknowledged that it was difficult for a party to present a case through another language and invited the Tenant to take of a drink of water and collect his thoughts before the matter proceeded further. The Tenant went on to show to the Tribunal his email to the RTB sent on 29 September 2019 asking for a different interpreter from the interpreter who attended the adjudication. It was clear to the Tribunal that the Tenant was agitated and upset. Mindful that the Tribunal hearing that morning concerning the other apartment no 2 had not concluded and would have to be scheduled on another day, the Tribunal informed the parties that it was minded to adjourn the hearing to allow the Tenant's issue with the interpreter to be considered by the RTB. The Tribunal asked the Landlord's agents for their comments. The Landlord's agents stated that they would not object on the condition that the matter be dealt with at the earliest opportunity.

The Tribunal then adjourned and reconvened on 4 November 2019 at 11 am.

Submissions of the Tenant on 4 November 2019.

The Tenant was asked and confirmed to the Tribunal that he was satisfied with the competency of the interpreter present. The Tenant stated that he was not satisfied with communications received from the RTB which wrongly stated that the hearing was on 8 November 2019. The Tribunal replied that although such errors were regrettable, the Tribunal was concerned only with the evidence relating to the dispute. The Tribunal stated that it was very concerned if there were errors in relation to the facts of the dispute and that the Tenant should draw the attention of the Tribunal to any such errors as the hearing continued.

The Tenant began by stating to the Tribunal that he had not received the Notice of Termination. It was the Landlord's agent's evidence that the Notice had been sent by prepaid post. The Tenant stated that he had experienced other difficulties with letters he had sent being misdirected by An Post. He stated that he went to the Post Office and gave them the tracking number of the letter. The Post Office had not been able to find the letter. The Post Office told him it was not their responsibility. The Tenant stated that this was the same in this situation with the Notice of Termination.

The Tribunal asked the Tenant when did he first become aware that there was a possibility of his tenancy being terminated? The Tenant replied that it was on 18 April 2019 when he met the Landlord's agent, Mr Kerry O'Brien. Mr Dooley informed the Tribunal that a video of the letter box at the Dwelling had been submitted for the dispute hearing relating to apartment no 2 which was scheduled to be heard this afternoon. The Tribunal confirmed that they had seen this video. Mr Dooley stated that the burden of proving that the Notice had been delivered should fall on the Landlord. The Tenant stated that he did not speak to the other tenants in the building and was not aware that they had been served notices to vacate. The Tenant stated that when he became aware that the Landlord was seeking to end the tenancy he became frightened that he would be put out on the streets.

The Tenant then outlined the grounds on which he was claiming that the Landlord was in breach of the duties regarding standard and maintenance of the Dwelling. He stated that

there was no washing machine for 6 months until the Landlord provided a new one. He stated that there was a serious problem with the heating. With the previous landlord the cost of the heating was included in the rent. As a result of these problems there was damp and mould in the Dwelling and this had badly affected his health. The heating broke in October of 2018. The Landlord only responded to the problem when a lady from Threshold contacted the Landlord's agent on behalf of the Tenant. The Landlord's agent provided him with plug in electric heaters. The rooms of the Dwelling have high ceilings so were very cold. The electric heaters did not solve the problem. As a result of this the Tenant became ill. The Tenant stated that prior to the heating breaking he had been in good health. The electric heating also cost the Tenant extra. The electricity bill had increased from €70 to €100 every 2 months to €300 every 2 months.

The Tenant also had problems with the drainage. A sewage pipe had broken last summer and the basement was flooded with sewage up to his waist. The Tenant told the Landlord's agent and it was fixed 2 weeks later but the problem returned and was only properly fixed on 11 June 2019. As a result of these problems there were a lot of mice. The Tenant set traps and would catch a mouse every day.

The Tenant stated that the Landlord was seeking to get him out because of all these problems. The Landlord was carrying out building works upstairs in the building. Changing floors and radiators. All the dust came into the Tenant's apartment. There were electrical problems. There was a leak and the floor had been covered in water for 2 to 3 days in May of this year.

The Tenant stated that the yard where they do their washing is in a very bad condition. No one was maintaining the greenery. There was a lot of rubbish and it was not possible to walk through. The door had been removed from the boiler. In support of this the Tenant had submitted photos showing the condition of the yard.

The Tenant stated that there had been no problems with the previous landlord. His health had been good but now it was bad. Letters from his doctor were submitted in support of this. The Tribunal asked the Tenant when he had first met the new landlord. The Tenant replied that he had received a letter from the old landlord in July of 2018 telling him of the change of ownership. He stated that he had never met the new landlord. When the sewage and heating issues arose a neighbour told him to contact Lansdown Partnerships as agents for the Landlord. The Tenant stated that the agents had never referred to the Notice of Termination when discussing the maintenance issues.

Submission of the Respondent Landlord.

Mr O'Brien gave evidence on behalf of the Landlord. He stated that the Notice of Termination had been served by prepaid post. He stated that he had served 87 notices in the last 12 months in this manner and had only had been challenged on 2 of these notices. All of the other apartments apart from the Tenant and the tenant in apartment 2 had been vacated on or before the vacate date. The first apartment was vacated on 4th April 2019 with the last one vacating on 18th and 19th April. The Tribunal asked Mr O'Brien had he approached the Tenant to discuss vacating the Dwelling after serving the notice. The Tribunal noted that there had been a lot of communications regarding maintenance issues and asked whether the issue of vacating had been discussed with the Tenant during these exchanges. Mr O'Brien replied that he had not discussed the issue of vacating with the Tenant. There was a language problem and he did not wish to be seen as intimidating the Tenant. The Tribunal asked had the issue of vacating been discussed with Threshold? Mr

O'Brien replied that Danielle in his office would have mentioned to Threshold that the electric heaters were a temporary solution as the tenancy was ending. Mr O'Brien stated that it was not the Landlord's obligation to call the tenants. All the other tenants had got the notice and had vacated. Mr O'Brien stated that he did not understand how the Tenant could argue that he had not received the notice. The Tenant had received other correspondence such as the letter informing him of the change of landlord.

Regarding the issue of the standard and maintenance of the Dwelling, Mr O'Brien stated that they had replaced the washing machine within 2 weeks of being made aware that there was a problem. The electric heaters were provided as the boiler had been decommissioned as it was a hazard. The electric heaters were mounted on the walls. The mould and damp had occurred because the building was in need of a major repair. The building was dilapidated and required proper damp proofing. The sewage was a recurring problem which had now been fixed. A drain doctor had attended the dwelling in November 2018. The problem returned in June 2019 but the Tenant did not bring this to the attention of the Landlord's agent. It was the work team who noticed it. Regarding the yard, Mr O'Brien stated that the grass was overgrown but there was no rubbish other than an abandoned exercise table which could be seen in the photos.

Mr O'Brien stated that the Tenant's own evidence on the condition of the Dwelling supported the argument that the refurbishments needed to be carried out and that to do this the Dwelling needed to be vacated. It was planned to completely strip out everything. All services would have to be decommissioned. The Dwelling would be completely uninhabitable.

The Tenant questioned Mr O'Brien as to why they had not taken care of the hygiene in the hall way. The Tenant stated that 2 of the 8 apartments were already vacant. One of the tenants had passed away. The Tenant asked Mr O'Brien which post boxes had the notices been put in.

Mr Dooley challenged the evidence on the heating. He stated that the heating had been decommissioned deliberately to leave the tenants without any heat. Mr Dooley stated that the heating had only been addressed when Threshold had intervened. He stated that the heating could have been fixed and did not have to be shut down. The Tribunal asked but neither party knew how old the heating system was. Mr Dooley stated that the post was delivered via a main post box with 8 internal letter boxes all of which were openable with the one key. Lots of children played in the area. It was not surprising that the Tenant did not receive the notice.

Closing Statements.

Mr Dooley -

The Tenant confirmed that he wished Mr Dooley to present his closing statement. Mr Dooley stated that the Tenant had not received the Notice of Termination. There are often problems with delivery of prepaid post. There was no certainty as to the reasons why the other tenants had left. Mr Dooley stated that he believed they were non-nationals. The breach of obligations on standards and maintenance was deliberately done because the Landlord wanted to evict the tenants. The heating had been decommissioned to leave the tenants with insufficient heating. The building was pre 1963 and needed to be properly heated. The mould and damp had affected the Tenant's health and caused him stress. The problems such as the washing machine were part of the Landlord's agenda and a deliberate strategy. The Tenant had been there over 16 years. The Landlord's plan was

to treble the rent. The Landlord's agent should be well aware of their responsibilities. The Tenant says he never got the notice. There was insufficient evidence that he had got the notice. The issue of vacating was never mentioned to Threshold. It all amounts to a deliberate strategy.

The Tenant then stated that he wished to add that he had difficulties getting the HAP forms completed. The Tribunal stated that issues surrounding HAP should be brought before a different forum and were not under the remit of the RTB dispute process.

Mr O'Brien -

The Notice of Termination was properly served. Regarding obligations on standards and maintenance, anything properly reported to the management was dealt with as quickly as possible. The building is pre 1963 and is in need of substantial refurbishment.

6. Matters Agreed Between the Parties

The address of the Dwelling is Apartment 1, 15 Grove Park, Rathmines, Dublin 6.

Rent is €450 per month.

A deposit was paid of €300.

The Tenant is still in occupation of 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 therefor are set out hereunder.

Finding 1:

The Tribunal finds that the notice of termination served by the Respondent Landlord on the 27th of August 2018 and dated 24 August 2018 was received by the Appellant Tenant and is valid. The Appellant Tenant and all persons residing in the dwelling in this case shall vacate and give up possession of the dwelling within 100 days of the issue of the determination order of the RTB.

Reasons for finding:

A central dispute in this case is the service of the notice of termination, dated the 24th August 2018, on the Appellant Tenant. The Appellant Tenant stated that he did not receive the notice of termination and the first he was aware of the termination of his tenancy was on meeting representatives of the Respondent Landlord on the 18th April 2019. The Respondent Landlord's agent stated that a notice of termination was served by ordinary post and that there had been no issue with service in the many other notices served by the agent.

The Tribunal notes the burden on a recipient, in this case the tenant, to prove that they did not receive a notice by ordinary post, or the other means provided by section 6 of the Act. In the circumstances of this case, the Tribunal cannot ignore the evidence of the Landlord's agent that the other apartments had been vacated on or around the vacate date. The Tribunal does not accept that the near simultaneous departure by the majority of the tenants of a building would take place by chance. Therefore the Tribunal accepts that the postal

system successfully delivered the notices of termination to the Dwelling and that the Tenant received his notice of termination.

The Tenant gave evidence of post sent to him by other parties being lost in the postal system despite the allocation of a tracking number. This is accepted by the Tribunal and no postal delivery service can be 100% reliable. However in the current situation the other notices of termination have been received by the other tenants in the building and acted upon. The absence of any discussions between the Tenant and the Landlord's agent and Threshold and the Landlord's agent on the impending vacate date cannot and should not be seen as evidence that the notices were not received by the tenants. The Tribunal notes that the Tenant has no English which may have further complicated the issues.

The Tribunal notes the Tenant's contention that the works required do not require vacant possession.

The Tenant had the benefit of a further Part 4 tenancy when the Notice of Termination was served on 27 August 2018. The grounds on which a part 4 tenancy may be terminated are set out in Section 34 of the Act. One of the grounds for terminating such a tenancy, and the ground relied on in this circumstance as set out in paragraph 5 to the table of section 34, is that the landlord requires the dwelling to be vacated for the purpose of carrying out refurbishment or renovation works.

In respect of para. 5, the first matter to be addressed is whether the notice of termination properly outlines that the Landlord intends to substantially renovate or refurbish the dwelling. The second is whether vacant possession is required. The third is whether the notice has properly specified the nature of the works. The fourth is, where planning permission is not required, whether the landlord has complied with section 35(9) of the Act. The fifth is whether the notice adequately specifies the details required in respect of a potential new tenancy if the dwelling becomes available for reletting. That matter has not been disputed in the present case and the notice complies with the requirements of the Act in this respect.

The Tribunal is satisfied that the Landlord does have the intention to refurbish and renovate, that it had the intention at the date of service of the notice of termination and that the notice provided appropriate detail in this regard. The Tribunal notes the list of items of works from (a) to (j) set out in the Notice of Termination contained in case file 1. In support of this the Landlord's agents gave evidence to the Tribunal of the works to be carried out. The evidence of the Tenant as to the condition on the Dwelling supported the Landlord's position that repairs were needed to the Dwelling.

Does the way in which the dwelling is to be substantially refurbished or renovated require the dwelling to be vacated for that purpose? In the present case, the evidence is clear that the works outlined, including lifting all flooring and floor boards, replacing all plumbing and electrics, upgrading partition walls, repair/replacement of doors and frames, installation of new fire alarms, and the installation of new kitchens and bathrooms could not reasonably be carried out with a tenant in residence. As such, it can only be concluded that vacant possession is required for the specified works.

The notice of termination set out in case file 1 specified a comprehensive program of works and provides the tenant with sufficient information as to the extent of the works so that the tenant may assess, from the notice, whether the works proposed constitute substantial renovation and refurbishment such as would require vacant possession. In that regard, the notice in this case provides a list of multiple items and it is clear from the notice and works

specified that what is proposed is significant renovation and refurbishment and that vacant possession is required.

It has not been contended that planning permission is required for the proposed works. There is no requirement to appoint a contractor before the notice was issued. The requirement in section 35(9) of the Act is that a landlord specify the name, if any, of the contractor appointed to carry out the work. The notice stated that DL Builders have been engaged as contractors. As such, the notice in this case was in compliance with the Act in this regard.

The final requirement of s. 35(9) is whether the notice has specified the dates on which the intended works are to be carried out and the proposed duration of the period in which those works are to be carried out. The notice in this case clearly states that the works will commence on 12 April 2019, and are expected to last 4 to 6 months. The notice in this case was in compliance with the Act in this respect and adequately specified the dates and proposed duration of the works.

The Tribunal is satisfied that the notice is in compliance with the formal requirements set out in sections 62 (requirements for a valid notice) and section 66 (notice periods).

In setting out a time frame to vacate the dwelling of 100 days, the Tribunal has taken into consideration the fact the Tenant has been in occupation of the Dwelling since 2003 and the fact that the Tenant is required to vacate to allow for the substantial refurbishment works to be carried out. There is no suggestion that the Tenant has been anything other than a good and compliant tenant throughout the tenancy.

Finding 2:

The Landlord is in breach of the obligations to repair and maintain the Dwelling as set out in section 12(1)(b) of the Act. The Tenant is entitled to payment within 28 days of the date of issue of the determination order, of damages in the amount of €2,800 which sum is made up of €600 for the increased cost for the electricity required to heat the Dwelling, €1,200 for the sewage overflow and €1,000 for the health issues experienced by the Tenant as a result of the damp and mould in the Dwelling.

Reasons for finding:

The Tribunal accepts the Tenant's evidence that there were problems with the heating in the Dwelling and that the Landlord's efforts to deal with the problem by providing electric heaters did not address the problem. The Tribunal notes the increased costs to the Tenant of the electric heating. The Tribunal accepts the Tenant's evidence that the condition of the Dwelling had a negative impact on the Tenant's health.

The Tribunal accepts the Tenant's evidence regarding the overflow of sewage into the basement of the Dwelling. The Landlord's agents did not question the Tenant on this evidence.

The Tribunal makes no findings regarding the condition of the yard. The photographs provided did not support the Tenant's claim that the yard was impassable due to rubbish.

8. Determination:

In the matter of Jurig Puckov [Appellant Tenant], and Val Issuer DAC [Respondent Landlord], the Tribunal, in accordance with sections 103(7) and 108(1) of the Residential Tenancies Act, 2004, determines that:

1. The Notice of Termination dated 24th August 2019 and served by the Respondent Landlord on the 27th of August 2018 on the Appellant Tenant in respect of the tenancy of the dwelling Apartment 1, 15 Grove Park, Rathmines, Dublin 6 is valid.
2. The Appellant Tenant and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 100 days of the date of issue of the Determination Order.
3. The Appellant Tenant shall pay any further rent from 4 November 2019, being the date of the Tribunal Hearing, at the rate of €450 per month, unless lawfully varied, or proportional part thereof at the rate of €14.79 per day and any other charges as set out in the terms of the tenancy agreement, until such time as he vacates and gives up possession of the above dwelling.
4. The Respondent Landlord shall refund the entire of the security deposit of €300.00 to the Appellant Tenant, upon the Appellant Tenant vacating and giving up vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.
5. The Respondent Landlord shall pay the sum of €2800.00 to the Appellant Tenant within 28 days of the date of issue of the Determination Order, being damages for breach of landlord obligations in relation to the standard and maintenance of the dwelling, in respect of the tenancy of the above dwelling.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 20/11/2019.

Signed:



Dervla Quinn, Chairperson

For and on behalf of the Tribunal.