

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0922-005722 / Case Ref No: 0422-76538

Appellant Tenant: Dovile Dyraite

Respondent Landlord: Davina Collins

Address of Rented Dwelling: 5 Churchwell Avenue, Belmayne, Balgriffin, Dublin 13, D13XD99

Tribunal: Fintan McNamara (Chairperson)
Healy Hynes, Dervla Quinn

Venue: Virtual

Date & time of Hearing: 25 April 2023 at 10:30 a.m.

Attendees: For the Appellant:
Dovile Dyraite (Tenant)
Evaldasd Meiftinis (Tenant's partner)

For the Respondent:
Davina Collins
Simon Collins

In attendance: Recording Technician/Stenographer as arranged by the RTB
Vaida Grigalavicioene (RTB appointed interpreter)

1. Background:

On 07/04/2022 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 25/07/2022. The Adjudicator determined that:

In the matter of Davina Collins [Applicant Landlord] and Dovile Dyraite [Respondent Tenant], the adjudicator, in accordance with Section 97 of the Residential Tenancies Act, 2004, determines that:

1. The Notice of Termination served by, or on behalf of, the Applicant Landlord, on the Respondent Tenant on 15 September 2021, in respect of the dwelling at 5 Churchwell avenue, Belmayne, Balgriffin, Dublin 13, is valid.
2. The Respondent Tenant and all persons residing at the above dwelling shall vacate and give up possession of the above dwelling within 28 days of the date of the Order.
3. The Respondent Tenant shall also pay any further rent outstanding from 25 July 2022 to the Applicant Landlord at the rate of €1,275 per month or proportionate part thereof at the rate of €41.92 per day unless lawfully varied and any other charges as set out in the tenancy agreement for each month, or part thereof until she vacates the above dwelling.

4. The Applicant Landlord shall refund the entirety of the security deposit of €1,000 to the Respondent Tenant upon her vacating and giving up vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received from the Tenant on 19/09/2022 and thereafter approved by the RTB.

The RTB constituted a Tenancy Tribunal and appointed Fintan McNamara, Healy Hynes, Dervla Quinn as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Fintan McNamara to be the chairperson of the Tribunal (“the Chairperson”).

On 21/03/2023 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 25/04/2023 the Tribunal convened a virtual hearing, using MS Teams.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case file.

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

The Chairperson asked the Parties attending the Virtual Tribunal Hearing to identify themselves and to identify in what capacity each was 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 asked all persons to speak only when invited to by the Chairperson and emphasised the importance of following his directions in this regard.

The Chairperson explained the procedure which would be followed; 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 her case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case; that there would be an opportunity for cross-examination by the Appellant and, 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/recording technician 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 [reference section 123(3) of the 2004 Act].

The Parties giving evidence and the Interpreter gave their respective affirmations.

The parties were given the opportunity to reach an agreement among themselves but did not succeed in so doing.

5. Submissions of the Parties:

Appellant Tenant's Case:

The Appellant Tenant in her evidence said that she and her family wished to continue living in the property and did not wish to leave until the property is sold. When asked by the tribunal if she had anything to add to this request she said she had nothing to add and repeated her request to remain in the dwelling until it is sold.

Respondent Landlord's Case:

The Respondent Landlord said that the Notice of Termination had expired 12 months earlier and that she needed to sell the property. She said that in the intervening period she had incurred extra expenses because of higher interest charges and that she also had to pay service charges which left her out of pocket. She indicated however that she was not making any claim for these extra costs. She said that progress in the sale of the property had been seriously hampered as prospective purchasers were put off due to the fact that a tenant was in occupation of the dwelling. She said they had received an offer from a prospective purchaser but that it was extremely low.

The Respondent Landlord also pointed out that she had approached the local Authority with a view to selling the property to them but they were not interested and stated that the Appellant Tenant and her family did not qualify as they would only be entitled to a two bedroomed house and this was a three bedroomed property.

6. Matters Agreed Between the Parties:

Matters ascertained at the Hearing

1. The tenancy commenced 1/08/2019.
2. The rent is €1275 per month and there are no arrears owing.
3. €1000 security deposit was paid.
4. The tenants continue 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 thereof, are set out hereunder.

Finding: The Notice of Termination served by the property agent (Mr John Brophy) on behalf of the Landlord, on the Tenant, on 15 September 2021, is valid and the Tenant is overholding.

Reason: Section 34 of the Act provides that a Part 4 tenancy can be terminated by a landlord where the landlord intends to, within 9 months after the termination of the tenancy, enter into an enforceable agreement for the transfer to another, for full consideration, of the

whole of his or her interest in the dwelling or the property containing the dwelling and the notice of termination is accompanied by a statutory declaration referred to in section 35.

To be valid, a notice of termination must be signed by the Landlord, or his or her authorised agent. Section 62 of the Act sets out what must be contained in the notice of termination and section 66 of the Act specifies the applicable notice period that the Landlord must give to the Tenants. The Tribunal takes into account the Notice and letter from Mr John Brophy, dated 20 April 2022, in which he confirms that he hand delivered the Notice to the Tenant on 15 September 2021. The Tribunal has carefully reviewed the Notice in case file 1 and is satisfied that it complies with the requirements of sections 62 and 66 of the Act.

The Notice is in writing; it is signed by the Landlord; it specifies the date of service; it sets out the reason for terminating the tenancy (sale of the dwelling); it sets out the termination date (16 March 2022), it gives the requisite period of notice (which in this case is at least 180 days) and it confirms that the Tenant has the full 24 hours of the termination date to vacate the dwelling. It also sets out that the Tenant can appeal the validity of the Notice of Termination within a period of 28 days.

Statutory Declaration: The Tribunal has also carefully considered the Statutory Declaration that accompanied the Notice and is satisfied that it is valid. It is signed by the Landlord, sworn before a practising solicitor and includes the declarations and information specified in Section 35 of the Act. It declares the Landlord's intention to sell (or transfer her interest in) the property within 9 months of the date of termination of the tenancy and a declaration to offer the property back to the Tenant if she does not sell (or transfer) the property within the 9 months. The Appellant Tenant did not dispute the validity of the Notice of Termination at the hearing.

The Tribunal notes that the Appellant Tenant received a Notice of termination which has expired over 12 months ago and is of the view after careful consideration that 28 days is the appropriate time frame for the tenant to vacate the dwelling

8. Determination:

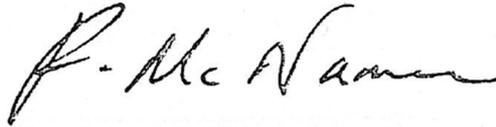
In the matter of Dovile Dyraite (Appellant Tenant) and Davina Collins (Respondent Landlord), the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served by, or on behalf of, the Respondent Landlord on the Appellant Tenant on 15 September 2021, in respect of the dwelling at 5 Churchwell Avenue, Belmayne, Balgriffin, Dublin 13, is valid.
2. The Appellant Tenant and all persons residing at the above dwelling shall vacate and give up vacant possession of the above dwelling within 28 days of the date of issue of the Determination Order.
3. The Appellant Tenant shall also pay any further rent outstanding from 25 April 2023 to the Respondent Landlord at the rate of €1,275 per month or proportionate part thereof at the rate of €41.92 per day, unless lawfully varied, and any other charges as set out in the tenancy agreement for each month, or part thereof, until she vacates the above dwelling.
4. The Respondent Landlord shall refund the entirety of the security deposit of €1,000 to the Appellant Tenant upon her vacating and giving up vacant possession of the above

dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 26/04/2023.

Signed:



Fintan McNamara, Chairperson

For and on behalf of the Tribunal.