

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1018-003301 / Case Ref No: 1018-49154

Applicant Tenant: Eamon Smith

Respondent Landlord: Jim Magee

Address of Rented Dwelling: Flat 4, 10 Lower John Street, Co. Wexford

Tribunal: Ciara Doyle(Chairperson)
James Egan, Finian Matthews

Venue: Room G.02, Dept of Housing, Planning and Local Government, Newtown Road, Wexford

Date & time of Hearing: 14 January 2019 at 11:00am

Attendees:

Eamon Smith (Applicant Tenant)
Jim McGee (Respondent Landlord)
Betty Ahern (Respondent Landlord's
Accompanying Party)
Paul Massey (Respondent Landlord's Witness)

In Attendance: Stenographer

1. Background:

On 08/10/2018 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 Mediation which took place on 18/10/2018.

Subsequently the matter was referred to Tribunal by the Tenant.

The RTB constituted a Tenancy Tribunal and appointed James Egan, Ciara Doyle, Finian Matthews as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Ciara Doyle to be the chairperson of the Tribunal ("the Chairperson").

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 14/01/2019 the Tribunal convened a hearing at Room G.02, Dept of Housing, Planning and Local Government, Newtown Road, Wexford, Wexford.

2. Documents Submitted Prior to the Hearing Included:

1. RTB File

3. Documents Submitted at the Hearing Included:

Letter dated 1st April 2016 signed by the Respondent Landlord addressed "to whom it concerns" - submitted by the Applicant Tenant

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 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; 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 applied to have the dispute determined by a Tribunal (the Applicant) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present his case, and that there would be an opportunity for cross-examination by the Applicant.

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 oath and be recorded by the official stenographer present and she 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.

The parties were provided with an opportunity to discuss matters among themselves with a view to resolving the matter by agreement, but this was not successful.

5. Submissions of the Parties:

Applicant Tenant's Case:

The Applicant Tenant submitted that he was a tenant in the dwelling from the date he commenced occupation. He accepted that the other tenant in the dwelling, Mr. Massey, had originally agreed with the Respondent Landlord to rent the dwelling but said the Landlord had accepted him as a Tenant from the outset and he paid rent with Mr. Massey on a 50:50 basis at all times. He said he moved in to the dwelling on 19 May 2015 and all had been well between him and Mr. Massey until Mr. Massey had received a letter from social welfare seeking re-imburement of monies that had been paid to him on the basis that he had not disclosed that he was sharing the dwelling in his application for rent allowance.

The Tenant produced a letter signed by the Landlord dated 1st April 2016 addressed to "whom it concerns" confirming he was a tenant in the dwelling and that he had resided there since January 2016. He said the Landlord had given him this letter to enable him to make an application for housing assistance and he had retrieved a copy of the letter from Wexford County Council for the purpose of the hearing.

He said the HAP payments had commenced on 2 October 2018, the day before he was evicted and that he had made his contributory payment for the succeeding 3 weeks, for which he had not been re-imbursed,

He said he had been threatened by the Landlord and by Mr. Massey and when he returned home on 3 October 2018 at 9.30pm the lock on the communal door to the building containing the dwelling, had been changed and he had not been allowed in since. He said he had tried to alert one of his neighbours that he had been locked out, on the evening of 3 October, and when doing so a terracotta plant box had smashed the window. He denied this was an act of vandalism and said it was an accident.

He said all of his belongings had been dumped by the Landlord in to a damp loft. He said he presented at the Garda station that night and spent the following 17 nights sleeping there, followed by a period of time in a homeless shelter. He said he was now homeless and on the streets. He said the Gardai had arranged for him to get some of his belongings, including his passport but mainly clothes, from the Landlord but much of his belongings still remained with the Landlord, including furniture and electrical equipment, suits and coats.

Respondent Landlord's Case:

The Respondent Landlord said he had taken in Mr. Massey from a homeless shelter and had agreed that he could have a friend share the dwelling. However, he said as far as he was concerned it was Mr. Massey's tenancy and he was responsible for the rent.

He said he was aware Mr. Smith had moved in shortly after Mr. Massey commenced occupation and that he too was from the homeless shelter. He said he had provided housing to a number of men from the same shelter over the years as they had difficulty coming up with the usual upfront payments for a tenancy and he allowed them to move in without such payments.

He said he had been very good to them and that there were several vulnerable tenants living in the building containing the dwelling, some of whom were anxious and unwell individuals.

He said he had no difficulty with either of the men until 2018, when the Tenant's behavior had got out of hand. He said he had received numerous complaints from Mr. Massey about the Applicant Tenant's anti-social behaviour, and he had a serious and genuine concern that someone would be seriously injured as a result, which he said left him no choice but to change the locks.

He said he always considered Mr. Massey to be the tenant and had told him that if he, Mr. Massey, served a notice of termination on the Appellant tenant, that he would take further action then. He said he understood that Mr. Massey had served the Appellant Tenant with a Notice of Termination, before the locks were changed.

When asked if he was aware that there was a procedure set out in the Act for properly terminating a tenancy, the Landlord said he was aware, but his concerns for the safety of the other tenants, caused by the Appellant Tenants anti-social behavior, had left him with no choice but to change the locks.

He said he himself had been threatened by the Tenant and that the Tenant had made a nuisance of himself at the Landlord's pub, which had caused his customers to complain.

He did not deny that he had signed a letter confirming that Eamon Smith was a Tenant in respect of an application for HAP but said he was unaware that three payments had been made by the Tenant to Wexford County Council in respect of same.

Evidence of Paul Massey

Mr. Massey said he had signed the tenancy agreement with the Landlord and the Appellant Tenant was not party to that agreement. He said he invited him to come and live with him after a few days as he knew him. He said they had got on very well until one day he discovered the Tenant had allowed another person to sleep in his room, while he was away, and when he told him not to allow it to happen again, the Tenant's attitude had changed towards him.

He said the Appellant Tenant stopped paying his half of the rent and became aggressive towards him, violent on some occasions and had left him in fear of his life. He said the Tenant had threatened to kill him and his children and he couldn't sleep with fear.

He said the Appellant Tenant had drank heavily on many occasions and became abusive. He said he wanted him out and had contacted a number of advisory bodies for assistance and concluded the Appellant Tenant was a licensee or lodger and not a tenant of the Landlord. He said he had issued him with a written notice to vacate more than 28 days before the locks had been changed and considered that he was entitled to do so.

6. Matters Agreed Between the Parties

The following matters were agreed between the Parties:

1. The Appellant Tenant commenced occupation on 19th May 2015.
2. There was no deposit paid by the Appellant Tenant.
3. The monthly rent was €130 per week (incl. ESB) and later increased to €140 per week (incl. ESB)
4. The Appellant Tenant vacated the dwelling on 3 October 2018, after the Respondent Landlord changed the locks on the dwelling.

7. Findings and Reasons:

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.

7.1 Finding 1: The relationship of Landlord and Tenant existed between the Appellant Tenant and the Respondent Landlord in respect of the tenancy of the dwelling at Flat 4, 10 Lower John Street, Wexford, Co. Wexford.

Reason: It was clear based on the letter produced by the Appellant Tenant which was signed by the Landlord and dated 1st April 2016, that the Landlord had confirmed him to be a Tenant in the dwelling. The Respondent Landlord accepted he had signed the letter which he was aware was to be used by the Tenant in his application for HAP and the Landlord had facilitated the Tenant's application in this regard.

7.2 Finding 2: The Respondent Landlord unlawfully terminated the tenancy of the dwelling at Flat, 10 Lower John Street, Wexford, Co. Wexford.

Reason: Under Section 58 of the Act a tenancy may only be terminated by means of a valid notice of termination that complies with the requirements set out in Section 62 of the Act and, in the case of a Part 4 tenancy, is based on one or more of the grounds set out in Section 34 of the Act. In this case, no notice whatsoever was served by the Landlord on the Tenant and the locks were changed, excluding the Tenant from the dwelling from 3 October 2018.

The Landlord said that he had changed the locks due to his serious concerns for the safety and wellbeing of the other tenants in the dwelling/ building which arose as a result of the alleged anti-social behavior of the Appellant Tenant.

Notwithstanding the serious concerns that he may have had, the Landlord had a legal obligation to terminate the tenancy by way of written notice to the Tenant, in a form prescribed by the Act.

Under Section 67 of the Act, a Landlord must give a tenant a minimum of 7 days' notice even if a tenancy is being terminated by reason of behavior of the tenant that is behavior within paragraph (a) or (b) of the definition of "behave in a way that is anti-social" in Section 17(1), as was alleged to have been the case here.

While the Landlord's witness, Mr. Massey, stated that he had given the Tenant 28 days' notice to terminate the tenancy, that notice was not in the prescribed form nor was it from the Landlord, as it should have been.

The Tenant submitted that he had slept in the Garda Station for 17 nights, followed by a period in a homeless shelter and that ultimately the unlawful termination had left him homeless. He said he had been denied access to his belongings by the Landlord and suffered the loss of his dignity as a result.

The Tribunal, taking in to account of all the evidence submitted by the parties, considers a sum of €2,000 to be an appropriate sum of damages to be awarded to the Tenant in compensation for the consequences of the unlawful termination of the tenancy. The Tribunal in making an award in this amount, takes in to account the behavior of the Tenant as set out below, prior to the termination of the tenancy and the fact that the Landlord would have been entitled in the circumstances pertaining in this case, subject to compliance with the relevant provisions of the Act, to take the required steps to terminate the tenancy on the grounds of anti-social behavior by the Tenant as envisaged under Section 17(b) of the Act, giving the Tenant 7 days' notice to vacate the dwelling.

In exercise of its powers, therefore, under section sub-section (2)(d) of section 115 of the Act the Tribunal directs that damages in respect of the unlawful termination of the tenancy in the amount of €2000 shall be paid by the Respondent Landlord to the Appellant Tenant.

7.3 Finding 3: The Appellant Tenant is in breach of his obligations under Section 16(h) of the Act.

Reasons:

The Tenant is obliged under Section 16(h) "not to behave within the dwelling, or in the vicinity of it, in a way that is anti-social or allow other occupiers of, or visitors to, the dwelling to behave within it, or within the vicinity of it, in such a way".

Under Section 17 “behave in a way that is anti-social” means:

- (a) Engage in behaviour that constitutes the commission of an offence being an offence the commission of which is reasonably likely to affect directly the well-being or welfare of others,
- (b) Engage in behaviour that causes or could cause fear, danger, injury, damage or loss to any person living, working or otherwise lawfully in the dwelling concerned or its vicinity and, without prejudice to the generality of the foregoing, includes, violence intimidation, coercion harassment or obstruction of, or threats to, any such person, or
- (c) Engage, persistently, in behaviour that prevents with the peaceful occupation-
 - (i) by any other person residing in the dwelling concerned, of that dwelling,
 - (ii) by any person residing in any other dwelling contained in the property containing the dwelling concerned, of that other dwelling, or
 - (iii) by any person in a dwelling (“neighbourhood dwelling”) in the vicinity of the dwelling or the property containing the dwelling concerned of that neighbourhood dwelling

The Tribunal accepts the evidence given by Mr. Massey, that he was intimidated by the Tenant on numerous occasions and threatened in a way that was likely to affect his wellbeing and cause him fear.

In particular the Tribunal accepts that the Tenant threatened to cause harm to Mr. Massey and his children and became physically abusive towards him during the time they lived in the dwelling. Mr. Massey said the Tenant antagonised him, knowing he had a heart condition. On one occasion he said he walked in to the kitchen and the Tenant was paralytic after drinking all day and he attacked him resulting in his punching the Tenant, who had to be picked up off the floor. He said he had been so terrified of the Tenant, he found it difficult to sleep and the Tenant had made his life a misery.

The Tribunal is also satisfied on the evidence that the behaviour of the Tenant caused fear in other tenants living in the vicinity of the dwelling and the Landlord gave evidence that he had received several complaints in relation to the Appellant Tenant’s anti-social behaviour. The Landlord has an obligation under the Act to third parties in respect of a tenant’s anti-social behaviour. The Landlord described the other tenants in the building, where the dwelling was located, as vulnerable people, who suffered from anxiety and poor health and said the Tenant’s abusive behaviour had caused fear in them. He said the extent of the Tenant’s anti-social behaviour, particularly after he was drinking heavily, caused him so much concern that he felt, had he not terminated the tenancy in the manner he did, that someone would have been seriously injured or killed and he had a responsibility for all those who lived in the vicinity of the dwelling, to protect them from the Tenant’s anti-social behaviour.

The Landlord also gave evidence that he himself had been threatened and intimidated by the Tenant and the Tribunal accepts that this behaviour amounted to anti-social behaviour as envisaged under section 17 (a) and (b) of the Act, which would have justified the Landlord in serving a notice of termination on the tenant in a prescribed form giving him 7 days’ notice to vacate the dwelling.

The Tenant disputed the veracity generally of Mr. Massey’s evidence and said he too had been the victim of anti-social behaviour. However, the Tribunal noted that the Tenant did

not take any opportunity afforded to him to cross examine Mr. Massey or the Landlord in respect of the alleged acts of anti-social behaviour on their part.

The Tribunal is satisfied, on the evidence before it, that the Respondent Landlord suffered severe distress, anxiety and inconvenience as a result of the anti-social behaviour engaged in by the Appellant Tenant.

Taking into account the seriousness of the Tenant's anti-social behaviour, the Tribunal finds a sum of €1,500 to be an appropriate sum of damage to be awarded to the Landlord in compensation for breach of the Tenant's obligation in this regards.

In exercise of its powers, therefore, under section sub-section (2)(d) of section 115 of the Act the Tribunal directs that damages in respect of anti-social behaviour in breach of tenant obligations in the amount of €1,500 shall be paid by the Appellant Tenant to the Respondent Landlord.

8. Determination:

In the matter of Eamon Smith (AppellantTenant) and Jim Magee (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlord shall pay the Appellant Tenant the sum of €500 within 28 days of the date of issue of the Order, being a sum of €2,000 damages for the consequences of unlawfully terminating the Appellant Tenants tenancy less the sum of €1,500 damages payable by the Appellant Tenant to the Respondent Landlord in respect of the Tenant's breach of his obligations under Section 16 (h) of the Act in respect of the tenancy of the dwelling at Flat 4, 10 Lower John Street, Co. Wexford.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 25/01/2019.

Signed:



Ciara Doyle Chairperson

For and on behalf of the Tribunal.