

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1019-004025 / Case Ref No: 0819-56665

Appellant Landlord:	Mark Moore
Respondent Tenant:	Neal Bibby
Address of Rented Dwelling:	122 Oak Court Drive, Palmerstown, Dublin 20, D20KF38
Tribunal:	John Keaney (Chairperson) Eoin Byrne, Maureen Cronin
Venue:	Telephone conference tribunal
Date & time of Hearing:	26 August 2020 at 10:30
Attendees:	<div style="margin-left: 40px;">For the Appellant Landlord: Mark Moore, Appellant Landlord Tracy McGann, Landlord's Witness H.G. Carpendale & Company Solicitors, Tribunal Representative</div> <div style="margin-left: 40px;">For the Respondent Tenant: Neal Bibby, Respondent Tenant, Dabid O'Brien BL, Counsel for Tenant</div> <div style="margin-left: 40px;">Stenographer</div>
In Attendance:	

1. Background:

On 26/08/2019 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 23/09/2019. The Adjudicator determined that:

1. The relationship between the parties in respect of the dwelling at 122 Oakcourt Drive, Palmerstown, Dublin 20, D20 KF38 was a tenancy governed by the Residential Tenancies Act.
2. The Respondent Landlord shall pay the Applicant Tenant the sum of €750 within 28 days of the date of issue of this order being an overpayment of rent of €250 and the unjustifiably retained security deposit of €500 with respect of the aforesaid tenancy.
3. The Respondent Landlord shall pay the Applicant a further sum of €5,000 within 28 days of the date of issue of this order being damages in respect of an illegal eviction and

breach of Landlord's obligation under s. 12(1)(a) of the Act in respect of the aforesaid tenancy.

Subsequently the following appeal was received.

The RTB constituted a Tenancy Tribunal and appointed John Keaney, Eoin Byrne and Maureen Cronin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Keaney to be the Chairperson of the Tribunal ("the Chairperson").

On 31/10/2020 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 26/08/2020 the Tribunal convened a Telephone Conference Tribunal in Dublin.

2. Documents Submitted Prior to the Hearing Included:

RTB File.

3. Documents Submitted at the Hearing Included:

The Tribunal noted that four further case files had been received between the original hearing and the adjourned hearing, making a total of eight case files in all.

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 appealed (the Appellant) 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 their case, and that there would be an opportunity for cross-examination by the Appellant.

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

The Chairperson indicated that the Tribunal would be willing to clarify any queries in relation to the procedures either then or at any stage during the course of the Tribunal hearing. It was also indicated that the Tribunal would be willing to consider an application made at any stage during the Hearing for a short adjournment for the purpose of allowing the parties to try to negotiate, on a without prejudice basis, a consent settlement of the dispute.

The Chairperson stressed that all evidence would be taken on oath 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 €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.

All those giving evidence were then affirmed.

At the conclusion of the Appellant Landlord's case the Tribunal hearing was adjourned.

When the Tribunal hearing resumed, the Chairperson welcomed those participating in the Tribunal and confirmed that it was being held via telephone conferencing because of the COVID-19 restrictions. The Chairperson asked the parties participating to identify themselves and to identify in what capacity they were participating in the Tribunal.

The Chairperson explained the procedure which would be followed for a telephone conference Tribunal and reminded all parties that they were still bound by the oath or affirmation made at the original hearing.

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present.

The Chairperson also reminded the Parties that as a result of the Hearing that day, the Board would make a Determination Order.

For ease of reference in this report, the parties are referred to as the "Appellant Landlord" and the "Respondent Tenant", notwithstanding the disagreement between the parties as to whether the arrangement was a lease or licence.

5. Submissions of the Parties:

Appellant Landlord's Case

Appellant Landlord's Evidence

The Appellant Landlord was adamant that all occupants of the property had been his licencees. He referred to a number of examples in support of this contention including being able to access the roof void via an occupant's bedroom, accessing the boiler in the Respondent Tenant's bedroom, being flexible about notice periods, having his post delivered to the property and finding a cleaner for the property. He stated that each occupant was liable only for their own payment. He stated that the RTB website advised that a licence existed if the owner continued to have access to the accommodation. He quoted Professor Wylie stating that none of the conditions required for a joint tenancy, being unity of title, time, possession and interest were present. He referred to an earlier decision of an RTB Tribunal in support of his contention that the Respondent Tenant had a licence and not a tenancy.

He went on to say that in July 2019 he agreed with the Respondent Tenant and another occupant, called Jack, that they could move into the rear annexe of the property on a trial basis with a view to them being given a lease and exclusive occupation. He said it was agreed that the change would take place on Sunday (which would have been Sunday 7th July 2019). He said he helped Jack to move his things into the rear annexe but that the Respondent Tenant left the property and did not return until 10.00pm. He said that after going into the rear annexe the Respondent Tenant let himself into the main dwelling. He said that in the course of a conversation with the Respondent Tenant, the Respondent Tenant became angry and ultimately made a very derogatory remark about the Appellant Landlord's son, who was present at the time. He said that in response to this he told the Respondent Tenant that he wanted him out within a month. He said he confirmed this in an e-mail the following day. The Appellant Landlord stated that the Respondent Tenant agreed to move out and looked for the refund of his deposit and half of the rent paid. He said that

he agreed to refund the Respondent Tenant the deposit of €500.00 but that the Respondent Tenant made certain demands as a result of which he, the Appellant Landlord, withdrew from the agreement.

The Appellant Landlord said that on 08 July 2019 he gave the Respondent Tenant a month to vacate the dwelling but that the Respondent Tenant agreed on 09 July 2019 to vacate that day. He said that the Respondent Tenant stayed in the rear annexe on the nights of 07 and 08 July 2019. He said that on 09 July 2019 the Respondent Tenant told him that he was moving the remainder of his property from the main dwelling to the rear annexe until he moved out. He said that the Respondent Tenant asked about a coffee machine and blender and he told him where he had left them. He said the Respondent Tenant took them with him when he left that day.

The Appellant Landlord stated that he did not have any bank details for the Respondent Tenant into which to pay the balance of the deposit. He said he wanted to deduct €220.00 from the deposit because a mattress that was less than one year old was stained by the Respondent Tenant.

When cross-examined on behalf of the Respondent Tenant, the Appellant Landlord stated that the rear annexe was separate to the main dwelling and that he had stayed in the rear annexe. He said that he had stayed in the main dwelling between December 2017 and February 2018, because the back room was vacant. He denied ever having lived with his witness, Tracy McGann, after 2016. The Appellant Landlord accepted that his business card showed Tracy McGann's address but maintained that this was only to gain access to the market in that locality. The Appellant Landlord accepted that the electoral register showed him as registered at Tracy McGann's address but said that this occurred in 2016 and had not been updated. When it was put to him that in an e-mail to the Respondent Tenant's solicitor on 04 October 2019 he stated that in 2017 he only spent 10 to 15 days at the main dwelling the Appellant Landlord said that he was only referring to the early part of that year. The Appellant Landlord rejected the assertion that he did not live at the dwelling. The Appellant Landlord stated that he was in and out of the dwelling all the time. He stated that the four bedrooms in the house were not occupied constantly but accepted that they were occupied for the majority of time. He referred to the floor plan of the main dwelling shown on Page 4 of Case File 3 and stated that he had stayed in "Room 1" on the ground floor between December 2018 and February 2019 and not December 2017 to February 2018 as previously stated. When asked as to which room was occupied by "Cos" between the end of 2018 and beginning of 2019 the Appellant Landlord said that he could not remember any tenant by that name. The Appellant Landlord then listed the occupants of Room 1 in chronological order ending with an occupant by the name of Carmella from December 2018. When it was put to him that he had previously said that he occupied Room 1 between December 2018 and February 2019 the Appellant Landlord again changed his evidence and said that he had occupied that room from December 2017 to February 2018. When the Appellant Landlord was referred to a text message from him to the Respondent Tenant dated 31 December 2017 advising that a new tenant was moving into Room 1 in the New Year he then changed his evidence again and stated that he was living in the main dwelling between December 2018 and February 2019. The Appellant Landlord stated that in early 2017 he was living between four different addresses being his sister's, his parents', Tracy McGann's and the dwelling. He said that after the first six months of 2017 he was in constant occupation of the rear annexe until the foundations at the rear were being laid and that he then occupied Room 1 from December 2017 to February 2018. He said that from

February 2018 he was living in the rear annexe. He did not accept that the connecting door between the main dwelling and the rear annexe was blocked off and a picture hung on the connecting door. He stated that the rear annexe was originally an outbuilding that became an extension when it was joined to the main dwelling and then became an annexe when the connecting door was closed off. He did accept that the rear annexe had been advertised for let as a separate dwelling

The Appellant Landlord did not accept that he took the Respondent Tenant's keys from him on 09 July 2019, nor did he accept that he had left the Respondent Tenant's goods in the rain. He denied that he had approached the Respondent Tenant with a drill and threatened him causing the Respondent Tenant distress and discomfort. He accepted that he had received letters from the Respondent Tenant's solicitor threatening injunctive proceedings but denied that he had been abusive towards the Respondent Tenant. He accepted that he had sent texts to the Respondent Tenant as set out in Case File 3 but denied they were abusive.

Tracy McGann's Evidence

Tracy McGann stated that the Appellant Landlord moved in with her at the end of 2014 until the middle of 2016. She confirmed that he had registered to vote whilst living at her address but did not change the register when he left. She confirmed that the registered office of the Appellant Landlord's company was her address and said this was for work purposes. She said that she and the Appellant Landlord were in and out of the house without seeking permission and without any objections from the occupants and that the Appellant Landlord had used the washing machine in the house as there was no washing machine in the rear annexe. She said that she had met the Respondent Tenant in the house.

She said that she became involved when the Appellant Landlord asked her to take over the dealing with the e-mails from the Respondent Tenant because she was involved in finance. She said she e-mailed the Respondent Tenant to advise his deposit would be returned in full provided there was no damage. She said that the Appellant Landlord then advised her about the stained mattress and she told the Respondent Tenant that €220.00 would be deducted. She said that it was only then that the Respondent Tenant raised the issue about his goods being damaged.

When cross-examined Tracy McGann stated that the Appellant Landlord first stayed in the rear annexe at the end of 2016 and that the Respondent Tenant was not residing in the main dwelling at the time. She said that the Appellant Landlord moved into the rear annexe in the middle of 2016. She initially stated that the Appellant Landlord lived in the main dwelling between January and March 2017 which she then changed to 2018. She maintained that she was a neutral witness but accepted that she had sent an e-mail referring to the Respondent Tenant as "fuck face" but had not intended that this be seen by the Respondent Tenant.

The Tribunal then adjourned.

When the Tribunal hearing resumed Counsel for the Respondent Tenant objected to further evidence being received by the Tribunal by way of the additional Case Files submitted. Counsel was advised that he could recall the Appellant Landlord to be cross-examined further as to the evidence or he could make submissions in relation to the additional evidence at the end of the hearing. Counsel advised that he did not wish to cross-examine the Appellant Landlord further.

Respondent Tenant's Case

Respondent Tenant's evidence

The Respondent Tenant said that when he moved into the house in January 2017 there was one other resident, "Jack", who occupied an upstairs room. The Respondent Tenant then referred to the floor plan of the house at page 4 of Case File 3. He confirmed that his room was the one downstairs on the left-hand side of the hall. He confirmed that there was another bedroom on the ground floor to the right of the hall and two more bedrooms upstairs. He said that he did not know where the Appellant Landlord was living at the time he took up occupation but that the Appellant Landlord never mentioned living in the house. He said that the Appellant Landlord told him that he had 8 properties let out. He referred to a text from the Appellant Landlord on 07 September 2017 (reproduced at page 9 of Case File 3) in which the Appellant Landlord stated that he had 8 properties. He said that after he moved in two other occupants joined him and Jack. He referred to a letter dated 25 April 2017 (reproduced at page 7 of Case File 3) from the Appellant Landlord addressed to the four of them regarding payment of rent, which confirms that all four rooms were occupied as at that date. The Respondent Tenant then went on to confirm the names of the occupants of Room 1 from February 2017 until June 2019 and the dates that they occupied that room, stating that Room 1 was occupied pretty consistently between those two dates. He stated that the Appellant Landlord never lived in the main dwelling whilst he lived there. He referred to the Appellant Landlord's text to him (reproduced on page 10 of Case File 3) in which the Appellant Landlord advised that he was "going to be around for the next few weeks" which he said showed that he wasn't normally there. He said that he had been in the rear annexe during 2017 and saw that it had a full kitchen including washing facilities and independent heating. He said that the Appellant Landlord lived there from January 2018, after the tenant moved out, and that the Appellant Landlord had never watched television, cooked or used the washing machine in the main dwelling.

He said that there was doorway connecting the rear annexe to Room 1 from a date in March 2018 for a few weeks, but this was blocked up in April 2018 after the Council had inspected the property. He said that after the door was blocked up a tenant by the name of "Con" moved into Room 1. He referred to the photograph on Page 90 of Case File 1 which he said showed the connecting door having been blocked off.

He said that on Sunday 07 July 2019 he tried to gain access to the rear annexe but was unable to do so. He said that he and Jack met the Appellant Landlord at 12.30 and agreed with him that he, the Respondent Tenant, could move his belongings into the rear annexe on Tuesday 09 July 2020. He said that prior to this the Appellant Landlord had advised them that he wanted the main dwelling for his own use and suggested that he and Jack move into the rear annexe.

He said that on Sunday evening 07 July 2019 he needed access to the main dwelling. He said that he knocked on the door and that when the Appellant Landlord answered he was very angry and demanded that the Respondent Tenant return the key. The Respondent Tenant said he objected to this as he had paid rent in relation to the main dwelling and still had belongings in his room. He said he gave the Appellant Landlord the key to the main door but kept his room key. He said that he returned to the main dwelling on the morning of Tuesday 09 July 2020 and that the Appellant Landlord was aggressive towards him. He said that the Appellant Landlord told him that his belongings from the kitchen were in a black bag at the side of the house. The Respondent Tenant said that he telephoned the Guards at that point as he did not feel safe. He said that he was able to pack up the

remainder of his belongings and move them into the rear annexe. He said that at one point the Appellant Landlord asked him to move the black bags to inside the rear annexe. He said that he refused at which point the Appellant Landlord ran at him with a battery drill which he held inches from the Respondent Tenant's head and threatened him. He said that he felt so threatened that even though he had nowhere to go he decided to vacate and move home to Kilkenny and commute from there. He said that the last conversation he had with the Appellant Landlord was on 09 July 2020 when he asked the Appellant Landlord that if he went would he get his deposit back to which the Appellant Landlord agreed. He said that because of that he moved out at 4.00pm that day. He said that the only subsequent contact he had with the Appellant Landlord was the abusive texts and e-mails that he received.

He said that since leaving the property he had seen an advertisement on DAFT.ie (reproduced in page 3 of Case File 7) advertising the rooms in the main dwelling to let stating that the Appellant Landlord did not live in the property.

The Respondent Tenant confirmed that he had seen the letters sent by the Appellant Landlord to the Respondent Tenant's solicitor. He said the Appellant Landlord had been contacting him and belittling him and being very unpleasant.

When cross-examined by the Appellant Landlord, the Respondent Tenant stated that Jack had lived in the dwelling before him and stayed after he had left. He confirmed that the dates set out on page 4 of Case File 3 were correct to the best of his knowledge and did not agree that they were misleading. The Appellant Landlord then put to the Respondent Tenant the names of various occupants of Room 1 and the dates they occupied Room 1 which were inconsistent with the evidence that the Respondent Tenant had given. The Respondent Tenant disagreed with the Appellant Landlord's recollection and stated that the dates he gave were correct to the best of his recollection.

He disagreed with the Appellant Landlord that he, the Appellant Landlord, had occupied Room 1 from July 2018 until December 2018. He referred to the Appellant Landlord's text to him on 17 November 2018 (reproduced at page 12 of Case File 3) in which the Appellant Landlord refers to Carmella moving into "Cos" room and not "my" room.

The Respondent Tenant said that he had never been offered and had never asked for a lease. He said that he did not know that he had a licence. He said that the Appellant Landlord never lived in the main dwelling and that he had never occupied any vacant bedroom. He agreed with the Appellant Landlord that he had only rented one room, that each occupant paid a different rent, and that the Appellant Landlord made the rental arrangements.

The Respondent Tenant said that he referred to himself as a licensee in the text to the Appellant Landlord on 09 July 2019 (reproduced on page 27 of Case File 1) because he was only repeating back to the Appellant Landlord the phrase that the Appellant Landlord had used and was not accepting that he was a licensee. He agreed that as at June 2019 there were two occupants in the main dwelling. He disagreed that there was a rolling notice period. The Respondent Tenant agreed that he and Jack were offered the rear annexe but denied there was any mention of registration with the RTB. He disputed the Appellant Landlord's assertion that it was agreed that he and Jack would be given a tenancy of the rear annexe but agreed that there had been mention of a trial period. The Respondent Tenant referred to the text message from the Appellant Landlord on 20 June 2019

(reproduced at page 14 of Case File 3) giving details of the occupation of the rear annexe but making no mention of a tenancy.

The Respondent Tenant said that he had plans on Sunday 07 July 2019 and did not return to the property until 8.30pm. He accepted that he had had a few drinks but vehemently denied making any sort of derogatory comment about the Appellant Landlord's son. He said that the Appellant Landlord told him he had a months' notice to leave. He said that he did not know what arrangement the Appellant Landlord had made with Jack and that as far as he was concerned he would move his belongings into the rear annexe on Tuesday 09 July 2019, that being his next day off.

The Respondent Tenant said that he moved out of the rear annexe under duress and under threat from the Appellant Landlord. He said that he was in fear for his safety. He said that he spoke to his father who advised him to move out. He said that he had not put any accusations to the Appellant Landlord as he did not want to cause any further upset. He said that he vacated the property by 4.00pm on 09 July 2020 after being threatened by the Appellant Landlord.

The Respondent Tenant referred to the texts sent by the Appellant Landlord (reproduced on page 18 of Case File 3) as an example of the threatening messages received from the Appellant Landlord.

The Respondent Tenant said that he had not been willing to give his bank details to the Appellant Landlord until such time as the Appellant Landlord agreed to return all of the monies due to him.

The Respondent Tenant agreed that the Appellant Landlord had supplied electrical kitchen equipment but maintained that he and Jack had their own coffee machines. The Respondent Tenant said that the Appellant Landlord had disposed of the coffee machine and a blender. He stated that these were left out in the rain on the morning of 09 July 2019 and not at 4.00 pm. He pointed out that the time stamp on the photograph of the items as submitted by the Appellant Landlord was 12.12pm and not 4.00pm. He said he had refused to take these items from the Appellant Landlord because they were full of water. He said the replacement information he had furnished was in relation to items that were as near as possible to the originals. The Respondent Tenant completely rejected the Appellant Landlord's claim regarding the stained mattress. He denied that the photograph furnished by the Appellant Landlord was of his mattress pointing out that in a text of 05 July 2019 (reproduced on page 14 of Case File 3) the Appellant Landlord stated that he was disposing of 6 mattresses.

On re-examination the Respondent Tenant confirmed that the Appellant Landlord had been in touch with the Respondent Tenant's solicitor before proceedings were commenced and that the Appellant Landlord had been rude to his solicitor.

Each of the parties then made a closing statement. The Appellant Landlord submitted that the arrangement in the present case was a licence, not a lease; he again referred to the four unities. The Respondent Tenant's representative submitted that the Appellant Landlord's evidence had been evasive and misleading and that the arrangement in question was a lease, not a licence, such that the Tribunal did have jurisdiction, and that further damages should be awarded to the Respondent Tenant.

6. Matters Agreed Between the Parties

1. The Respondent Tenant's occupation of the dwelling began in 2017.
2. The agreed payment at all relevant times was €500.00 per month.
3. The Respondent Tenant had paid a deposit of €500.00 at the commencement of his occupation of the dwelling none of which had been repaid by the Appellant Landlord.
4. The Respondent Tenant ceased occupation of the property on 09 July 2019.

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 issue of the unlawful termination of the tenancy and the issue of the deposit retention, were properly before the Tribunal.

Reasons: The property at 122 Oak Court Drive, Palmerston, Dublin consisted of a four bedroom house (referred to herein as the main dwelling) and a self-contained two bedroomed residential unit at the back of the main dwelling (referred to herein as the rear annexe). The Appellant Landlord contended that the Respondent Tenant occupied part of the main dwelling by virtue of a licence. If that contention was correct, then the Tribunal would not have jurisdiction to hear the Respondent Tenant's complaints as disputes regarding licences fall outside of the remit of the Residential Tenancies Act 2004 and so fall outside the remit of the Residential Tenancies Board.

The Appellant Landlord's case was that the occupants of the property failed to satisfy the test for a joint tenancy as they did not have unity of title, time, possession and interest and on that basis no tenancy of the dwelling could have existed and so the occupants were licensees. Unfortunately, the Appellant Landlord was referring to the law relating to joint tenancies affecting the legal ownership of land and this is completely irrelevant to the question of an occupational tenancy.

The Appellant Landlord also asserted that he resided in the dwelling with the other occupants (either occupying the rear annexe at a time when it was only an extension of the main dwelling and not a separate dwelling or occupying one of the bedrooms in the main dwelling) and for that reason the dispute did not come within the remit of the Board. Section 3(1)(g) of the Act excludes from the provisions of the Act a dwelling within which a landlord also resides. The Tribunal do not accept the Appellant Landlord's evidence that he occupied one of the bedrooms in the main dwelling for a period of approximately 6 months. His evidence on this could, at best, be described as inconsistent. On the other hand, even though the Respondent Tenant stated that it was to the best of his recollection, the Respondent Tenant's evidence on this point, i.e. that the Appellant Landlord could never have occupied the room, was cogent and consistent. The Respondent Tenant accepted that the Appellant Landlord occupied the rear annexe from January 2018 but the Tribunal accept the Respondent Tenant's evidence that the Appellant Landlord did not share any of the accommodation or facilities in the main dwelling and that from approximately April 2018 the connecting door between the rear annexe and the main dwelling was blocked off further emphasising the separateness of the main dwelling from the rear annexe. In the

circumstances the Tribunal do not accept that the Appellant Landlord at any time resided in the main dwelling.

S.25 of the Act (which deals with the non-application of the security of tenure provisions of the Act) does not apply to this situation as, regardless as to whether there could be said to be two dwellings within one building, the Appellant Landlord had not served the requisite notice in writing before the commencement of the tenancy.

The Tribunal finds that, on the facts, the Respondent Tenant had a tenancy of one room in the main dwelling which entitled him to exclusive occupation and the right to use, in common with others, the kitchen, bathroom and living room in the main dwelling. The fact that the Appellant Landlord had to ask the Respondent Tenant to leave his room unlocked for a workman to gain entry is consistent with the Respondent Tenant having exclusive possession.

The Appellant Landlord made no mention of the existence of a licence until after the dispute arose between the Respondent Tenant and the Appellant Landlord. Until then the Appellant Landlord in his texts to the Respondent Tenant referred to “rents” and “tenants”. The Appellant Landlord’s letter to the occupants dated 25 April 2017 refers to payment of rents. All such evidence is consistent with the existence of a tenancy.

The fact that occupants came and went at different times and paid different amounts for rents is not inconsistent with each of the Respondent Tenants having a tenancy of their one room with a right to use the common areas.

In addition, in his cross-examination of the Respondent Tenant, the Appellant Landlord asserted on more than one occasion that from Sunday 07 July 2019 the Respondent Tenant and Jack had a tenancy of the rear annexe.

In either case, as at 07 July 2019, the Respondent Tenant had a tenancy in the annexe of the property at 122 Oak Court Drive and so the disputes between the Appellant Landlord and Respondent Tenant are properly before the Tribunal. Even if the Tribunal is incorrect in its conclusion as to the nature of the Respondent Tenant’s occupation of the main dwelling, once he moved into the separate, self-contained annexe, even on a so-called “trial period”, a tenancy existed in respect of the annexe.

Finding 2: The Appellant Landlord has unjustifiably retained the Respondent Tenant’s security deposit.

Reasons: Pursuant to S.12 (1) (d) of the Act a landlord is required to return promptly to a tenant any deposit paid at the commencement of the tenancy, subject to any deduction for rent arrears or any deterioration in the condition of the dwelling in excess of normal wear and tear.

It was agreed that the Respondent Tenant had paid €500.00 at the start of the tenancy and none of this had been repaid by the Appellant Landlord.

The Appellant Landlord sought to deduct €220.00 from the deposit in respect of the replacement of a stained mattress. The allegation regarding the stained mattress was only made after the Respondent Tenant sought compensation for his goods which he said were destroyed by the Appellant Landlord’s actions. Also, the Tribunal noted the Respondent Tenant’s assertion that only 4 days before the tenancy was terminated the Appellant Landlord advised the Respondent Tenant that he was disposing of 6 mattresses and that the photograph of the mattress furnished by the Appellant Landlord could have been of one of these mattresses. In the absence of any receipt for the cost of a replacement mattress

the Tribunal does not accept that the Appellant Landlord has proved his loss on the balance of probabilities. For this reason, the Respondent Tenant is entitled to the return of all of his deposit.

Finding 3: The Respondent Tenant was unlawfully evicted from his dwelling.

Reasons: The Respondent Tenant had the benefit of a periodic tenancy from month to month. There are two possible scenarios. As at 09 July 2019, he either had a tenancy of part of the main dwelling (because he had paid rent for that part and had not vacated or given up possession of that part of the main dwelling) or a new tenancy of the rear annexe began by agreement on 07 July 2019. In either case a tenancy existed and as such the Appellant Landlord was obliged to observe the proper formalities to terminate the tenancy. As more than 6 months had elapsed since the commencement of the tenancy the Respondent Tenant had the benefit of a Part IV tenancy, which could only be terminated pursuant to the provisions of s.34 of the Act. Whatever the reasons for the dispute between the Appellant Landlord and the Respondent Tenant on 07 July 2019 the Appellant Landlord was not entitled to terminate the tenancy in the manner in which he did by giving one month's notice of termination by way of an e-mail.

The Tribunal accepts the Respondent Tenant's evidence that it was his intention on Tuesday 09 July 2019 to move the remainder of his belongings from the main dwelling to the rear annexe and to remain there for the remainder of the notice period. It would appear however that the relationship between the Appellant Landlord and the Respondent Tenant further deteriorated between Sunday 07 July 2019 and Tuesday 09 July 2019. The Tribunal accepts that this resulted in the Appellant Landlord removing some of the Respondent Tenant's belongings from the main dwelling and placing them at the side of the main dwelling where they became damaged by rainwater. However, the Tribunal makes no award in respect of this loss as the Tribunal finds that the Respondent Tenant has failed to adequately prove on the balance of probabilities the amount of his loss in this regard. The Tribunal accepts, and notes that the Appellant Landlord did not dispute this evidence with the Respondent Tenant, that at some point on the morning of 09 July 2019 the Appellant Landlord ran at the Respondent Tenant brandishing a battery drill and threatened the Respondent Tenant. While the Appellant Landlord denied this in direct evidence, he did not challenge the Respondent Tenant's evidence of this in cross-examination. The Tribunal also accept the Respondent Tenant's evidence that this caused him great fear and that as a result of this threat the Respondent Tenant decided to vacate the rear annexe the same day. The lack of notice meant that the Respondent Tenant was obliged to move home to Kilkenny and had the inconvenience of commuting from there to his employment for a time. It also meant that the Respondent Tenant had paid rent for a period of occupation that was denied him as a result of the actions of the Appellant Landlord. The Respondent Tenant is thus also entitled to be reimbursed the overpayment of rent of €250.00.

The Tribunal is of the view that the Adjudicator underestimated the detrimental effect, both in terms of distress and inconvenience, that the circumstances of the unlawful termination had on the Respondent Tenant and is of the view that damages greater than the €5,000.00 awarded by the Adjudicator are appropriate. For the distress and inconvenience caused to the Respondent Tenant the Tribunal considers that an award of €10,000.00 is appropriate. The Respondent Tenant's right to peaceful and exclusive occupation was so severely interfered with that he was left with no option other than to leave the dwelling at considerable personal inconvenience; that occurred solely as a result of the unlawful actions of the Appellant Landlord, in breach of the Residential Tenancies Act 2004. The

Tribunal's award is not one of exemplary damages but is intended to provide damages to the Respondent Tenant for the loss suffered; in this case, the loss suffered was considerable and the Tribunal is satisfied that an award of €10,000 is required to reflect the nature of the damage, loss and inconvenience suffered by the Respondent Tenant.

Balancing the right of the Respondent Tenant to a prompt remedy, and in the absence of any evidence as to the means of the Appellant Landlord, the Tribunal is satisfied that monies due should be paid within 28 days of the date of issue of the determination order of the Board.

8. Determination:

In the matter of Mark Moore [Appellant Landlord] and Neal Bibby [Respondent Tenant], the Tribunal, in accordance with Section 108 (1) of the Residential Tenancies Act 2004, makes the following Order:

1. The relationship between the parties in respect of the dwelling at 122 Oak Court Drive, Palmerstown, Dublin 20, D20 KF38 was a tenancy governed by the Residential Tenancies Act 2004.
2. The Appellant Landlord shall pay the Respondent Tenant the sum of €750 within 28 days of the date of issue of this Determination Order being an overpayment of rent of €250 and the unjustifiably retained security deposit of €500 in respect of the tenancy of the above dwelling.
3. The Appellant Landlord shall pay the Respondent Tenant a further sum of €10,000 within 28 days of the date of issue of this Determination Order being damages in respect of an unlawful eviction and breach of Appellant Landlord's obligation under section 12(1)(a) of the Act for the consequences of unlawfully terminating the Applicant Respondent Tenant's tenancy of the above dwelling.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 06/09/2020.

Signed:



John Keaney Chairperson

For and on behalf of the Tribunal