

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1020-004467 / Case Ref No: 0520-62286

Appellant Landlord:	Mary Carroll
Respondent Tenant:	Sandra Bolger
Address of Rented Dwelling:	13 O'Growney Terrace, Kells, Co. Meath, A82D6F4
Tribunal:	Ciara Doyle (Chairperson) Andrew Nugent, Brian Murray
Venue:	Board Room, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	25 January 2021 at 2:30
Attendees:	For the Appellant Landlord: Mary Carroll, Appellant Landlord For the Respondent Tenant: Sandra Bolger, Respondent Tenant Aine Morgan, Respondent Tenant's Representative
In Attendance:	Stenographers

1. Background:

On 21/05/2020 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 14/08/2020. The Adjudicator determined that:

The Respondent Landlord shall pay the Applicant Tenant the sum of €5,000 within 28 days of the date of issue of this order being damages in respect of an illegal eviction in respect of the tenancy of the dwelling at 13 O'Growney Terrace, Kells, Co. Meath, A82 D6F4,

Subsequently the following appeal was received.

The RTB constituted a Tenancy Tribunal and appointed Ciara Doyle, Andrew Nugent and Brian Murray 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").

On 16/12/2020 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 25/01/2021 the Tribunal convened a hearing at Board Room, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

RTB File.

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

The Chairperson asked the Parties present on the call to identify themselves and to state 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 Appellant Landlord would be invited to present her case first; that there would be an opportunity for cross-examination by the Respondent Tenant, that the Respondent Tenant would then be invited to present her case and that there would be an opportunity for cross-examination by the Appellant Landlord. The Chairperson explained that following this, both parties would be given an opportunity to make final submissions.

The Chairperson stressed that all evidence would be taken on affirmation and would be recorded by the official stenographer present. The Chairperson reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or up to 6 months imprisonment or both. The Chairperson asked the Parties if they had any queries about the procedures, there were no queries.

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.

5. Submissions of the Parties:

Submission of Appellant Landlord

The Appellant Landlord stated that it was the Tenant's contention that she did not receive the Notice of Termination dated 10 February 2020 until 10 May 2020. She referred to a letter from an auctioneer on the case file indicating the Tenant had listed with the auctioneers for an alternative rental property in March 2020 and said this was proof she had received the notice of termination in February 2020.

She questioned, had she not given the Tenant notice until May 2020, why would she have requested to be listed on the auctioneer's data base and requested a reference at that time.

She said she had handed the notice to the Tenant on the 10th February 2020, being a date prior to the pandemic. She said on 10th February 2020 she had a cup of tea with the Tenant and discussed with her the prospect of her daughter moving back into the dwelling.

She said she had given her a further copy of the Notice in May when the Tenant said she had no recollection of having received the first notice.

She referred to text messages whereby the Tenant referenced looking for somewhere else to live during that period. She said she did not serve a Statutory Declaration with the Notice of Termination because she was not aware of the requirements of the Residential Tenancies Act or the workings of the Residential Tenancies Board. She said she had sent the Notice of Termination as a friend and landlady and on that notice, she had stated the reason for the termination was that her daughter needed to live in the dwelling. She said this was a valid reason.

She said the entire tenancy was created in the context of them being friends and said she had no understanding whatsoever of the amount of notice she needed to give to comply with the Act.

She said it was her understanding that the Tenant was entitled to a month's notice. She confirmed to the Tribunal that her daughter moved into the dwelling on the 26th June 2020. She said there was a delay in her daughter moving in, as the dwelling was not habitable when the Tenant had moved out.

She also said she felt intimidated by the Tenant and at one stage had reported an incident to the Gardai, resulting in them attending at the dwelling to discuss matters with the Tenant.

Submission of Respondent Tenant

The Tenant, assisted by her friend, submitted that she had not received the Notice of Termination from the Landlord dated 10 February 2020, until 10 May 2020.

She said she had a discussion with the Landlord in March 2020 about her daughter returning to live in the dwelling, but no notice of termination had been served at that time. She said following on from that discussion, she had made enquiries with a local auctioneer with a view to making alternative arrangements and requested a reference for this purpose.

She said she had received the written Notice of Termination on 10 May 2020, which was dated 10 February 2020, and she moved out of the dwelling on 10 June 2020, being the date set out in the notice for termination of the tenancy. She said she did this as she felt intimidated by the Landlord's actions into leaving. She denied ever being aggressive with the Landlord.

She said she had received a visit from the Gardai, which had been initiated by the Landlord and this had upset her. She said she felt forced into leaving the dwelling and had been required to take up emergency accommodation, during the lockdown period, having no proper cooking or washing facilities and said she had remained there for over 4 months.

She said she had suffered undue stress as a result of the unlawful termination of the tenancy.

6. Matters Agreed Between the Parties

1. The rent payable was €500 per month.
2. There was no deposit paid.
3. The tenancy commenced on 10th March 2017.
4. The tenancy ended on the 10th June 2020.

7. Findings and Reasons:

Finding 1:

The Notice of Termination dated 10 February 2020 is invalid and the Appellant Landlord shall pay the Respondent Tenant the sum of €3,000 in respect of the unlawful termination of the tenancy.

Reasons:

The Notice of Termination is invalid for several reasons, including not having the information required by Section 62 of the Residential Tenancies Act in respect of reference to the Residential Tenancies Board for adjudication, the fact that the tenant had the full 24 hours to vacate, and that the Landlord had to make an offer of a fresh tenancy if the family member vacated. It also did not give the tenant the sufficient notice.

Further the Notice of Termination was not accompanied by the statutory declaration required by Section 35 of the Residential Tenancies Act.

The Landlord stated she had no knowledge of the RTB or the Act and suggested the fact that the tenancy commenced based on a friendship absolved her from the legal formalities of a relationship between Landlord and Tenant. The Landlord was receiving rent from the Tenant and this was a tenancy within the meaning of the Act. As such, the Landlord ought to have familiarised herself with her legal obligations under the Act, including the legal requirements set out in the Act to lawfully terminate the tenancy.

The Tribunal does not accept that a Notice of Termination was served by the Landlord on the Tenant on 10 February 2020 and on the balance of probabilities concludes that the Tenant did not receive the written Notice of Termination until 10 May, as stated by the Tenant in her evidence. It therefore appears to the Tribunal that the notice was served during a period in which Section 5 of the Emergency Measures in the Public Interest (Covid19) Act 2020 expressly prohibited service of a notice of termination.

The Tribunal accepts the Tenant's evidence that she did have a discussion with the Landlord in or around March 2020 about the possibility of her daughter moving into the dwelling and following that discussion, listed with the auctioneer to keep her options open.

The Tenant gave evidence that she was intimidated by the Landlord to the extent that she felt forced into leaving the dwelling on 10 June 2020, being the termination date set out in the notice.

By that stage she had lodged a dispute with the RTB as to the validity of the Notice of Termination and the appropriate course of action would have been for her to wait until the dispute was resolved by the RTB. At that stage she had the protection of the law in that the Landlord could not have acted on the Notice of Termination until the dispute in relation to the validity of it was resolved. Notwithstanding same, the Tenant left the dwelling and in her evidence stated she moved into emergency accommodation.

The Tribunal concludes there is insufficient evidence to demonstrate the Tenant was intimidated into leaving by the Landlord on 10 June 2020, being the date of termination set out in the Notice of Termination. While the Tribunal accepts the relationship between the parties had completely broken down at that stage, the Tenant ought to have waited for her dispute to be validly determined before leaving and she was lawfully entitled to do so.

That said, had the Tenant been served with a valid Notice of Termination, she would have been entitled to a greater notice period and she would also have had the benefit of Section

5 of the Emergency Measures in the Public Interest (Covid 19) Act 2020 which prohibits service of notice of termination during the emergency period. This would have given her additional time in the dwelling and may have avoided her having to temporarily re-locate to emergency accommodation. It for this reason, the Tribunal assesses damages in the sum of €3,000 for the unlawful termination of the tenancy.

8. Determination:

In the matter of Mary Carroll [Appellant Landlord] and Sandra Bolger [Respondent Tenant] the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act, 2004, determines that:

The Appellant Landlord shall pay the sum of €3,000 to the Respondent Tenant within 28 days of the date of issue of this Order, being damages for the unlawful termination of the tenancy of the dwelling at 13 O'Growney Terrace, Kells, Co. Meath, A82 D6F4.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 08/02/2021.



Signed:

Ciara Doyle Chairperson

For and on behalf of the Tribunal