

## **Residential Tenancies Board**

### **RESIDENTIAL TENANCIES ACT 2004**

#### **Report of Tribunal Reference No: TR1022-005765 / Case Ref No: 0322-76074**

<b>Appellant Tenant:</b>	Waqas Arshad Khan
<b>Respondent Landlord:</b>	Sansovino Property Company Limited
<b>Address of Rented Dwelling:</b>	Apartment 22, Glashaus, Broadfield House, Belgard Square West, Dublin 24, D24C952
<b>Tribunal:</b>	Ciara Doyle (Chairperson) Brian Murray, Hugh Markey
<b>Venue:</b>	Virtual
<b>Date &amp; time of Hearing:</b>	14 December 2022 at 10:30 a.m.
<b>Attendees:</b>	For the Appellant Tenant: Waqas Arshad Khan (Appellant Tenant) Rachel Sweeney (Appellant Tenant's wife)  For the Respondent Landlord: Shauna Halpin (Respondent Landlord's representative) Lee Ross (Respondent Landlord's representative) Brendan Hall, Forensic Fire Investigator (Respondent Landlord's witness)
<b>In attendance:</b>	RTB appointed stenographer/logger

#### **1. Background:**

On 14/03/2022 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 22/09/2022. The Adjudicator determined that:

"1. The Applicant Tenant shall pay the total sum of €4,044.92 to the Respondent Landlord dwelling within 7 days of the date of issue of the Determination Order being rent arrears in respect of the tenancy of the dwelling at Apartment 22, Glashaus Broadfield House, Belgard Square West, Dublin 24, D24 CP52.

2. No Notice of Termination was served by the Respondent Landlord on the Applicant Tenant in respect of Apartment 22, Glashaus Broadfield House, Belgard Square West, Dublin 24, D24 CP52.

3. The Respondent Landlord shall pay the total sum of €500.00 to the Applicant Tenant within 7 days of the date of issue of the Determination Order, being damages of €500.00 for the consequences of unlawfully terminating the Applicant Tenant's tenancy of the above dwelling."

Subsequently the following appeal was received from the Tenant on 18/10/2022. The grounds of the appeal: Validity of notice of termination (if you are disputing the validity of a termination notice issued), Unlawful termination of tenancy (Illegal eviction). The appeal was approved by the Board on 24/10/2022.

The RTB constituted a Tenancy Tribunal and appointed Ciara Doyle, Brian Murray, Hugh Markey 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 21/11/2022 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 14/12/2022 the Tribunal convened a Virtual hearing, via microsoft teams.

## **2. Documents Submitted Prior to the Hearing Included:**

RTB Tribunal case files.

## **3. Documents Submitted at the Hearing Included:**

There was no further documentation submitted at hearing.

## **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. In particular, she outlined 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 Tenant) would be invited to present his case first, that there would be an opportunity for cross-examination by the Respondent Landlord, that the Respondent Landlord would then be invited to present their case, and that there would then be an opportunity for cross-examination by the Appellant Tenant. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission. She reminded the parties that the hearing was a de novo hearing involving a full rehearing of the case on the facts.

The Chairperson stressed that all evidence would be taken on affirmation 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. Prior to commencing evidence, the Chairperson reminded the parties that it was open to them to reach an agreement. The Chairperson advised the parties of the benefits of reaching an agreement and advised them that any agreement reached would be capable of being confidential while retaining the enforceability of an order of the RTB. The Chairperson indicated that, if the parties wished

to discuss matters among themselves, the Tribunal would rise and allow them to discuss matters. The parties availed of the opportunity but were unable to reach an agreement.

All parties intending to give evidence then stated an affirmation. The Tribunal asked the parties what matters could be noted as agreed. The list of matters referred to below were noted as agreed.

## **5. Submissions of the Parties:**

### **Appellant Tenant's Submissions:**

The Appellant Tenant said he had been living in the dwelling for over 4 years without complaint and during Covid he had not fallen into rent arrears. However, in 2021 he had a family bereavement which required him to travel outside of Ireland and he was under a lot of stress due to his personal circumstances at the time. In his absence he said his fiancée, and now wife, looked after the dwelling and liaised with the Landlord in respect of rental payments. He complained that although he was the main tenant, the Landlord chose to communicate with Ms. Sweeney instead of him and it wasn't until he received an email on the 1st October 2021 claiming rent arrears due and owing and giving him a 28 day warning notice, that he became aware of the issue.

He said that notice had been given to him by email only and that he should have been informed of the rent arrears by the Landlord before then. He submitted that the Landlord's claim for rent arrears of €4,044.92 was inaccurate as it failed to take into account several payments that had been made to the Landlord.

In particular he referred to bank statements on the case file noting a payment on the 9th September 2021 of €500 and a further payment on the 13th October 2021 of €1,000, both of which he said were not reflected in the Landlord's rental statement. He confirmed that rent had not been paid in August 2021 because the Landlord provided them with incorrect account details for payment. He said a further cash lodgement of €1,261.23 had been made in October 2021 and this was also not credited to their rent account.

When questioned as to why there was no lodgement slip on file to evidence the cash payments, he submitted that the receipt had been burnt in the fire which occurred at the dwelling on the 16th October 2021.

On that day he said he had been out of the dwelling and when he returned the apartment was in flames. He said the Landlord had accommodated all of the tenants in the block for a couple of nights, but he received a call on the 20th October 2021 from Lee Ross stating that his lease was surrendered and that no further accommodation would be provided. He said he asked if it was because of the rent arrears but Mr. Ross told him that it was not about the rent arrears and that the lease was surrendered.

He said there were at least 10 other apartments in the building which had been badly damaged by the fire. He said it was appalling, demoralising and shocking to be treated this way and it was his worst nightmare.

He submitted that 9 of the other 10 apartments that had been affected were given another apartment by the Landlord, but he had not been offered alternative accommodation. He questioned how the Landlord could have known the property was uninhabitable, when he made the call to him on 20th October, when they had not received the final report in respect of the fire until the 22nd October 2021.

He said because of the unlawful eviction he was left homeless and that he had also lost his job due to the mental strain of the situation. He submitted a list of expenses including accommodation costs and parking costs from the 21st October 2021 to the 13th March 2022 totalling €5,051.33.

The Tenant also suggested that there were inadequate fire alarms and security alarms in the block comprising the dwelling. He said there had been a burglary at his dwelling several weeks prior to the fire and he had requested that the security be improved, and that the Landlord was obliged to provide a safe environment.

Ms. Sweeney gave evidence to say that she had made several calls to Ms. Halpin about changing the locks but no action was taken.

By way of cross examination Mr. Ross asked them if they had a pulse ID for the burglary incident and they said they had but it was not on the case file.

Respondent Landlord's Submissions:

Evidence of Mr. Hall

Mr. Hall said it was inaccurate to state there was no proper fire alarm at the dwelling. He said he had investigated the incident and the fire alarm was functional and operating at the time of the fire. He said he attended the apartment shortly after the fire broke out and in the days afterwards with both a structural engineer and Garda forensics. He said he had 41 years experience in forensic investigations. He said the Tenant's account was inaccurate. There were no security issues at the dwelling, there was no evidence of a break in and no evidence of any electrical fault. He said the fire was most likely started by a fire load introduced in the kitchen area of the dwelling and that had damaged the Breton slab between the dwelling and another apartment and significant works had to be carried out to the dwelling. In his opinion he had not seen a safer building in terms of fire safety. He said the damage within the dwelling was extensive. He said 10 apartments were not affected and the Tenant's submission in this regard was incorrect. He said it did not appear to have been an accidental fire. He said while his report on the matter did not issue until the 22nd October 2021 he had verbally communicated his findings to the Landlord four days after the incident as he had been on site continually in the aftermath.

Evidence of Ms. Halpin

Ms. Halpin said she had numerous calls with the Tenant's wife, Rachel Sweeney, about rent. She was aware that the Tenant had a family bereavement and had been asked expressly by Ms. Sweeney, to keep him out of communications to avoid further stress for him. When arrears mounted, she said she had no option but to serve the 28 day notice, which she sent to Mr. Khan on the 1st October 2021 by email. She said she had been trying to work with Ms. Sweeney in respect of rent arrears, as a gesture of goodwill and stated that Ms. Sweeney was originally registered as a tenant on the RTB registration form.

She submitted that the Landlord was seeking arrears of €4,044.92 as set out in the rental statement on page 4 of Case File 2. In respect of rent for July 2021, a sum of €1,000 had been credited to their account however that was stated on the statement to have been paid in September. She said this related to the rent paid by the Tenant on 13th October 2021 as reflected in the Tenant's bank statements and this discrepancy in the description arose due to a difficulty in recent weeks getting the exact date from Ulster Bank, who were in the process of closing their account.

She said her accounts department had thoroughly searched their records and they were satisfied that there was no payment of €500 received on the 9th September 2021 as was set out in the Tenant's evidence. She said there was no rent received from the Tenant in October 2021 and no rent received in August 2021. When questioned by the Tenant, she accepted that while they had submitted a claim for rent for the entire month of October 2021 of €1,261.23, they should only be claiming €813.69 for the rental period from 1 October to the date of termination on 20 October 2021. She reduced their rental arrears claim to €3,597.38 on this basis.

Ms. Halpin said that she had requested a Garda report or pulse ID in respect of the alleged burglary at the property in the weeks prior to the fire. They had investigated the incident, but there was no damage to the door and therefore they had no reason to change the locks or change the security in the dwelling following the Tenant's report.

Mr. Ross gave evidence to say he had made a phone call to the Tenant on the 20th October 2021 and told him the tenancy was terminated. He said any contents damaged in the fire should have been insured by the Tenant, as that was his responsibility. He said that when certain information had been provided to him from Mr. Hall in relation to the fire, it was decided to terminate the tenancy. The Landlord accepted no written notice of termination was served.

#### **6. Matters Agreed Between the Parties:**

1. The tenancy commenced on the 8th February 2017.
2. The tenancy was terminated on the 20th October 2021.
3. The tenant paid a deposit of €1,150 which is retained by the Respondent Landlord.
4. The monthly rent was €1,261.23.

#### **7. Findings and Reasons:**

Finding 1:

The Appellant Tenant owes the Respondent Landlord the total sum of €3,597.38 in respect of rent arrears in respect of the tenancy of the dwelling at Apartment 22 Glashaugh, Broadfield House, Belgard Square West, Dublin 24, D24C952.

Reasons:

It was accepted by the Tenant that there were rent arrears due and owing but there was a direct conflict of evidence between the parties as to the amount of arrears.

The Tenant did not provide a statement showing their rental payments to assist the Tribunal in calculating the rent arrears due and owing and there was inconsistency in their evidence as to the amount of rent arrears. The Tenant commenced his evidence by stating arrears were approximately €2,025 and later changed that figure to €1,280.37. The Tenant did provide two bank statements, to evidence a lodgement of €1,000 on the 13th October 2021 and another on the 9th September 2021 of €500. The former was credited to the rental account, as was evidenced in the Landlord's rental statement.

The Landlords denied receiving the €500 on the 9th September 2021 and suggested this may have bounced back in to the Tenant's account, but the statements were redacted so

this could not be proven. The Tenant also alleged to have had made a cash lodgement in October of €1,261.23 but no evidence was available in respect of that lodgement as they said the receipt was burnt in the fire.

On the balance of probabilities, and given the Tenant could not provide a comprehensive account of how he calculated the arrears of €1,280.37, the Tribunal finds that the evidence submitted by the Landlord in respect of rent arrears, which included a comprehensive and detailed rental statement set out on page 4 of Case File 2, reflects the rent arrears due and owing, with a deduction for the rent from the 20th October 2021 to the end of October 2021, which the Landlord accepted was not due and owing by the Tenants.

**Finding 2:**

The Tribunal finds that the Landlord carried out an unlawful termination of the tenancy.

**Reasons:**

It was accepted by the Landlord that no notice of termination had been served on the Tenant as is required under Section 62 of the Act to lawfully terminate a tenancy.

The termination of the tenancy was done by way of a telephone call by the Landlord's agent, after a very unfortunate fire at the dwelling, which on the evidence given by Mr. Hall, clearly rendered the dwelling uninhabitable.

The Landlord ought to have served a correct notice of termination on the Tenant in accordance with Section 62 of the Act at the time and the Tenant was entitled to receive a valid form of notice of termination rather than a phone call telling them that the lease was surrendered.

The Tribunal accepts the Tenant's evidence that this resulted in a very stressful time for him, and finds that he was deprived of a valid Notice of Termination in the required format which amounted to an unlawful termination of his tenancy. On the other hand, the Tribunal accepts that exceptional circumstances arose in that a fire rendered the dwelling uninhabitable. Taking into account all of the circumstances, the Tribunal considers a sum of €2,500 to be appropriate damages for the consequences of the Landlord failing to terminate the tenancy in accordance with the requirements of the Act.

No submissions were made or any evidence tendered to suggest that the Landlord was entitled to retain some or all of the Tenant's security deposit. Accordingly, taking in to account the deposit of €1,150 paid by and due back to the Tenant, and given the findings that -

- (1) the Appellant Tenant shall pay the Respondent Landlord rent arrears of €3,597.38, and
- (2) the Respondent Landlord shall pay the Tenant €2,500 by way of damages for the consequences unlawfully terminating the tenancy -

the Tribunal finds that the Respondent Landlord is required to pay the sum of €52.62 to the Appellant Tenant within 28 days of the date of the Determination Order.

**8. Determination:**

In the matter of Waqas Arshad Khan (Appellant Tenant) and Sansovino Property Company Limited (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 €52.62 within 28 days of the date of issue of the Determination Order being damages of €2,500 for the consequences of unlawfully terminating the tenancy, having allowed for rent arrears of €3,597.38 and having deducted the deposit of €1,150, in respect of the tenancy of the dwelling at Apartment 22 Glashaus, Broadfield House, Belgard Square West, Dublin 24, D24C952.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 16/12/2022.

A handwritten signature in black ink, reading "Ciara Doyle". The signature is written in a cursive, flowing style.

**Signed:**

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**Ciara Doyle, Chairperson**

For and on behalf of the Tribunal.