

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1022-005780 / Case Ref No: 0822-79021

Appellant Tenant:	Amaechi Innocent
Respondent Landlord:	Brendan Galligan
Address of Rented Dwelling:	44 Austin Friars Street, Mulligar, Co. Westmeath, N91K584
Tribunal:	Mary Doyle (Chairperson) Fintan McNamara, Dervla Quinn
Venue:	Virtual
Date & time of Hearing:	07 February 2023 at 10:30 a.m.
Attendees:	For the Appellant: Amaechi Innocent (Tenant) Philip Hynes (Witness) For the Respondent: Brendan Galligan (Landlord)
In attendance:	RTB appointed stenographer/logger

1. Background:

On 11/08/2022 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 28/09/2022. The Adjudicator determined that:

"In the matter of Amaechi Innocent [Applicant Tenant] and Brendan Galligan [Respondent Landlord], the Residential Tenancies Board, in accordance with Section 121 of the Residential Tenancies Act, 2004, determines that:

1. The Applicant Tenant's application in respect of the tenancy of the dwelling at 44 Austin Friars Street, Mulligar, Westmeath, N91K584, is abandoned."

Subsequently the following appeals were received:

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

On 13/01/2023 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 07/02/2023 the Tribunal convened a hearing virtually, 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:

Opening the hearing the Chairperson stated that it had been established to hear an appeal by the Appellant Tenant, Amaechi Innocent, against a determination made, following an adjudication held on 28 September 2022, in the case of a dispute between the Tenant and the Respondent Landlord, Brendan Galligan, in respect of the Tenancy of a dwelling at 44 Austin Friars Street, Mullingar, Westmeath, N91K584. The adjudicator determined that the appeal was abandoned as neither party was in attendance

The Chairperson introduced the members of the Tribunal to the parties.

She asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. She confirmed with the Parties that they had received the relevant papers from the RTB in relation to the case and that they had received and understood the RTB document entitled "Tribunal Procedures". The Chairman said that she would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Affirmation, would be recorded by the stenographer, and that based on that recording a transcript would be made and could be available to the Tribunal and the Parties with consent of the RTB for a fee.

The Chairperson also stated that it was against the law for anyone giving evidence to refuse to make an Affirmation, to refuse to produce any document in their control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. She pointed out that an offence may be prosecuted by the RTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Tenant would be invited to present his case first, this would be followed by an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present his case, followed by an opportunity for cross-examination by the Appellant Tenant. She said that members of the Tribunal would ask questions of both Parties from time to time.

The Chairperson said that at the end of the hearing, both the Appellant Tenant and the Respondent Landlord would be given the opportunity to make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the RTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

The Chairperson stated that the Tribunal would be willing to consider a short adjournment for the purpose of allowing the parties, should they so wish, to enter without prejudice negotiations to try to reach a consent settlement of their dispute. The parties did not take the opportunity and the hearing proceeded.

5. Submissions of the Parties:

Appellant Tenants' Submission:

The Tenant began his submission by stating that he commenced his tenancy in either 2014 or 2015. He signed a lease. He paid the rent himself for one year and he then went on the HAP scheme. When he moved into the dwelling it had been unoccupied for some years and there was nothing in the dwelling. It took him 4 days to clean and he had to buy everything - there were no fittings and no furniture. He needed a place to stay and that this is why he moved in. He stated that he saw an advertisement for the dwelling and that he had made an appointment with the Landlord.

Sometime after, he could not be sure of dates as all his belongings and papers were removed by the Landlord and are in storage, the Local Authority came and viewed the dwelling and stated that it needed work to comply with the Housing Standards Regulations. At that stage the Tenant stated that the Landlord verbally told him to vacate. The Tenant went to Africa in December 2019 and he returned to Ireland just before the first Covid lock down in March 2020. When he entered the dwelling he found his living room, kitchen and one of the bedrooms locked. The Tenant stated that the Landlord had entered the dwelling and was trying to make a second apartment out the existing dwelling. The Tenant called the Garda who told him that it was a civil matter. The Tenant told the Tribunal that he broke the door into to the living room to gain access to his belongings.

In December 2021 he asked the Landlord to paint the dwelling as his children were coming for Christmas. The Landlord refused so he and his friends bought paint and painted the dwelling.

On 1 May 2022, the Tenant went to Africa and wrote to the Landlord on 10 May 2022 advising him of that. The Tenant followed this up with an email on 11 May 2022 and had no response to either email (tribunal case File 3, pages 2 and 3). The Tenant made several phone calls to the Landlord also and despite leaving messages still did not speak to the Landlord. The Tenant then received a "whats app" message from a friend on 22 May 2022 asking him if he, the Tenant, was back in Ireland as his friend had seen some activity in the dwelling. As his mother was ill and the Tenant was looking after her, the Tenant did not come back to Ireland until 12 July 2022. The Tenant found that the locks were changed in the dwelling and he could not access it. The Landlord's wife works in the shop underneath the dwelling and the Tenant approached her to find out what was happening. She suggested that the Tenant ring her husband, the Landlord. After about 3 hours waiting outside the dwelling, as it was getting cold, the Tenant got into the dwelling from the back of the building and found that everything was gone from the dwelling. Gardai arrived and he told them that he had just come from Africa and that he had nothing - everything was gone. The Landlord stated In front of the Gardai that he had removed the Tenant's property and was storing it in a locked storage unit. The Gardai suggested that the Tenant stay for one week and then find other accommodation. The following day he went to HAP and they informed him that his HAP payments had ceased as he had not told them they he was going to Africa and that he would have to reapply to get HAP which could take up to a year.

On 18 August 2022 at approximately 8.00 a.m. he was woken up to loud noise and roughly dragged from his bed by 5 men. One was the Landlord, the other a handy man who the Tenant recognised and 3 other men who were wearing masks covering all of their faces except their eyes. The Tenant stated that he was assaulted by the Landlord and his men and he was in pyjamas. The Tenant stated that the men were dragging him, screaming at him and the Tenant called the Gardai. As he was explaining the situation to the Gardai the Landlord took the phone from him. The Landlord stated that if the Tenant had given him the keys it would never have gotten to this stage. The Tenant stated that he was left in the middle of Mullingar on the street in his pyjamas and he was ashamed, very distressed and crying. The Tenant eventually was allowed to put on jeans and tee shirt and left. He went to the Garda station to report all that had happened and the Tenant stated that a named Garda stated "Why did you come back from Africa". The Tenant was very upset by the Garda's comments. The Tenant then went to Mullingar County Council to try to get accommodation, he tried all the B and B's and Hotels in Mullingar and could not get a room. In desperation the Tenant went back to the dwelling and asked the Landlord if he could sleep there for the night. The Landlord refused. The Tenant then went to the Cathedral hoping he could stay there but he could not. The Tenant eventually went to the train station where he stayed for the night. The Tenant is now in a homeless unit in Longford. When asked about the value of his belongings he stated that it was everything he owned and he estimated that it was worth c. €40,000. The Tenant further stated that he was a diabetic and suffered from high blood pressure. All his medications had increased due to the stress of the situation that he now finds himself in due to being homeless and living in a hostel in Longford.

Evidence of Philp Hynes (Witness):

Mr. Hynes began by stating that the dwelling was in a poor state when the Tenant moved in. It had never been painted and he and friends of the Tenant had painted the dwelling in December 2021. The witness further stated that the heating never worked, a window was broken and was stuffed with material to keep the cold out. The shower was broken and he, the witness, had to get tape from his brother to try and fix the shower tray to stop any leaking. All in all, the witness stated that the dwelling was in dire straits. He further stated that the Tenant was not trading from the dwelling. The witness stated that he was trying, without any success, to get the Tenant's belongings returned to him. He had made numerous telephone calls to the Landlord but never got a reply. During the course of the witness's evidence the Landlord temporarily left the virtual hearing and the evidence of the witness was halted until such time as the Landlord returned to the virtual hearing.

Respondent Landlord's Submission:

The Landlord began his submission by stating that there never was a lease and what was agreed with the Tenant was a casual arrangement. The Tenant, appeared in a distressed state in 2015/2016 carrying two bags looking for accommodation. The Landlord allowed him the use of an apartment which had been unoccupied for some time. The Landlord later found out that the Tenant had been removed from another property. The Landlord stated over the next few years the relationship was rocky and he didn't want to give any details. The Landlord stated that he found it hard to get his rent. The Landlord stated that the dwelling was a decent dry apartment and that the Tenant had the benefit of free heating and free electricity whilst staying there.

In 2019 when he visited the dwelling he could see from the door that the dwelling was full of "stuff" and it was being used as a warehouse. There were various items piled high,

numerous flat screen tv's, recording machines, bags etc. The Landlord stated that this would invalidate his insurance and constituted a fire hazard. The landlord further stated that the Tenant was bringing old cars and parking them in his back yard and on property belonging to his neighbour. Neighbours were complaining about activity in the dwelling and the landlord felt that the Tenant was trading from the dwelling. The Landlord spoke to his solicitor who wrote to the Tenant concerning his breach of obligations in relation to accumulation of goods (tribunal case file 4, page 5).

The Landlord decided that he wanted to sell the dwelling and issued a Notice of Termination and Statutory Declaration to the Tenant on 6 March 2020 giving a Termination date of 9 September 2020. However, Covid intervened, and the Landlord stated that he was unable to execute the Notice. In May 2022 he became aware that the Tenant had gone to Africa and the Landlord entered the dwelling and discovered a total mess. The Landlord emailed to the Tenant on 23 May 2022 (tribunal case file 4, page 4) stating that he was outraged about the condition of the dwelling and that he had engaged tradespeople to restore the dwelling to habitable condition. In this email the Landlord also informed the Tenant that he had received complaints from neighbours.

On 13 July the Tenant returned and used cutting equipment to gain access to the dwelling with 3 men. His wife and 3 women were working underneath in the shop and were terrified. The Landlord arrived and stated that he was assaulted by the Tenant and his men. The Landlord stated that the Gardai told him that this was a criminal offence, breaking and entering and trespassing and that he could press charges. The Tenant remained in the dwelling overnight. The Tenant changed the locks and refused to give the Landlord a copy key for his own dwelling. On 18 August at approximately 11.00 a.m. the Landlord arrived at the dwelling with 3 tradesmen who were going to renovate the dwelling. The Landlord stated that one of the trades people (the smallest) went up a ladder at the back and gained access via a window. He then let the other men in by opening the front door. The Tenant was in bed in his night clothes. The Landlord agreed that he took the phone from the Tenant when the Tenant phoned the Gardai and the Landlord told the Gardai that the Tenant had not paid rent. The Landlord stated that Gardai told him that he the Landlord had no other option. The Landlord stated that the men were not wearing balaclavas but two might have been wearing Covid masks. The Tenant got dressed and left. The Landlord stated that he later contacted the Gardai who stated that the Tenant never made a complaint that he was assaulted. The Landlord stated that he packed up all the Tenant's belongings and put them into a storage unit of his own. The landlord stated that the witness's comments about being unable to contact him were untrue. The Landlord stated that he was well known in Mullingar, that he worked 6 days a week in his shop in Mullingar and anybody can contact him there. The Landlord finally stated that he 77 years old and that he had been a Landlord for 45 years and he was too intelligent to assault anyone or to allow any of his tradespeople to assault anyone.

6. Matters Agreed Between the Parties:

The address of the dwelling is 44 Austin Friars Street, Mullingar, Co. Westmeath, N91K584.

A deposit of €300 was paid by the Tenant. This deposit is retained by the Landlord.

The Tenant has vacated the dwelling.

7. Findings and Reasons:

Having considered all the evidence, the Tribunal's finding and reason therefor is set out hereunder:

Finding:

An unlawful eviction occurs where a landlord denies a tenant access to their rented dwelling and by entering the Dwelling on 18 August 2022 and forcibly removing the Tenant from the Dwelling the Landlord has carried out an unlawful eviction. The Tenant has suffered as a result of this not least because he was forced to spend a night sleeping rough and remains in homeless accommodation. The Tenant is entitled to damages of €7,000.00.

Reasons:

The events that took place on 18 August 2022 were not disputed by either party in so far as the Landlord entered the Dwelling and the Tenant was forced to leave and thereafter the Tenant could not access the Dwelling. Where a landlord is found to have carried out an unlawful eviction, he/she may be ordered to allow the tenant re-entry into the dwelling and or required to pay damages up to and including €20,000.

The Tribunal finds that Mr. Innocent was a tenant in the dwelling. A tenancy is defined in section 5 of the Residential Tenancies Act 2004 (as amended) "includes a periodic tenancy and a tenancy for a fixed term, whether oral or in writing or implied". The Tenant had the benefit of a Part 4 Tenancy.

Section 58 of the Act specifically states that "a tenancy of a dwelling may not be terminated by the landlord or the tenant by means of a notice of forfeiture, a re-entry or any other process or procedure not provided by this Part". The Tribunal finds that the Respondent Landlord unlawfully terminated the tenancy by the Landlord accompanied by 3 or 4 men entering the dwelling via at window at the back of the Dwelling when the Tenant was in bed. This evidence was given both in writing and in direct evidence to the Tribunal by the Landlord and the Tenant (Tribunal case file 4, page 3).

Under section 115 of the Act the Tribunal finds that damages in the amount of €7,000 is the appropriate amount to provide relief to the Tenant having regard to the manner of the termination and the distress, inconvenience, the conduct of the landlord on the day of the unlawful termination and the fact that the Landlord has not facilitated the return of the Tenant's belongings. In this regard the Tribunal orders the Landlord to return all of the belongings of the Tenant within 28 days of the issue of the Determination Order.

8. Determination:

In the matter of Amaechi Innocent (Appellant Tenant) and Brendan Galligan (Respondent Landlord), the Tribunal, in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Respondent Landlord shall pay the total sum of €7,000 to the Appellant Tenant within 28 days of the date of issue of the Determination Order, being damages of €7,000 for the consequences of unlawfully terminating the Appellant Tenant's tenancy of the dwelling at 44 Austin Friars Street, Mullingar, Co. Westmeath, N91K584.
2. The Respondent Landlord shall return all the belongings of the Appellant Tenant removed from the dwelling at 44 Austin Friars Street, Mullingar, Co. Westmeath, N91K584, within 28 days of the date of issue of the Determination Order.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 08/02/2023.

A handwritten signature in black ink, appearing to read 'M. Doyle', written over a horizontal line.

Signed:

Mary Doyle, Chairperson

For and on behalf of the Tribunal.