

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1023-006798 / Case Ref No: 0723-87253

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| Applicant Landlord: | Aidan McKibben |
| Respondent Tenant: | Ciaran Walsh, Laura Barrett |
| Address of Rented Dwelling: | 58 Manor Hill, Ballincollig, Cork, P31YK29 |
| Tribunal: | Rosemary Healy Rae (Chairperson) Michelle O'Gorman, Fintan McNamara |
| Venue: | Virtual |
| Date & time of Hearing: | 14 March 2024 at 10:30 a.m. |
| Attendees: | Aidan McKibben (Applicant Landlord) No Attendance by or on behalf of the Respondent Tenants |
| In attendance: | RTB appointed stenographer/logger. |

1. Background:

On 17 July 2023 the Landlord made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 78 of the Act. The matter was referred to a Mediation which took place on 6 October 2023. The Mediation was unsuccessful.

Subsequently an application to have the dispute referred to a Tribunal was received from the Landlord on 12 October 2023. The ground of the application was rent arrears and the application was approved by the Board on 12 October 2023.

The RTB constituted a Tenancy Tribunal and appointed Rosemary Healy-Rae, Fintan McNamara and Michelle O'Gorman as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Rosemary Healy-Rae to be the chairperson of the Tribunal ("the Chairperson").

On 19 February 2024 the Parties were notified of the constitution of the Tribunal and provided with details of the date, time and log in details for the hearing.

On 14 March 2024 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:

None.

4. Procedure:

The Chairperson asked the party present to identify himself and to identify in what capacity he was attending the Tribunal. The Chairperson confirmed with the party that he had received the relevant papers from the RTB in relation to the case and that he 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. She stated that, because the Respondent Tenants were not in attendance, the Applicant Landlord would be invited to present his case and that the Tribunal members might ask questions from time to time. Following this the Landlord would be given an opportunity to sum up his case.

The Chairperson stressed that all evidence would be taken by way of affirmation and be recorded by the official recording technician present and she also advised the Applicant Landlord that this was the only recording of the proceedings which was permissible. She reminded the Applicant Landlord 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 also advised the Applicant Landlord that as a result of the hearing that day, the Board would make a Determination Order which could be appealed to the High Court on a point of law only.

The Applicant Landlord then took the affirmation.

5. Submissions of the Parties:

Applicant Landlord's Submissions:

The Landlord stated that the Tenants never paid their portion of the rent on a regular basis. He said that the HAP portion of the rent is paid in arrears at the end of each month but that the top up from the Tenants never came on a regular basis. He said he had numerous telephone calls and texts with the Tenants in relation to the outstanding rent payments and that he had actually issued a total of five warning letters to them.

He said that he issued the notice of rent review to the Tenants on 5 August 2022 and the notice increased the rent from €1,400.00 per month to €1,494.00 per month with effect from 7 November 2022. However, he said that the Tenants never paid the increased rent. He said that he did receive the HAP payments of €1,400 per month from 29 September 2022. He referred to the notice of rent review and the advertisements for comparable properties that he had submitted to back up the notice. He said that the dwelling is a three-bedroom house with one bathroom. He said that the dwelling is now inadequate for the Tenants' needs because they are now a family of seven. He confirmed that the Tenants had never challenged the validity of the notice of rent review.

In relation to the warning notice for rent arrears the Landlord said that this issued on 12 January 2023 and that at that point the Tenants were in arrears of rent in a sum of €221.00. He said that was the sum that was outstanding at that moment in time and he referred the Tribunal to the rent statement in relation to all of the rent payments which had been submitted by him. He stated that the arrears which had accumulated by virtue of the non-

payment of the increased rent (of €94.00 per month) was paid off by the Council's HAP section in February 2024.

He said that he tried to engage with the Tenants about the arrears of rent and there had been numerous telephone calls and texts with them prior to the issue of the Notice of Termination on 11 August 2023. He said that the HAP payments are made in arrears and he indicated that there are currently rent arrears outstanding in the sum of €1,452.00 as of today's date. However, when the Tribunal questioned him further on this, he indicated that the HAP payments generally come in at the end of the month so this sum will actually be paid by HAP at the end of March 2024. The Landlord argued that based on the terms of the lease the Tenants are required to pay the rent in advance. When the Tribunal questioned him on this point it appears that the lease specified that the rent is to be paid on or before the 24th of the month. He agreed that the Tenants had paid a month's rent in advance when they moved in on 29 June 2019. The Landlord stated that the house is now for sale and is due to be purchased by Cork County Council. In this regard he queried whether he would be able to enter the dwelling to retrieve the contents of the house before the sale of the dwelling. The Tribunal informed him that the issue of access to the dwelling did not form part of this dispute and that if he wishes to gain access to the dwelling, he needs to notify the Tenants and agree a date with them in relation to access to the dwelling.

6. Matters Agreed Between the Parties:

Because the Tenants were not in attendance it was not possible for any matters to be agreed. However, the Tribunal accepted the Landlord's evidence in relation to the following uncontroversial facts:

1. The address of the dwelling in question is 58 Manor Hill, Ballincollig, Cork P31YK29.
2. The tenancy of the dwelling commenced on 29 June 2019.
3. The rent payable was €1,400.00 per month prior to the issue of a rent review notice on 5 August 2022.
4. The rent payable as per the notice of rent review is €1,494.00 per month with effect from 7 November 2022.
5. A security deposit of €2,400.00 was paid which is currently retained by the Landlord.
6. A warning notice in relation to rent arrears was served by the Applicant Landlord on the Respondent Tenants on 12 January 2023.
7. A Notice of Termination was served by the Applicant Landlord on the Respondent Tenants on 11 August 2023.

7. Findings and Reasons:

Having considered all of the documentation before it and having considered the oral evidence presented to it by the Applicant Landlord, the Tribunal's finding, and reasons thereof, are set out hereunder.

As a preliminary matter, the Tribunal is satisfied that the Respondent Tenants were on notice of the Tribunal hearing and elected not to attend. The Tribunal confirmed with RTB staff that the Respondent Tenants were on notice of the date, time and connection details for the hearing. The hearing notification was delivered to them by email on 19 February

2024. This is a permissible form of notification under the Electronic Commerce Act 2000. They were thus on notice of the hearing.

The Respondent Tenants did not attend the hearing. The Tribunal also confirmed that there had been no notification by them to the RTB of any difficulties in connecting to the hearing. That being the case, the Tribunal could only conclude that the Respondent Tenants had elected not to attend the hearing. There being no good reason apparent to the Tribunal not to proceed with the hearing, the Tribunal thus decided to continue with the hearing, and commenced the hearing at 10:45am. By the time the hearing had concluded there had been no communication at any stage from the Respondent Tenants, nor any attempt apparent to the Tribunal to connect to the hearing.

Finding No. 1:

The Notice of Rent Review issued by the Landlord on 5 August 2022 is valid.

Reasons:

The Tenants did not challenge the validity of the notice of rent review. However, the Tribunal had to consider its validity because the warning notice for rent arrears and the Notice of Termination which issued thereafter were based on the Tenants' failure to pay the increased rent of €94.00 per month from 7 November 2022.

Section 22 of the 2004 Act sets out the procedures for notification of the rent review.

22.—(1) The setting of a rent (the “new rent”) pursuant to a review of the rent under a tenancy of a dwelling and which is otherwise lawful under this Part shall not have effect unless and until the condition specified in subsection (2) is satisfied.

(2) That condition is that, at least 90 days before the date from which the new rent is to have effect, a notice in the prescribed form is served by the landlord on the tenant stating the amount of the new rent and the date from which it is to have effect and the matters specified in subsection (2A).

(2A) The notice referred to in subsection (2) shall—

(a) without prejudice to subsection (2) and pursuant to the condition referred to in that subsection, state the amount of the new rent and the date from which it is to have effect,

(b) include a statement that a dispute in relation to the setting of a rent pursuant to a review of the rent under a tenancy must be referred to the Board under Part 6 before—

(i) the date stated in the notice as the date from which that rent is to have effect, or

(ii) the expiry of 28 days from the receipt by the tenant of that notice, whichever is the later,

(c) include a statement by the landlord that in his or her opinion the new rent is not greater than the market rent, having regard to—

(i) the other terms of the tenancy, and

(ii) letting values of dwellings

(I) of a similar size, type and character to the dwelling that is the subject of the tenancy, and

(II) situated in a comparable area to that in which the dwelling the subject of the tenancy concerned is situated,

(d) specify, for the purposes of paragraph(c), and without prejudice to the generality of that paragraph, the amount of rent sought for 3 dwellings—

(i) of a similar size, type and character to the dwelling that is the subject of the tenancy, and

(ii) situated in a comparable area to that in which the dwelling the subject of the tenancy concerned is situated.....

Section 22(2C) provides that the “amount of rent sought” means:

the amount of rent specified for the letting of a dwelling in an advertisement the date of which falls within the period of 4 weeks immediately preceding the date on which the notice referred to in subsection (2) is served.

The property is in a rent pressure zone and the new rent was calculated using the RTB’s rent pressure zone calculator.

The Landlord included advertisements for three comparable properties with the notice of rent review which were dated within the period of 4 weeks immediately preceding the date on which the notice was served.

The Tribunal is satisfied that the Notice of Rent Review complied with the requirements of the 2004 Act and there was no dispute as to its service, not less than three months before the new rent was due to take effect on 7 November 2022.

Finding No. 2:

The Notice of Termination served by the Applicant Landlord on the Respondent Tenants on 11 August 2023 in respect of the tenancy of the dwelling at 58 Manor Hill, Ballincollig, Cork P31YK29I, is valid.

Reasons:

Section 16 of the Residential Tenancies Act 2004, as amended, (“the 2004 Act”) provides as follows:

16.—In addition to the obligations arising by or under any other enactment, a tenant of a dwelling shall— (a) pay to the landlord or his or her authorised agent (or any other person where required to do so by any enactment)— (i) the rent provided for under the tenancy agreement on the date it falls due for payment,

Paragraph 1A of the Table to section 34 of the 2004 Act provides that a tenancy may be terminated for breach of tenant’s obligations to pay rent as it falls due. Paragraph 1 and 1A provide as follows:

1. The tenant has failed to comply with any of his or her obligations (other than the obligation to which paragraph (a) of section 16 applies)] in relation to the tenancy(whether arising under this Act or otherwise) and, unless the failure provides an excepted basis for termination— (a) the tenant has been notified in writing of the failure by the landlord and that notification states that the landlord is entitled to terminate the tenancy if the failure is not remedied within a reasonable time specified in that notification, and (b) the tenant does not remedy the failure within that specified time.

1A. The tenant has failed to comply with paragraph(a) of section 16 in relation to the tenancy concerned and the condition specified in subsection (3) (inserted by paragraph (b) of section 12 of the Residential Tenancies and Valuation Act 2020) of section 67 has been satisfied.

Paragraph (3) of section 67 provides as follows:

(3) The condition that applies in respect of paragraph (aa) and subparagraph (ii) of paragraph (b) of subsection (2) is that— (a) the tenant and the Board have been given a notification (in such form as may be specified by the Board) in writing by the landlord that such amount of rent due as is specified in the notification has not been paid to the landlord, and (b) that amount is not paid to the landlord within the period of 28 days following— (i) receipt of the notification by the tenant, or (ii) receipt of the notification by the Board, whichever occurs later.

The Tribunal accepts the Landlord's evidence that there were arrears of rent owed as of 12 January 2023 in the sum of €221.00. Therefore, the Tenants were in breach of their obligation to pay the rent as it fell due.

The Landlord served a Rent Arrears Warning Notice on the Tenants on the 12 January 2023 and a copy was served on the RTB. Having failed to pay the arrears within a period of 28 days, the Landlord served a Notice of Termination on the Tenants on 11 August 2023 and served a copy on the RTB on the same date. The contents of the Notice of Termination complied with the requirements of section 62 of the Residential Tenancies Act 2004 (as amended). The Tribunal is therefore satisfied that the Notice of Termination is valid. The Tenants were given until 15 September 2023 to vacate the dwelling. The Tenants did not vacate the dwelling on the appointed date and are therefore now overholding.

The Tribunal is of the view that the Tenants should be allowed a period of 3 months from the date of issue of the Determination Order. In this regard the Tribunal has taken into account the fact that the Tenants are a family of seven and may find it difficult to source alternative accommodation

Finding No. 3:

The Applicant Landlord's claim in relation to rent arrears is not upheld.

Reasons:

The Landlord submitted that there are currently rent arrears outstanding in the sum of €1,452.00 as of today's date. However, it is clear to the Tribunal that the HAP payments are generally made at the end of the month so this sum will actually be paid by HAP towards the end of March 2024. The Tribunal also notes that the lease specifies that the rent is to be paid on or before the 24th of the month. The Landlord also confirmed that the Tenants had paid a month's rent in advance when they moved in on 29 June 2019.

As per the rent schedule submitted by the Landlord, the Council paid a total sum of €2,885.20 on 25 February 2024 which cleared off the rent arrears due to the non-payment of the rent increase of €94.00 since 7 November 2022.

In all of the circumstances the Tribunal is satisfied that there are currently no rent arrears outstanding.

8. Determination:

Tribunal Reference TR1023-006798

In the matter of Aidan McKibben [Applicant Landlord] and Ciaran Walsh and Laura Barrett [Respondent Tenants] the Tribunal, in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Rent Review dated 5 August 2022 and served by the Applicant Landlord on the Respondent Tenants in respect of the tenancy of the dwelling at 58 Manor Hill, Ballincollig, Cork P31YK29, is valid.
2. The Notice of Termination with a date of service of 11 August 2023 served by the Applicant Landlord on the Respondent Tenants in respect of the tenancy of the dwelling at 58 Manor Hill, Ballincollig, Cork P31YK29, is valid.
3. The Respondent Tenants have been over-holding in the dwelling and they and any other persons residing in the above dwelling shall vacate and give up possession of the dwelling within 3 months of the date of issue of the Determination Order.
4. The Applicant Landlord shall refund the security deposit of €2,400.00 to the Respondent Tenants, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.
5. The Respondent Tenants shall continue to pay any further rent outstanding to the Applicant landlord from 14 March 2024, being the date of the Tribunal Hearing, at the rate of €1,494.00 per month, or proportionate part thereof at the rate of €49.12 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement, for each month or part thereof, until such time as the above dwelling is vacated by the Respondent Tenants and any other persons residing therein.
6. The Applicant Landlord's claim in respect of rent arrears is not upheld.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 20/03/2024.



Signed:

Rosemary Healy-Rae, Chairperson

For and on behalf of the Tribunal.