

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1117-002686 / Case Ref No: 0617-35184

Appellant Landlord:	John Collins
Respondent Tenant:	Mariana Hasan, Sergiu Hasan
Address of Rented Dwelling:	22 The Green, Dunboyne Castle, Dunboyne , Meath,
Tribunal:	Maureen Cronin (Chairperson) Nesta Kelly, Donald Menzies
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2,
Date & time of Hearing:	11 January 2018 at 10:30
Attendees:	Aidan Horan, Landlord's agent John Collins, Appellant Landlord Mariana Hasan, Sergiu Hasan, Respondent Tenants
In Attendance:	DTI Wordwave

1. Background:

On 27th July 2017 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 10/10/2017. The Adjudicator determined that:

1. The Respondent Landlord shall pay the total sum of €4,000 to the Applicant Tenants, within 28 days of the date of issue of the Order, being damages for unjustly depriving the Applicant Tenants of possession of the dwelling contrary to section 56 of the Act, in respect of the tenancy of the dwelling at 22 the Green, Dunboyne Castle, Dunboyne, Co. Meath.

Subsequently a valid appeal was received from the Landlord on 21st November 2017. The grounds of the appeal were Unlawful termination of tenancy (Illegal eviction) ;

The RTB constituted a Tenancy Tribunal and appointed Nesta Kelly, Maureen Cronin, Donald Menzies as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Maureen Cronin to be the chairperson of the Tribunal ("the Chairperson").

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 11th January 2018 the Tribunal convened a hearing at Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

1. RTB File

3. Documents Submitted at the Hearing Included:

Photographs of the property were submitted by the Appellant Landlord.

4. Procedure:

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Landlord, John Collins, against a determination made following an adjudication held on 10th October 2017 in the case of a dispute between the Appellant Landlord and the Respondent Tenants. The Chairperson introduced the members of the Tribunal to the parties.

The Chairperson 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". Both Parties confirmed that they had done so. 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 then 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 Oath or Affirmation, would be recorded by the stenographer present, and that based on that recording a transcript could be made available to the Tribunal if necessary, to assist it in preparing its report on the dispute. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his 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 Landlord would be invited first to present his case, including the evidence of any witness; this would be followed by an opportunity for cross-examination by the Respondent Tenants; that the Respondent Tenants would then be invited to present their case, followed by an opportunity for cross-examination by the Appellant Landlord. She said that members of the Tribunal would ask questions of both Parties from time to time. She also directed that neither Party should interrupt the other when direct evidence was being given.

The Chairperson said that at the end of the hearing, both the Appellant Landlord and the

Respondent Tenants would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties 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 to enter without prejudice negotiations in an effort to try to reach a consent settlement of their dispute should they so wish. The parties indicated that they were willing to talk to each other. Following a short adjournment, the hearing resumed and the Tribunal was informed that the parties would proceed to a hearing of the appeal. The Tribunal resumed hearing the appeal. All persons giving evidence to the Tribunal were then sworn in.

5. Submissions of the Parties:

Appellant Landlord's evidence:

The Appellant Landlord told the Tribunal that he lived in Australia for some years and that when he returned to Ireland, he fully intended to move into the dwelling and that his sister, Emer Burke, managed the letting of the dwelling during his time in Australia. He said his sister informed the tenants by text on a mobile phone they had to leave the dwelling as her brother, the owner, was moving back from Australia, and needed the house to live in. The Appellant Landlord said his sister gave the tenants 3 months from 13th November 2016 to 13th February 2017 in the text to vacate the dwelling. The Landlord gave evidence that he accepted the Notice of Termination was incorrect and did not comply with the statutory requirements. He gave evidence that he returned to Ireland and lived with his parents in December 2016. He said that he discovered that the tenants had painted parts of the dwelling without his permission. He also said that he did not give permission for the tenants to have 2 other adults living in the dwelling with them. He gave evidence that the tenants were not ready to move out on the date specified (13th February 2017) and that he let them stay a further 3 or 4 days.

He said that of the deposit €1,100 which the Respondent Tenants paid to Ms. Burke at the start of the tenancy, the Appellant Landlord said that he returned €800 to the tenants and retained €300, which he said was made up of €150 for paint so that he could restore the dwelling to it's previous condition, and €150 as payment for the tenants staying the extra days, from 13th February to 16th February 2017.

He said that after the tenants left, he started on refurbishing the house and discovered the pyrite problem, that he had known there was a pyrite problem in other houses in the same estate, but that he thought it didn't affect the dwelling. He said that he applied for funding from the government compensation scheme and that the pyrite works would take 3 months, during which time the house could not be occupied. He said that in the circumstances, he completed the refurbishment, and 3 weeks after the tenants had vacated the dwelling, he advertised and re-let the dwelling as he needed the money for

the mortgage. He said that the dwelling was let to new tenants at a rent of €1,800. He said that those tenants remained in occupation until September 2017. He said the house was vacant for a few weeks and let again in October 2017. He said that because of the pyrite problem he can only get tenants on a month to month basis.

The Landlord said that he has been living in another house that he owns in Huntstown Drive, Dublin 15. He said he had bought the house in Huntstown Drive as a buy to let, before he came back from Australia, but that he wanted to live in the dwelling.

The Landlord's agent said that there were 2 grounds relevant to the appeal - that the Tenants were letting to another couple, and that they had painted the dwelling without the landlord's permission for either.

The Landlord and the Landlord's agent both said that they accepted that the Notice of Termination was invalid. The Landlord said that the arrangement with his sister to manage the letting of the dwelling was informal and that neither of them were professional landlords. The Landlord also questioned the validity of the leases included in the RTB file as he said he did not personally sign them.

Respondent Tenant's evidence:

The Respondent Tenant Mariana Hasan gave evidence on her own behalf and on behalf of the second named Tenant Sergiu Hasan that they had been renting the dwelling for 4 years, and sharing the dwelling with another couple. She said that they received a text in November 2016 from Emer Burke, the Landlord's sister who managed the property on behalf of the Landlord. The Respondent Tenant said the text informed the Tenants that the Landlord would be returning from Australia and would be moving into the dwelling. The text also said the tenants had 3 months notice from 13th November 2016 to 13th February 2017 to leave the dwelling. The Tenant said that she and her husband had settled into life in Dunboyne, that they had a baby aged 1 year and 4 months, that she had been on maternity leave for 9 months and had returned to work in Blanchardstown in September 2017.

She said that she had child care set up in Dunboyne, that a woman in Dunboyne minded her child while she was at work, and that she had no expense for baby minding in Dunboyne as the woman came to the dwelling to mind the child. The Tenant said that when she got the notice to leave the dwelling, that she searched for another house to rent in Dunboyne but that none was available. She also said that she offered the Landlord an increase of rent to €1,600 but it was not accepted. The Tenant said that the only house she could get was in Clonsilla, a two-bedroom house at a higher rent, €1,400, whereas they had been paying €1,350 for the dwelling which was a three-bedroom house, which they had shared with another couple. The Tenant also said that now she is living in Clonsilla, she has to pay €420 per month to a creche for 2 days a week for her baby.

The Tenant said that her husband, the second named Respondent Tenant, works in Dublin city, and she works in Blanchardstown. She said that when they moved out, that they trusted the word of the Landlord, that he needed the dwelling to live in, and that approximately 2 weeks after they left the dwelling, at the end of February or beginning of March 2017, a friend told them the dwelling was advertised at a higher rent of €1,800.

The Tenant said they were very upset and that was the reason they made an application to the RTB.

Also, the Tenant gave evidence that the Landlord did not return the entire deposit to them, and that the Landlord had retained €300 partly because the Tenants did not move out on the 13th February 2017 but stayed for a further 3 days until 16th February, and that they the Tenants had painted some rooms in the dwelling, and the Landlord wanted to repaint them. The Tenant gave evidence that they had to borrow the money for their deposit on the house in Clonsilla.

In reply to questions from the Tribunal, the Tenant gave evidence that Emer Burke showed the tenants the dwelling in 2013 and that Ms. Burke gave them the lease to sign and subsequent leases in 2014, and 2016. She said that Ms. Burke was aware that the Tenants were sharing the dwelling with another couple, and pointed out the names of the other couple on the leases signed on 18th August 2014 and 19th August 2016. The Tenant also said that before painting the dwelling, she informed Ms. Burke and got Ms. Burke's consent to the painting.

Closing Submissions:

The Appellant Landlord said that he still intended to live in the dwelling. He said that the tenants had moved not very far away, but only a short distance away from Dunboyne, and that the child care expenses were not his responsibility.

The Landlord's agent said that in the context of renting, no property is for life. The agent also accepted that the method of termination of the tenancy was not the correct procedure. He said that the Landlord needed the dwelling to do substantial renovation, and that the Landlord had suffered badly because of the pyrite problem, that he was out of pocket, and that while the rent was high, he referred to the fact that the rental income is subject to taxation. He also pointed out that the Landlord had not signed the leases, and that neither had the Landlord's sister.

The Respondent Tenants submitted that the Landlord's agent during the tenancy, Emer Burke, the Landlord's sister was aware of that the tenants were sharing the dwelling with another couple. They said that it did not make sense that the Appellant Landlord got them to leave the dwelling and then re-rented it within a very short space of time. They had to borrow money for the deposit on the house to which they had to move on being evicted from the dwelling.

6. Matters Agreed Between the Parties

1. Address: 22 The Green, Dunboyne Castle, Dunboyne, Co. Meath (the Dwelling)
2. Rent: €1,350 monthly
3. Deposit: €1,100
4. Date tenancy commenced: 13th July 2013
5. On 8th November 2016, Respondent Tenants received text message from Appellant

Landlord's agent terminating the tenancy of the dwelling on 13th February 2017 for the reason that the Appellant Landlord intended to return to live in the dwelling.

6. The Appellant Tenants left the dwelling on 16th February 2017.

7. Findings and Reasons:

The Tribunal took into account the evidence of the parties, the materials before it, and the submissions of the parties, and the Tribunal finds as follows:

Finding 1:

The Tribunal finds that the Notice of Termination is invalid and that the Respondent Tenants were unjustly deprived of possession of the dwelling by the Appellant Landlord. The Tribunal finds that the Respondent Tenants are entitled to damages of €6,000 arising from the consequences of the Appellant Landlord unjustly depriving the Respondent Tenants of possession of the dwelling.

Reasons:

The Respondent Tenants were in occupation of the dwelling under a Part 4 tenancy which may only be terminated for a reason specified in section 34 of the Act. The reason given in evidence by the Landlord and by the Landlord's agent, that the Appellant Landlord required the dwelling for his own occupation, is a reason in accordance with paragraph 4 of the Table to Section 34 of the Residential Tenancies Act 2004. The text message sent by the Landlord's agent (Emer Burke, the Landlord's agent when the Landlord was out of the country) is not a Notice as defined in Section 6 of the Act. In any case it did not specify the other obligations on a landlord giving notice of termination of a Part 4 tenancy; nor did it comply with the form of notice required by Section 62 of the Act. However, the Respondent Tenants still enjoy the statutory protection of the Act. Paragraph 4 of the Table to section 34 of the Act states as follows:

"4. The landlord requires the dwelling or the property containing the dwelling for his or her own occupation or for occupation by a member of his or her family and the notice of termination (the "notice") contains or is accompanied by a statutory declaration

(a) specifying—

(i) the intended occupant's identity and (if not the landlord) his or her relationship to the landlord, and

(ii) the expected duration of that occupation,
and

(b) that the landlord, by virtue of the notice, is required to offer to the tenant a tenancy of the dwelling if the contact details requirement is complied with and the following conditions are satisfied—

(i) the dwelling is vacated by the person referred to in subparagraph (a) within the period of 6 months from expiry of the period of notice required to be given by the notice or, if a dispute in relation to the validity of the notice was referred to the Board under Part 6 for resolution, the final determination of the dispute, and

(ii) the tenancy to which the notice related had not otherwise been validly terminated by virtue of the citation in the notice of the ground specified in paragraph 1, 2, 3 or 6 of this

Table.”

The relevant parts of section 56 of the Act states as follows:

“(1) This section applies where—

- (a) a tenant under a Part 4 tenancy, or under a further Part 4 tenancy, has vacated possession of the dwelling concerned on foot of a notice of termination served under section 34(a),
- (b) that notice of termination cited as the reason for the termination one or more of the grounds specified in paragraphs 3 to 6 of the Table to section 34, and
- (c) (ii) in case the ground cited is that specified in paragraph 4 of that Table, the occupation by the person concerned does not take place within a reasonable time after the service of the notice of termination or, in circumstances where such a requirement arises, the landlord does not comply with the requirement to make the offer referred to in that paragraph.”

“(2) Where this section applies, the tenant may make a complaint to the Board under Part 6 that, by reason of the matters mentioned in subsection (1), he or she has been unjustly deprived of possession of the dwelling concerned by the landlord.”

“(3) An adjudicator or the Tribunal, on the hearing of such a complaint, may, if he or she or it considers it proper to do so, make—

- (a) a determination comprising a direction that the landlord shall pay to the complainant an amount by way of damages for that deprivation of possession,
- (b) subject to section 118, a determination comprising a direction that the complainant be permitted to resume possession of the dwelling concerned, or
- (c) subject to section 118, a determination comprising both of the foregoing directions.”

The Respondent Tenants accepted prior to the termination of the tenancy that the Appellant Landlord did intend to occupy the dwelling as stated in the text message sent by the Appellant Landlord’s agent. The Appellant Landlord accepted at hearing that he did not enter occupation of the dwelling, that he carried out refurbishment of the dwelling, and made it available for letting again at a higher rent. The Appellant Landlord did not offer the Respondent Tenants a new tenancy of the dwelling. There was an obligation on the Appellant Landlord to offer the Respondent Tenants a tenancy of the dwelling before advertising the dwelling. The Appellant Landlord was in possession of the contact details of the Respondent Tenants through his agent. The Appellant Landlord was thus in breach of paragraph 4(b) of section 34 and section 56(1)(c)(ii) of the Act and the Respondent Tenants were unjustly deprived of possession of the dwelling.

In addition, the Tribunal accepts, on the balance of probabilities, that the Appellant Landlord did not have an intention of residing in the dwelling, given that new tenants were in occupation of the dwelling at a significantly higher rent within a month of the termination of the Respondent Tenants’ tenancy.

If the dwelling is suitable for new tenants, it would have been suitable for the Respondent Tenants. The Tribunal is therefore also satisfied that the Respondent Tenants were unjustly deprived of possession on the basis that the Appellant Landlord never had a concluded intention to occupy the dwelling in breach of paragraph 4(b) of section 34 and section 56(1)(c)(ii) of the Act.

Under section 115 of the Act, the Tribunal has jurisdiction to award up to €20,000 of damages in respect of a breach of section 56 of the Act. The Tribunal is satisfied that the Respondent Tenants suffered damage, inconvenience and loss as a result of this breach of the Act by the Appellant Landlord. The Tribunal particularly notes that the Respondent Tenants were forced to locate away from Dunboyne, with their young child, where they had made their home for over three years. The Tribunal is satisfied that the Respondent Tenants suffered financial loss as a result of being unjustly deprived of occupation of the dwelling in that they had to borrow money for the deposit for the Clonsilla house, that they then had the extra expenses of €420 per month for child care, and are now paying a higher level of rent.

The Tribunal is satisfied that the Respondent Tenants are entitled to damages of €6,000 arising as a result of the damages incurred for the breach of the Act by the Appellant Landlord. In the absence of an application by the Respondent Tenants to take back occupation of the dwelling, the Tribunal will not make such an order as allowed by section 56 of the Act, and considering the fact that another tenant is in situ.

Finding 2:

The Tribunal finds that the Respondent Landlord unjustly retained €300 of the €1,100 deposit paid by the Respondent Tenants to the Landlord's agent at the commencement of the tenancy on 13th July 2013.

Reasons:

The Tribunal accepts, on the balance of probabilities, the evidence of the Respondent Tenants that the tenants did notify and seek the consent of the Landlord's agent, Emer Burke, in advance of painting the dwelling. The Tribunal finds the Tenant Mariana Hasan to be a credible witness. The Tribunal also accepts the validity of the 2013, 2014, and 2016 leases signed by the tenants in respect of the tenancies. In addition, the Tribunal notes that the leases dated 18th August 2014 and 19th August 2016, show the names of both members of the couple who were sharing the dwelling with the tenants.

8. Determination:

Tribunal Reference TR1117-002686

In the matter of John Collins (Landlord) and Mariana Hasan, Sergiu Hasan (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord shall pay the total sum of €6,300 to the Respondent Tenants, within 28 days of the date of issue of the Order, being damages of €6,000 for unjustly depriving the Respondent Tenants of possession of the dwelling contrary to section 56 of the Act, and €300 being the amount of the deposit unjustifiably withheld by the Appellant Landlord, in respect of the tenancy of the dwelling at 22 The Green, Dunboyne Castle, Dunboyne, Co. Meath.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 17 January 2018.



Signed:

Maureen Cronin Chairperson

For and on behalf of the Tribunal.