

**Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR1118-003376 / Case Ref No: 0818-47000**

<b>Appellant Tenants:</b>	Luisa Carolina Trejo Flores Moran, Thomas Moran
<b>Respondent Landlord:</b>	Loretto McDermott
<b>Address of Rented Dwelling:</b>	46 Newtown Court, Maynooth, Co. Kildare, W23T0V8
<b>Tribunal:</b>	Claire Millrine (Chairperson) Vincent P. Martin, John Keane
<b>Venue:</b>	Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	25/01/2019 at 2.30pm and 09 April 2019 at 10:30am
<b>Attendees:</b>	For Appellant Tenants: Luisa Carolina Trejo Flores Moran, Tenant Thomas Moran, Tenant Ruth Cahill, Witness for the Tenants For Respondent Landlord: Loretto McDermott, Landlord Lydia Bunni, BL, Landlord's Representative Goretti Peyton, Witness for the Landlord Anna Dawson, Witness for the Landlord
<b>In Attendance:</b>	Stenographer

**1. Background:**

On 12/08/2018 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 08/10/2018. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €500 to the Applicant Tenants, within 28 days of the date of issue of this Order, being damages for unjustly depriving the Applicant Tenants of their tenancy, in respect of the tenancy of the dwelling at 46 Newtown Court, Maynooth, Kildare, W23T0V8

Subsequently an appeal was received from the Tenants.

The RTB constituted a Tenancy Tribunal and appointed Vincent P. Martin, Claire Millrine, John Keane as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Claire Millrine 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 25/01/2019 the Tribunal convened a hearing at Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2. However late in the afternoon, the matter was adjourned to a further date to continue hearing evidence from witnesses. The hearing recommenced on 09/04/2019 and concluded on that date.

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

1. RTB File

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

None

## **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; 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) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant.

The Chairperson explained that following this, both Parties would be given an opportunity to make a final submission.

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present and he 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 [reference section 123(3) of the 2004 Act].

The Tribunal advised the Parties that it was still open to them to reach an agreement that resolved the matters and outlined the benefits and consequences of reaching an agreement among themselves. The Tribunal indicated that it would rise to allow the parties to engage in a without prejudice discussion among themselves to see if the matter could be resolved by agreement, if they so wished. All Parties intending to give evidence were sworn in.

Prior to the start of evidence, the Tribunal asked the Parties what matters could be noted as agreed. No matters were agreed.

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

Appellant Tenants' evidence:

The Appellant Tenant gave evidence that he was largely satisfied with the findings in the adjudication report however, he said where it was found that he was unjustly denied of the tenancy, the award of damages should have been greater. He submitted that notwithstanding that the Adjudicator determined such matters under Section 35 of the Act are of the most serious nature, the damages awarded were meagre. He said he understood that the Tribunal could not award punitive damages however he submitted that the damages awarded should at least have a negative effect.

The Appellant Tenant gave evidence that he has 2 children, ages 8 and 4 and that this has been extremely inconvenient for his family. He stated that the tenancy commenced back in 2011 and since then he had made a home for his family in the dwelling and formed good friendships with the neighbours. He said it has therefore been extremely upsetting for his wife and in particular the timing of the service of the Notice of Termination in December 2017, so close to Christmas. The Appellant Tenant gave evidence that following receipt of the Notice of Termination, they spent most evenings searching for alternative accommodation saying that they dared not tell their children that they would be vacating the dwelling. He said he and his wife viewed in or around 15/20 houses and apartments. He said some were not appropriate and some were outside of their budget. They also registered with the local estate agent. He said they spent a significant amount of time searching for new accommodation. He gave evidence that they found a suitable dwelling in April 2018 and moved in. He said he came to an agreement with the Respondent Landlord that they would vacate the dwelling earlier than the end of the notice period, in order to occupy the new house. He said that the dwelling is similar to the Respondent Landlord's dwelling; a 3 bed roomed property near the same neighbourhood with the rent amount being €1,450.00 per month.

The Appellant Tenant gave evidence that on 18 November 2017, they received a Rent Review Notice which they disputed. He said having disputed that the Notice they then received the Notice of Termination some 2 weeks later, on 11 December 2017. He said that the Notice of Termination was directly linked to them challenging the proposed rent increase. Further, he said that it is his view that whilst the Notice of Termination cited that the Respondent Landlord required the dwelling for her own use, he gave evidence that he does not believe that the Respondent Landlord required the dwelling for her own use and is in fact not currently using the property herself. He gave evidence that she is currently renting it out to 3 students under the rent a room scheme. He said that he has been back to the neighbourhood and is aware that students have been residing in the dwelling since he vacated and further that new students have begun renting since September 2018.

He gave evidence that he believes the Respondent Landlord is not residing in the dwelling and is renting the dwelling fully to students under the guise of a rent to room scheme. In addition, he said that she is leaving her car at the dwelling for periods to create the illusion she is residing in the dwelling. He said he approached the students during the first week of October 2018, prior to the adjudication hearing with an intention of confirming they were residing in the dwelling. He said that when he went to speak with the students at the dwelling he could see from the front door that there were students in the front sitting room as he was speaking to one student at the door. He said he saw 3 students in total. He said that he could not see further into the sitting room however and could not confirm whether it was organised as a bedroom.

There were a number of questions put to the Appellant Tenant by the Respondent Landlord's Representative. The Appellant Tenant confirmed that this was an enormous inconvenience to him and that his grievance is in relation to the amount of damages awarded to him by the Adjudicator. He confirmed that he found a new dwelling prior to the end of the notice period which was the same size, 1 km from the Respondent Landlord's dwelling and that there was no need to move his children from school or childcare. In addition, he confirmed that he remained on friendly terms with the neighbours and that relationships have been maintained. The Appellant Tenant confirmed that while it had been extremely stressful, he did not attend a doctor or seek medical attention for stress.

Evidence of Ruth Cahill - Witness for the Appellant Tenants:

Ms Cahill gave evidence that she resides at number 39. She said she has resided at her address for 11 years and that they are all great friends in the neighbourhood. She gave evidence that it was a very stressful time for the Appellant Tenant and his family. She said he received legal letters and she said in her opinion that they should not have been evicted in that manner. She gave evidence that there is a large green in front of the houses where all of the children play and she spends a lot of time outside the house watching them while they play. She gave evidence that she observed that there was no one residing in the dwelling during August and part of September 2018, as there was no lights on in the house. She said however there were cars parked outside the house. She said that students then moved into the house in mid-September 2018, as there were parties taking place. A number of questions were then put to the Ms. Cahill by the Respondent Landlord's Representative. She agreed that the legal letters were not threatening but reiterated that there was no need to proceed in this manner. She agreed that she could not have been watching the house all day long but said that it was her estimate that the Respondent Landlord has only been there for 12 days in total.

Respondent Landlord:

The Respondent Landlord gave evidence that she had been considering her financial affairs for a number of months prior to serving the Notice of Termination. She said that she and the Appellant Tenant had a good relationship until the Notice of Termination was served. She said she had acceded to 2 previous requests not to increase the rent, however in 2017, she said financially she had to attempt to increase it. She said when the Appellant Tenant challenged the Notice of a rent increase she had to make a decision on the dwelling and her own financial circumstances. She said after considering her circumstances, she engaged a solicitor to advise her as to the manner in which a tenancy should be terminated and the associated documentation, in order that she could have the dwelling for her own use.

The Respondent Landlord gave evidence that she wanted to move back into the dwelling for a number reasons, including her family and relations who live north of Maynooth and in any event she stated that she had always intended moving back to Maynooth at some stage. She said at the end of 2017, she decided to dispose of the property she had in Bray, County Wicklow and move back to Maynooth. This made sense both financially due to timelines with the mortgage provider and personally. She gave evidence that her property in Bray is currently on the market and the move back to Maynooth is permanent.

The Respondent Landlord gave evidence that in May 2018, she had contractors in the dwelling for approximately 6-8 weeks. She said the works which were required to be done were more substantial than initially thought and there were delays with the contractors. She

said she is not making a claim of excessive wear and tear however she spent in or around €14,000 on repairs to the dwelling and new bathrooms. She gave evidence that at this time she was back and forth to Bray where she was also organising to put that house on the market for sale. The Respondent Landlord denied that there were students in the dwelling in June and gave evidence that she had some friends from Spain saying with her in the dwelling. She said that students did not reside in the dwelling until 14 September 2018. She said that she commenced nightly stays in the dwelling on 19 July. She gave evidence that her employment brings her to 12 different areas and it is not correct to say that Maynooth is inconvenient in relation to her workplace. She gave evidence that she purchased the dwelling in 1994 and resided there before renting the dwelling. She stated that she previously lived in Killiney, County Dublin however moved to Bray due to financial circumstances.

The Respondent Landlord denied that she was not residing in the dwelling and listed a number of dates when she resided in the dwelling during the months of July/August/September/October/November/December 2018 and January 2019. She gave evidence that the students go home at weekends and she has the dwelling to herself. She said that she has taken over the downstairs sitting room as her living space, as it is a big room which she can lock when she is away or with friends. She stated the Tribunal is welcome to inspect this room. She stated that all of the bills are in her name and the student's accommodation costs include utilities. She gave evidence that Revenue have been notified of the rent a room scheme and she gave evidence that she has changed her address for the purposes of correspondence. Reference was made to recent correspondence provided from her health care provider and her place of work.

The Appellant Tenant put a number of questions to the Respondent Landlord following her evidence. The Respondent Landlord gave evidence that it was not a hardship on her to share the house with students and she has her own privacy. She said it is all a temporary arrangement until she can settle her financial difficulties.

Evidence of Goretti Payton - Witness for the Respondent Landlord:

Ms. Payton gave evidence that she is the Respondent Landlord's Partner and they have been together for 10 years. She stated that she is currently residing in Bray at the moment until the property is sold. She gave evidence that the property is currently listed with an estate agent and there have been several viewings, however no offer to date which they would be willing to accept. She gave evidence that once the property is sold, she will reside in the Maynooth dwelling and that at present the property in Bray is under her custody in order to sell it. She gave evidence that the Respondent Landlord spends no less than 3 nights per week in Maynooth and when she is not there she sometimes stays with her sister or friends. She said that when the house is sold they may continue with the arrangement with students however no more than 2 students. On being questioned by the Appellant Tenant, she stated there are currently 4 students in the dwelling and the Respondent Landlord also spends time visiting family in the West of Ireland.

Evidence of Anna Dawson - Witness for the Respondent Landlord:

Ms. Dawson gave evidence that she is a neighbour of the Respondent Landlord and her partner in Bray. She gave evidence that she rarely sees the Respondent Landlord now that she has moved to Maynooth. She said that she has visited the dwelling in Maynooth and can confirm that the Respondent Landlord is residing there. On questioning from the Tribunal she confirmed that the front room is furnished as a bedroom for the Respondent

Landlord's use and the tenants have the use of the bedrooms upstairs. She stated that she has been in the dwelling in Maynooth on two occasions, in January and February 2019, for lunch and one evening respectively.

#### Closing submissions - Appellant Tenants:

The Appellant Tenant submitted that he resided in the dwelling for 6 ½ years and as far as he was concerned, as long as he paid the rent and kept the dwelling in good condition he would be permitted to stay there. He said in December 2017, a dark shadow was cast over his family when he received service of a Notice of Termination and a long search began for a new dwelling. He submitted he and his wife searched for months for a home for their children which was suitable for their needs. He said that if they hadn't challenged the illegal rent increase, they may have still been there today. He said he believed that the Respondent Landlord raised the rent with a view to issuing a Notice of Termination thereafter. He said the key points to his complaint are; that the Respondent Landlord alleged this was for her own use, that is not the case. She still owns multiple residences and there is no real requirement to have this dwelling for her own use. Whilst the Respondent Landlord might be suffering from financial difficulties, it does not entitle her to terminate the tenancy in the manner which she did and submitted that same must be done in accordance with law. The Appellant Tenant said that he was not going to quote law but quote the RTB wherein it stated that there was a cohort of landlords breaching the law and that the RTB is responsible for holding such landlords accountable for this. He submitted that in the circumstances, he was urging the Tribunal to make a prohibitive judgment.

#### Closing submissions - Respondent Landlord:

The Respondent Landlord's Representative submitted that the evidence is clear, the Respondent Landlord gave oral testimony which could be corroborated by GPS that she is residing in the dwelling. She submitted that she required the dwelling for financial reasons and Revenue is aware of this. She submitted that the Respondent Landlord has her own property and constitutional rights to access and use the property if she fulfils certain criteria under the Act. She submitted that those criteria have been satisfied in this case and the dwelling is required for her own use, however the use may not be to the Appellant Tenants liking. She submitted that whilst the Respondent Landlord does have a house in Bray, that house is currently for sale and she has clearly shown an intention to sell this property. She submitted that the Tribunal has heard evidence in relation to the Respondent Landlord's financial difficulties and there is nothing in law to say that she cannot do what she is doing. She submitted that there is documentary evidence, in the form of bills and correspondence, submitted to the RTB in the Respondent Landlord's name, evidencing the change of address to the dwelling in Maynooth. She submitted if she was not residing there then why has she requested confidential medical information to be sent to that address, that HR in her workplace change her address, the RTB change her address. She said that the Respondent Landlord has also submitted agreements with the students. She submitted that there is nothing in law to say that she cannot do what she is doing with the dwelling. It was further submitted that if the Tribunal finds that the Respondent Landlord unjustly deprived the Appellant Tenants of the tenancy, the Tribunal is not permitted to make an award of damages in this case. In support of her submission the Respondent Landlord's representative made reference to a decision of the Supreme Court in *Murray v Conan P. Budds*, Solicitor and Anthony T. Hanahoe, Terence Hanahoe and Michael E. Hanahoe trading as Michael E. Hanahoe Solicitors [2017] IESC 4 and to a number of paragraphs in relation to the award of damages for unlawful termination of the tenancy, from page 215, in

Residential Tenancies by Laura Farrell. It was submitted that this was not a case whereby locks were changed and no notice of termination was served. The Appellant Tenants were served with a Notice and had time to find the most suitable accommodation for their needs. It was submitted that there was no evidence of any loss to the Appellant Tenants.

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

None.

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

Having considered all of the documentation before it, and having considered the evidence presented to it by the Parties, on the balance of probabilities, the Tribunal's findings and reasons thereof, are set out hereunder.

7.1 Finding: The Tribunal finds that the Respondent Landlord unjustly deprived the Appellant Tenants of the tenancy and the Respondent Landlord shall pay damages of €500 to the Appellant Tenants, in relation to the dwelling at 46 Newtown Court, Maynooth, Co Kildare.

Reasons: The Tribunal is of the view that the Respondent Landlord unjustly deprived the Appellant Tenant of the tenancy in circumstances where, on the balance of probabilities, the evidence suggests that the reason to terminate the tenancy under Section 34 of the Residential Tenancies Act, 2004 as amended ("the Act") was not a valid reason having regard to the evidence.

Section 34 of the Act provides:

A Part 4 tenancy may be terminated by the landlord—

(a) on one or more of the grounds specified in the Table to this section if—

(i) a notice of termination giving the required period of notice is served by the landlord in respect of the tenancy, and

(ii) that notice of termination cites as the reason for the termination the ground or grounds concerned and, in the case of paragraph 4, 5 or 6 of that Table, contains or is accompanied by the statement referred to in that paragraph,

or

(b) irrespective of whether any of those grounds exist, if—

(i) a notice of termination giving the required period of notice is served by the landlord in respect of the tenancy, and

(ii) that period of notice expires on or after the end of the period of 4 years mentioned in section 28(2)(a) in relation to the tenancy.

(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 F37[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 Tribunal, having heard all of the evidence, is not satisfied that the Respondent Landlord required the property for her own use nor did she take up occupation within a reasonable time after the service of the notice of termination. In coming to this conclusion the Tribunal had regard to all of the evidence adduced and in particular, to the following:

(i) There was no evidence submitted corroborating the Respondent Landlord's assertion that she had contractors in the dwelling for 6-8 weeks during May and June 2018 and that there was an over spend in relation to time and money on repairs to the dwelling. There was no evidence before the Tribunal in relation to any repairs/maintenance that took place prior to her residing in the dwelling. In addition, there is contradictory evidence from this period of time, the evidence of the Appellant Tenant was that there were students in the dwelling at that time and the Respondent Landlord's evidence was that she had friends from Spain staying in the dwelling. There was however no evidence before the Tribunal to explain why the Respondent Landlord was herself not using the dwelling, at that material time.

(ii) In addition, the Respondent Landlord cited financial reasons for requiring the dwelling for her own use. The Tribunal was furnished with no evidence to corroborate this assertion by the Respondent Landlord.

(iii) The Respondent Landlord's own evidence was that she did not commence nighty stays until mid-July 2018, some 2 ½ months after the Appellant Tenants vacated the dwelling. In addition, the documentary evidence in the form of correspondence from the Respondent Landlord's medical health providers, her workplace HR team, Revenue and bills are all dated late July/August 2018. On balance, this adds to the concerns of the Tribunal that the Respondent Landlord did not require the dwelling for her own use when she served the Notice of Termination.

(iv) The Evidence of Anna Dawson was that she was in the dwelling in January/February 2019, on two occasions however the Tribunal is of the view that her evidence carries little persuasive weight given that the Respondent Landlord would have been aware that the Appellant Tenants had appealed the decision of the Adjudicator, at this time.

The question for the Tribunal is not whether there is anything in law that prevents the Respondent Landlord doing what she at present is doing with regard to the rent to room scheme. The matter which the Tribunal is concerned with is, did the Respondent Landlord require the property for her own use at the material time, which the Tribunal finds on balance she did not. Consequently, the Respondent Landlord unjustly denied the Appellant Tenant the benefit of the tenancy.

Having found that the Appellant Tenant was unjustly denied the tenancy, the Tribunal must also consider the appropriateness of an award of damages under Section 56 of the Act. The Tribunal's jurisdiction to award damages for abuse of Section 34 of the Act, derives from Section 56 of the Act. Section 56 of the Act states:

56.—(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

The Tribunal notes the arguments of the Appellant Tenant and the reasons why it should make a “prohibitive judgment”. The Tribunal is also cognisant of the arguments made by the Respondent Landlord on this point, that damages cannot be punitive in nature and in fact, damages should only be awarded where there is clear evidence submitted as to stress and genuine inconvenience.

The Act is silent on the matter of punitive and/or prohibitive damages however there is a wealth of jurisprudence from the Courts on this point. It is well settled that the Tribunal does not have jurisdiction to award punitive damages and that damages are awarded for loss, inconvenience and expense and such an award must be proportionate, just and appropriate. Consequently, the Tribunal is tasked with assessing appropriate damages in each particular case, having regard to the evidence and any documentary evidence submitted. Damages are awarded on a case by case basis and are intended to compensate and not punish.

Accordingly, having considered the submissions made by both parties on this point, the Tribunal is of the view that it is appropriate to award an amount of damages for unjustly depriving the Appellant Tenant of the tenancy in the sum of €500.00 for inconvenience and distress encountered by the Appellant Tenant. In coming to this amount, the Tribunal is mindful that the Appellant Tenant found a property less than 1km from the dwelling, there was no need to search for new schools/childcare for his children. In addition, it has been possible to maintain relationships with the neighbours. The Tribunal also considers, looking at the date of the commencement date of tenancy, that the tenancy may have been lawfully terminated at the end of the further Part 4 tenancy cycle and the Tenants may have found themselves in this position sometime in the near future.

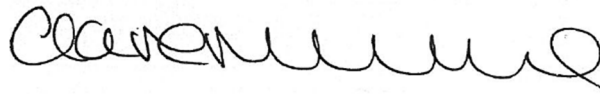
**8. Determination:**

**In the matter of Luisa Carolina Trejo Flores Moran, Thomas Moran (Appellant Tenants) and Loretto McDermott (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Respondent Landlord shall pay the total sum of €500.00 to the Appellant Tenants, within 28 days of the date of issue of the Order, being damages for unjustly depriving the Appellant Tenants of their tenancy, in respect of tenancy of the dwelling at 46 Newtown Court, Maynooth, Co Kildare, W23T0V8.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 29/04/2019.

**Signed:**

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

**Claire Millrine Chairperson**

For and on behalf of the Tribunal.