

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1119-004079 / Case Ref No: 0819-56614

Appellant Landlord:	Brendan Tuohy
Respondent Tenant:	Martin Ward, Katrina Ward
Address of Rented Dwelling:	2 The Courtyard, Mainstreet, Loughrea, Co. Galway
Tribunal:	Donald Menzies (Chairperson) Louise Moloney, Brian Murray
Venue:	The Executive Lounge, Hotel Meyrick, Eyre Square, Galway
Date & time of Hearing:	21 January 2020 at 11:00am
Attendees:	Kevin Tuohy, Appellant Landlord's Representative Owen Swaine, Appellant Landlord's solicitor Brendan Tuohy, Appellant Landlord (ex camera - the Appellant Landlord completed the Attendance Sheet but did not attend in the Tribunal Room, although he was elsewhere in the building) Martin Ward, Respondent Tenant Katrina Ward, Respondent Tenant Myles Murphy, Threshold, Respondent Tenants' Representative Andrea O'Connor, Respondent Tenants' accompanying person
In Attendance:	Recording Technician appointed by the RTB (Epiq, formerly Worldwave t/a DTI)

1. Background:

On 22/08/2019 the Tenants made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 78 of the Act. On 20/09/2019 the Landlord 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 24/10/2019. The Adjudicator determined that:-

The Respondent/Applicant Landlord shall pay the total sum of €8000.00 to the Applicant/Respondent Tenants within 56 days of the date of issue of the Determination Order, being for the consequences of unlawfully terminating the Applicant/Respondent Tenants' tenancy of the dwelling at 2 The Courtyard, Mainstreet, Loughrea, Co. Galway.

Subsequently the following appeal was received from the Landlord on 22/11/2019. The grounds of the appeal: "Rent arrears, Breach of tenant obligations, Unlawful termination of tenancy (Illegal eviction)". The appeal was approved by the Board on 25/11/2019.

The RTB constituted a Tenancy Tribunal and appointed Donald Menzies, Louise Moloney and Brian Murray as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Donald Menzies to be the chairperson of the Tribunal ("the Chairperson").

On 19/12/2019 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 21/01/2020 the Tribunal convened a hearing at The Executive Lounge, Hotel Meyrick, Eyre Square, Galway.

2. Documents Submitted Prior to the Hearing Included:

RTB Files.

3. Documents Submitted at the Hearing Included:

None, as the Appellant Landlord did not proceed with his appeal.

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 hearing was a public hearing; 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 Landlord) would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondent Tenants; then the Respondent Tenants would be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant Landlord. Each party would then be afforded the opportunity to make a closing submission.

The Chairperson stated that all evidence would be taken on oath or affirmation and that all evidence would be recorded by the recording technician present. The parties could, with the consent of the Board, obtain a transcript of the proceedings after the hearing on payment of the required fee. He reminded the parties 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 Appellant Landlord's solicitor advised the Tribunal that the Appellant Landlord did not wish to proceed with the Appeal. He said that the Appellant Landlord had applied to the Personal Insolvency Board and that a Personal Insolvency Practitioner (PIP) had been appointed very recently. He stated that he understood that all proceedings including the RTB dispute resolution process were therefore automatically stayed. He was unable to submit to the Tribunal any documentation in relation to the appointment of a PIP.

The Tribunal adjourned to consider the representation.

The Tribunal informed the solicitor for the Appellant Landlord that the appointment of a PIP does not stay a RTB dispute resolution process.

The Chairperson explained to the Appellant Landlord's solicitor that if the appeal was abandoned or withdrawn the determination made at adjudication would stand. In that case following the hearing the Tribunal would make its determination in relation to the dispute and would notify the RTB of that Determination.

The solicitor for the Appellant Landlord said that the Appellant Landlord understood that if the Appellant Landlord did not proceed with his appeal the Tribunal could deem that the appeal was abandoned.

5. Submissions of the Parties:

No submissions were made as the Appellant Landlord did not proceed with his appeal.

6. Matters Agreed Between the Parties

None, as the Appellant Landlord did not proceed with his appeal.

7. Findings and Reasons:

The Tribunal finds that the Appellant Landlord's appeal has been abandoned and that the Adjudicator's decision, in the matter of the dispute between the Landlord and the Tenants, stands.

Reason:

The solicitor for the Appellant Landlord, in the presence of the Appellant Landlord's representative, stated that the Appellant Landlord was not proceeding with the appeal. In the circumstances the Tribunal finds that the Appellant Landlord's appeal has been abandoned.

8. Determination:

In the matter of Brendan Tuohy [Appellant Landlord] and Martin Ward and Katrina Ward [Respondent Tenants], the Tribunal, in accordance with Section 108 (1) of the Residential Tenancies Acts 2004 to 2019, determines that:

1. The Appellant Landlord's appeal in respect of the tenancy of the dwelling at 2, The Courtyard, Mainstreet, Loughrea, Co Galway, is deemed abandoned by virtue of submissions to the Tribunal by the Appellant Landlord's solicitor.
2. The Adjudicator's decision in the matter of the dispute between the Appellant Landlord and the Respondent Tenants stands.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 22/01/2020.

A handwritten signature in black ink, appearing to be 'Donald Menzies', written over a horizontal line.

Signed:

Donald Menzies, Chairperson

For and on behalf of the Tribunal