

**Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR1121-005153 / Case Ref No: 0921-72645**

**Appellant Tenant:** Farah Damji

**Respondent Landlord:** Gavin Lennon, Propmaster Ventures Limited,  
Norman Prendergast, Alan Prendergast, Alberto Baroso

**Address of Rented Dwelling:** 195 Bachelors Walk Apartments, Liffey Street  
Lower, Dublin 1, D01W274

**Tribunal:** Elizabeth Maguire (Chairperson)  
Michelle O'Gorman, Eoin Byrne

**Venue:** Tribunal Room, RTB, 2nd Floor, O'Connell Bridge  
House, D'Olier Street, Dublin 2

**Date & time of Hearing:** 16 March 2022 at 2:30 p.m.

**Attendees:** For the Appellant tenant:  
Farah Damji (Appellant tenant)  
James MacGuill, MacGuill & Co., Solicitors  
(Solicitor for Appellant tenant)  
Norman Prendergast (witness)  
Alan Prendergast (witness)

For the Respondent landlord:  
Gavin Lennon (Respondent Landlord)  
Alberto Baroso (witness)  
Michael Heslin, Miley & Miley, Solicitors, (Solicitor  
for Propmaster Ventures Ltd., Norman Prendergast,  
Alan Prendergast)  
John Monaghan BL instructed by Miley & Miley,  
Solicitors (Representative for Propmaster Ventures  
Ltd.)

**In attendance:** RTB appointed Digital Logger

**1. Background:**

On 14 September 2021 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 24 September 2021. The Adjudicator determined that:

1. The Applicant Tenant was wrongfully deprived of possession of the dwelling by the Respondent Landlord, in respect of the tenancy of the dwelling at Apartment 195, Bachelors Walk Apartments, Bachelors Walk, Dublin 1, D01 W274.

2. The Respondent Landlord shall pay the total sum of €464.28 to the Applicant Tenant, within 14 days of the date of issue of the Determination Order, being damages of €4,500.00 for the consequences of unlawfully terminating the Applicant Tenant's tenancy of the above dwelling having deducted rent arrears of €4,035.72, in respect of the tenancy of the above dwelling.

Subsequently the following appeal was received by the RTB from the Tenant on 5 November 2021. The grounds of the appeal: Unlawful termination of tenancy (Illegal eviction). The appeal was approved by the Board on 24 November 2021.

The RTB constituted a Tenancy Tribunal and appointed Michelle O'Gorman, Eoin Byrne and Elizabeth Maguire as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Elizabeth Maguire to be the chairperson of the Tribunal ("the Chairperson").

On 22 February 2022 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 16 March 2022 the Tribunal convened a hearing at the Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2. To facilitate the parties, remote facilities were made available and the hearing proceeded via Teams as all parties chose to attend virtually.

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

RTB Tribunal case 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 then 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; the Appellant tenant would be invited to present her case first; that there would be an opportunity for cross-examination; that the Respondents would then be invited to present their cases, and that there would be an opportunity for cross-examination by the Appellant tenant's representative. The Chairperson explained that following the evidence, the parties would be given an opportunity to make final submissions.

The Chairperson explained that all evidence would be taken on affirmation and be recorded by the digital logger present and she 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 Chairperson noted that the proceedings were being recorded by the appointed digital logger, and that this was the only permitted recording.

The Chairperson also reminded the parties that as a result of the hearing, 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.

There were no queries on the procedures.

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 the parties so wish.

The parties intending to give evidence took an affirmation.

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

Prior to the Tribunal Hearing, the Tribunal had received requests from the appellant tenant for witness summonses to be issued for the following persons:

1. Mr. Norman Prendergast
2. Mr. Alan Prendergast
3. Mr. Alberto Baroso
4. Mr. Gavin Lennon.

In addition, the appellant tenant also requested that the RTB serve a witness summons on the current occupant of the dwelling.

She also sought to compel production of the letting agreement between Alberto Baroso and Mr. Gavin Lennon.

She also required the Tribunal to require all persons to attend the hearing in person (rather than virtually).

Having conferred, the Tribunal agreed to have witness summonses served upon Mr. Norman Prendergast and Mr. Alan Prendergast, in relation to the issues in the dispute before the Tribunal. The Tribunal declined to direct a witness summons be served upon the person in occupation of the dwelling as no information regarding the identity was provided by the appellant tenant. The Tribunal declined to direct production of the document sought by the appellant tenant on the basis that the issue of who was her landlord was res judicata in a previous Tribunal hearing and any agreement between Mr. Lennon and Mr. Baroso was irrelevant to the issues before the Tribunal.

The appellant tenant reverted pointing out that the identity of the person in occupation was a matter known to the RTB as the tenancy was registered.

The Tribunal conferred again and declined to issue the witness summons sought as there was insufficient evidence before the Tribunal of the identity of the person sought to be summonsed. The Tribunal is independent in its function.

The Tribunal also pointed out that the hearing was being conducted as a hybrid hearing - that the RTB was facilitating persons who wished to attend remotely.

In the event all parties including the appellant tenant attended remotely via Microsoft Teams.

Appellant tenant's submissions:

Ms. Farah Damji

The appellant tenant gave evidence that in early March 2020 she entered into a tenancy under a fake name at the dwelling. She said that she had “fled” from the UK. She said that this was a short let, and that Mr. Gavin Lennon had said that he was the owner and the landlord of the dwelling. She was asked whether there was any documentation produced to her at this time regarding Propmaster Ventures Ltd., she said that there was no documentation produced.

She said that the dwelling was partially furnished, with what she termed “broken IKEA rubbish”. She said that she was moving her possessions from London. She said that she had all the furnishings in the dwelling removed, and she left them outside the dwelling. She said that this included all items such as light fittings. She said that she had a full inventory of the belongings that she brought from London.

She said that she was subsequently arrested on foot of a European Arrest Warrant, and brought to the Dóchas Centre (Mountjoy Prison). She said that the premises was also entered by the Criminal Assets Bureau without a warrant, and she gave evidence to the effect that Mr. Lennon had given information to the Criminal Assets Bureau about her.

She said that she had no access to the dwelling from 17 August 2020 until 1 April 2021. She said that she made repeated attempts to contact Mr. Lennon from the Dóchas Centre, with the assistance of the chaplain there and also the security guards there, but she got no response. She said that it was only when her current solicitor made contact that there was any response.

She was asked whether the dwelling was vacant when she was in custody, she replied that it should have been vacant. She said that she produced materials which she said were reviews of the dwelling with her possessions in it, highly praising the dwelling. She said these were “laudatory reviews” using her belongings. She said that these photographs were images of the dwelling when it should have been empty. She said that there was a previous Tribunal hearing, which has been appealed on a point of law to the High Court.

She gave evidence that on the second Sunday in September 2021, she arrived at the dwelling. She said that there was another person there who said he was the legal occupant of the dwelling.

She was asked about whether there were notices affixed on the door previously, she said that there were no such notices. She said that if there had been such notices, she would have brought these to the attention of her solicitor, with whom she is in contact several times every day.

She said that she was excluded from the dwelling and that the locks were changed. She said that everything that was left in the dwelling was brought to “a dump in Glasnevin in an estate owned by the Prendergasts”. She said that “everything was trashed, ruined”.

She said that there were missing items, and items which were damaged. She reiterated that she had an inventory of the belongings that she had brought from London. She listed out the items to which she was referring, which included over €5000 in cash, designer clothes, designer handbags, paintings, vases, mirrors, diamond jewellery, pearls, china, chandeliers, and lampshades.

She said that these items went missing when she was in the Dóchas Centre. She said that she did not give anyone permission to enter the dwelling.

She gave evidence to the effect that after she returned to the dwelling and was excluded therefrom, her property was taken and it was damaged. She listed the items that she said were damaged, including clothing, bedding, paintings, and picture frames.

She said that she had 42 pages of photographs and a list of these items. She described to the Tribunal each of the photos that she had. She said it was horrible to have these things “trashed”.

She was asked by her solicitor about what was understood by her when she moved into the dwelling, whether she understood that Mr. Lennon needed the authority of the Prendergasts in dealing with her. She gave evidence to the effect that she was informed that the Prendergasts “micromanaged” the dwelling. She was asked whether she ever saw a document regarding the relationship between Mr. Lennon and Propmaster Ventures Ltd., she said that she did not. She was asked whether she had ever seen any documentation regarding the person in occupation of the dwelling after her, she said that she had not. She was asked whether she knew who this person is, she said that the RTB has the information as the tenancy has been registered.

Mr. Monaghan (representing Propmaster Ventures Ltd.) asked her whether Mr. Lennon had let the dwelling to her. She said that initially, yes, but he had said to her that he was managing the dwelling for Propmaster Ventures Ltd. She was asked to whom she paid rent, she said that rent was going to Mr. Lennon’s girlfriend’s account.

It was put to her that Propmaster Ventures Ltd. and the Prendergasts were not the landlord, that any dispute she has is with Mr. Lennon, that at no stage did Propmaster Ventures interfere with the tenancy or her belongings, and that they had no involvement in the matter.

In answer to the Tribunal, the appellant tenant confirmed that the rent was €1500.00 per month, together with a charge of €50 per month for Virgin Media. She said that she re-entered the dwelling following the previous Tribunal hearing and findings on 1 April 2021, and she was excluded from it on 12 September 2021. She said that she had a stall at the Blackrock market selling goods for the organisation that she founded, and she would leave early on a Saturday and a Sunday for this purpose. She said that “a lot of stuff was happening”. She said that the electricity was “terminated”, the element was taken out of the stove.

She gave evidence of trauma which had occurred to her that week, she said as a result of this she was “in a complete state”. She said that she came home, and could not get into the dwelling. She said that someone was standing there who said that he was the occupier. She said that Women’s Aid and her solicitor’s office had assisted her, she had to stay with a friend for a few nights, and then her organisation paid for her to live in a hotel for two months. She said that in November 2021 she obtained secure accommodation and that is where she is living now.

In answer to the Tribunal, she said that she had called to the dwelling to find out who was living there, she said that that person had tried to set up a Virgin Media account using her name, she contacted Virgin Media about this and they have set up an investigation. She reiterated that the RTB has the information regarding the identity of the current occupant.

The Tribunal asked whether her solicitor had contacted Mr. Lennon to ask the name of this person who is in the dwelling, Mr. MacGuill replied that at the previous RTB hearing he had asked Mr. Lennon who had not given the person’s name. He was asked whether he had sent any correspondence to Mr. Lennon, he said he had not.

In summing up, Mr. MacGuill (on behalf of the appellant tenant) said that the first part of the appellant tenant's claim is that the re-entry of the dwelling was unlawful, and was not being defended.

He said that the evidence of the appellant tenant was that she was informed at the outset that the Prendergasts would "micro-manage" the tenancy. He pointed out that she would not know the identity of the owner if there was not such a link.

He said that the Tribunal should look askance at the non-production of the lease agreement between Mr. Lennon and Propmaster Ventures Ltd. He directed the Tribunal to the appellant tenant's submissions and oral evidence and the photos provided to the Tribunal. He said that the Tribunal should prefer the appellant tenant's evidence. He said that the original decision [of the Adjudicator] was wrong, and he referred to the scale of the intrusion and the breaking into the dwelling. He said that there was an installation of another person to the exclusion of the appellant tenant, and that her property was removed unlawfully.

He said that the evidence was that there were parties staying in the dwelling [when the appellant tenant was in custody] when there was valuable property there. He said that her property was opened to strangers.

Mr. Norman Prendergast

Mr. Prendergast gave evidence that there is a letting agreement with Mr. Lennon for the dwelling. He was asked when this agreement was put in place, he said that he thought it was four years ago. He said that this was "a guess". He was asked how long was this agreement to last, he said it was to last two or three years. He was asked was this agreement terminated, he said that he did not know. He was asked whether Mr. Lennon still had an agreement, he said yes. He said it was carrying on from the first arrangement. He was asked whether he knew that there were consequences for him if the tenancy continued for more than five years, he said he did not know. He was asked whether he was interested in seeing the agreement with Mr. Lennon, he said that he did not look after that side of the business.

He was asked when he learned that the appellant tenant was in Mountjoy Prison. He said he did not remember, it was possibly a year ago. It was confirmed that she went to prison in August 2020, he said that he might have learned about this in October 2020. It was suggested to him that he had learned this from Mr. Lennon, he replied that he had learned it from Mr. Baroso. He was asked whether he had any other business dealings with Mr. Lennon, he replied in the affirmative. He was asked about this, he said that he did not want to say, it was personal information.

The appellant tenant's solicitor said that it was being put forward that there was a joint enterprise between Propmaster Ventures Ltd. and Mr. Lennon.

At this stage in the hearing, the appellant tenant indicated that she wished to confer with her solicitor. The Tribunal paused the hearing for a period of ten minutes.

When the hearing recommenced, Mr. MacGuill confirmed that he was ready to proceed.

He asked Mr. Prendergast whether any of the business arrangements with Mr. Lennon involved managing properties for Propmaster Ventures Ltd. He said that there were maybe two other properties, he gave evidence to the effect that Mr. Lennon was the tenant in all three tenancies. He was asked whether there were agreements in writing, he confirmed that there were. He was asked whether Mr. Baroso had those agreements, he said that Mr. Baroso should be asked that question. He was asked whether he had these

agreements, he said that he does not have them, and he said that he did not see what relevance that has to the case.

He was asked again that in October 2020 he was aware that the appellant tenant was not in the dwelling. He replied that he had heard she was in prison. He was asked whether he was still collecting rent, he said that he did not collect rent. He was asked whether Mr. Lennon was paying the rent, he replied that rent was paid to Mr. Baroso. He confirmed that Mr. Lennon did continue to pay rent to Propmaster Ventures Ltd. He was asked about Mr. Lennon's business, that he was advertising the dwelling as a short stay location. He said he did not know, that he paid rent to the company. He was asked was he aware that rent was being paid, he said that he was aware. He was asked was he told by Mr. Baroso that the tenancy had changed and that a new person was in the dwelling. He said that Mr. Baroso would have told him. He said that Mr. Lennon is the tenant and that he is entitled to quiet possession, and that he does not enquire of him. He said that his arrangement is to pay rent as it falls due. He was asked whether Mr. Lennon had "short lets", he replied that he presumed that it was. He said that Mr. Baroso looks after the day to day affairs of the company.

Mr. Monaghan (representing Propmaster Ventures Ltd.) asked him to confirm that there was a lease agreement in place with Mr. Lennon and the company, he confirmed that there was. He was asked whether there was a lease agreement between the company and the Appellant tenant, he said that there was not. He said that he had never met the appellant tenant. He said that Mr. Lennon was managing the properties, he was not the agent of the company, Mr. Baroso is the agent. He said that the relationship was with Mr. Lennon alone.

Mr. Alan Prendergast

Mr. Alan Prendergast gave evidence. He was asked whether he was also involved with Propmaster Ventures Ltd. He confirmed that he is. He was asked whether he had business dealings with Mr. Lennon. He said that he did not have direct dealings, he has business arrangements with the company. He was asked whether he talked to Mr. Lennon, he said that he does not discuss business with him. He was asked whether he had spoken to him, he gave evidence to the effect that he would greet him in a friendly way. He was asked whether Mr. Lennon manages properties for companies, he said that he manages properties for himself. He said that Mr. Lennon rents from Propmaster Ventures Ltd., and manages the properties for himself.

He was asked when he became aware that the appellant tenant was in prison, was he aware in October 2020 that she was in prison. He said that he is aware that she was in prison, he was asked when he became aware, he said it was difficult to give accurate evidence on this question, he said that nobody notified him officially, he might have become aware through hearsay or the newspapers.

He was asked why the name "Farah Damji" would mean anything to him, he said that he did not know. He said that it might have been mentioned to him.

He was asked whether he had some interest in seeing the tenancy agreement between Propmaster Ventures Ltd. and Mr. Lennon, he said that he would not.

He was asked about the furniture that was in the apartment when the appellant tenant took up occupation, he was asked whether this belonged to Propmaster Ventures Ltd. He said that he was sure that it did. He was asked whether he had to be consulted about the furniture being removed by the appellant tenant when she took up occupation, he said that

he had no recollection of this, and that it was unlikely. He confirmed that he had heard the appellant tenant's evidence very clearly, he said that he was not entirely certain that what she said transpired was exactly what had transpired.

Mr. Monaghan asked Mr. Prendergast whether he was a director of Propmaster Ventures Ltd., he said that he was. He confirmed he was not involved in everyday dealings of the company.

Respondent landlord's submissions:

Mr. Gavin Lennon

Mr. Gavin Lennon gave evidence. He said that there was a Notice of Termination given to the appellant tenant in July/August 2020. He said that there was a previous Tribunal hearing, which found in his favour. He said that after the Tribunal hearing, the appellant tenant had refused to pay rent. He said that from when she re-entered the dwelling no rent had been paid. He said that he had changed the locks, and removed her property to a storage unit.

He said that he had put her belongings into bags. He denied that he had damaged items, and he said that he had paid for storage for one month. He said that he told the appellant tenant that after that period the goods would be destroyed. He said that she took the items from the storage unit. He said that the Gardaí reviewed the matter. He said that there is no Garda case against him in relation to any damaged or stolen goods from the dwelling.

Mr. Monaghan asked him about the agreement between himself and Propmaster Ventures Ltd. He said that his landlord is Propmaster Ventures Ltd. He said that he pays rent. He was asked whether he and Propmaster Ventures Ltd. are engaged in a joint enterprise, he denied this, and said that they are solely landlord and tenant. He said that he had permission to sublet the dwelling.

It was put to him that the appellant tenant had said that her property was moved out of the dwelling, he said that he acted alone and took full responsibility for this. He said that he is the person to whom she is supposed to pay rent. He was asked whether the Prendergasts had any involvement in the new tenant in the dwelling, he denied this. He confirmed that this was his responsibility. He said that every dealing of the appellant tenant was with him. He said that she had used a false ID as a tenant.

He was asked by Mr. MacGuill whether he had a copy of the agreement with Propmaster Ventures Ltd. He said that he did not have it to hand. He did not know where it is. He said that he did not think it was relevant. He was asked whether the agreement was in writing, he said that it was in the beginning but that it had expired and was not renewed. He was asked about the provision in the agreement as to any rollover, he said that he could not say, but that after six months a person would be entitled to a Part 4 tenancy.

He confirmed that he paid rent monthly. He was asked how he thought he could rent for more than one month to the appellant tenant. It was put to him that he is a property professional.

He was asked whether he agreed with the findings of the Adjudicator regarding the termination of the tenancy. He said that he had not appealed the findings to the Tribunal. He was asked how many times he had let the dwelling out when the appellant tenant was in prison, he said that he did not let the dwelling out. The photos supplied by the appellant tenant in the Tribunal Case File were put to him, he said that it was not true, that nobody was in the premises. He was asked why he continued to pay rent to Propmaster Ventures



Ltd., he said that he had consulted the RTB who had informed him that he had a “sitting tenant” regardless of whether she was there or paying rent. He said that he accepted the verdict of the adjudication. He said that in his eyes he had terminated the tenancy lawfully. He gave evidence to the effect that the arrears of rent were €20,000.00, and that he was not receiving any rent.

He was asked whether he had seen damaged electrical equipment, he said he had not. He said that he had no access to the dwelling, that the appellant tenant had changed the locks in the dwelling before she had been in prison, and only she had the key. He said that when he took possession he broke in and changed the lock. He was asked whether he had taken photographs, he said that he had taken a video of the dwelling.

Mr. MacGuill asked the appellant tenant to hold up a painting to the screen, which she alleged was damaged.

It was put to Mr. Lennon that the dwelling was being let out to other parties, he did not accept that.

He was asked whether he had a copy of the tenancy agreement with the current tenant, he said he did not. He was asked where he keeps the agreement, he said he keeps it at home. He was asked for the name of the tenant, he said that he did not know if the tenant would be happy for his name to be provided to the hearing. He said that it is the same person in the dwelling, and there is an agreement for a letting for one year. He said that tenancy agreements do not have to be written or signed, he confirmed that since the last hearing the agreement has been signed.

In his summing up, Mr. Lennon said that he did not steal or damage the appellant tenant's property. He said that he was “working off the back of a Tribunal decision”. At the time of the previous Tribunal hearing there were arrears of over €16,000.00, and these had built up to over €20,000.00. He said that he had contacted the RTB for assistance in getting the appellant tenant moved, but had no response.

Mr. Alberto Baroso

Mr. Baroso confirmed that he is the property manager employed by Propmaster Ventures Ltd. He said that there was an agreement to lease the dwelling between Propmaster Ventures Ltd. and Mr. Lennon. He said that this was entered into in or about 2017/2018. He said that it was a written agreement, he did not have it to hand. He was asked whether it was a commercial lease, he said it was a residential lease.

He was asked whether Mr. Lennon had permission to sublet the dwelling, he replied that he had requested permission to do so, and this was permitted [by Propmaster Ventures Ltd.]. He confirmed that he had written a letter to say this. He was asked whether he had a key for the dwelling, and he replied that he did not have a key. He said that the key was changed three or four times. He was asked whether there was any interference with the dwelling by him or Propmaster Ventures Ltd., he replied that there was not. He said that he had not changed the locks, entered the dwelling or attempted to move another tenant into the dwelling. He said that Mr. Lennon is a good tenant and the lease is ongoing. He confirmed that there is a good business relationship, and there is no set time that he has to hand back possession of the dwelling.

In cross-examination by Mr. MacGuill, he confirmed that he has been working for Propmaster Ventures Ltd. since June 2005. He said that he had returned to Spain in or

about mid 2016 until 2017, and then returned to Ireland. He confirmed that in 2020 he was in Ireland.

He gave evidence to the effect that he does the property management for Propmaster Ventures Ltd. He was asked about the lease document between Propmaster Ventures Ltd. and Mr. Lennon, and the date on it, he said that he did not have it to hand. It was put to him that the appellant tenant had been asking for sight of this agreement for over one year.

He was asked when he was aware that the appellant tenant was in prison, he said that he probably knew at the time. He was asked who told him, he said it was probably Mr. Lennon who told him.

He was asked whether he knew that Mr. Lennon provided short letting of the dwelling, he said that he was. He was asked questions regarding whether there was planning permission for this. He said that he believed that since Mr. Lennon leased the dwelling the law had changed.

He confirmed in re-examination by Mr. Monaghan that the reason he had not looked for the letting agreement between Propmaster Ventures Ltd. and Mr. Lennon was because he believed this was not in dispute.

In his summing up, Mr. Monaghan said that the appeal grounds of the appellant tenant does not refer to the Adjudicator making an error. He said that there was no correspondence to say this.

He pointed out that this is the third time that Propmaster Ventures Ltd. has come before the RTB. He said that the evidence for the reason that Propmaster Ventures Ltd. was joined to the dispute was that someone informed the appellant tenant that the owners had put someone into the dwelling. He said that clarity was provided by Propmaster Ventures Ltd.

He said that there was no joint enterprise between Propmaster Ventures Ltd. and Mr. Lennon. He said that the position is that Mr. Lennon is the tenant of Propmaster Ventures Ltd., and that Mr. Lennon is the appellant tenant's landlord. He said that the reason for this is that Mr. Lennon is the person entitled to receive the rent from the appellant tenant. He said that there was well settled law that there is no privity between a head landlord and a sub-tenant.

He said that the appellant tenant's complaints are with Mr. Lennon, and that his clients did not have any dealings with the appellant tenant.

He said that there was oral evidence on oath that there is a lease agreement, and that Mr. Lennon pays rent to Propmaster Ventures Ltd.

He said that dependent on the outcome of this Tribunal hearing, he would be seeking costs from the Tribunal.

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

1. The address of the dwelling is 195 Bachelors Walk Apartments, Dublin 1, D01W274.
2. The rent payable was €1,500 per month.

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

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

### **7.1 Finding:**

The appellant tenant was wrongfully deprived of possession of the dwelling on 12 September 2021.

Reasons:

1. A tenancy was in place in the dwelling since March 2020. A Tribunal hearing had previously taken place on 21 June 2021 (TR0221-004671). The findings and Determination Order of that Tribunal have been appealed to the High Court on a point of law under section 123 of the Residential Tenancies Act 2004-2021.
2. The respondent landlord (Mr. Gavin Lennon) confirmed that he had entered the dwelling, changed the locks, excluded the appellant tenant and another tenant is in situ since that time.
3. The appeal to the High Court was pending at the date of his taking possession of the dwelling. As a result, the Tribunal findings and determinations were not effective.
4. Even if the Tribunal findings and Determination Order (TR0221-004671) were effective, it was not permissible for the respondent landlord to take possession of the dwelling in this manner.
5. In the circumstances, the Tribunal finds that the tenancy was unlawfully terminated, and the Tribunal awards the appellant tenant the sum of €4,500.00 damages in this regard for the inconvenience caused to her by the summary nature of the breach of her rights, including the removal of her belongings into storage.
6. In deciding the amount of damages, the Tribunal takes into account that the appellant tenant found secure accommodation within a period of two months in November 2021, and is still in that accommodation.
7. No application was made to the Tribunal for the appellant tenant to be re-instated in the dwelling. In light of her current accommodation situation, namely, that she has secure alternative accommodation since November 2021, and the large amounts of rent owed by her, the Tribunal would not have made any order for her re-instatement in the dwelling even if it were applied for.

### **7.2 Finding:**

There was insufficient evidence that the respondent landlord had let out the dwelling whilst the appellant tenant was in custody.

Reasons:

1. The appellant tenant gave evidence that she believed that whilst she was in custody the dwelling was let out by the respondent landlord.
2. She directed the Tribunal to screen shots taken from Airbnb contained in the Tribunal Case File (page 50-56, page 60-62). She said that these photos were of the dwelling with her furniture in the photos. She also provided reviews and further photos at pages 62-68, which she said proved that the dwelling had been let out to others during this time.

3. The respondent landlord denied that he had let out the dwelling while she was in prison.

4. The Tribunal has considered these documents.

5. There is only an incomplete address provided with these screenshots; there is also no information regarding the Airbnb “host”. There is nothing to link the screenshots with the dwelling, other than the appellant tenant’s evidence that it is the dwelling the subject matter of the dispute.

6. The Tribunal finds that there is insufficient evidence provided that these photographs are of the dwelling from an advertisement on the Airbnb website or that the reviews provided are of the persons who stayed at the dwelling during the time in question when the appellant tenant was detained in prison. The burden was on the appellant tenant to provide this evidence and she has not done so.

7. In the circumstances the Tribunal finds that there is insufficient evidence provided by the appellant tenant that the dwelling was let out whilst she was in prison and the Tribunal accepts the respondent landlord’s evidence that he did not let out the dwelling whilst the appellant tenant was in prison.

8. Further, the Tribunal notes that findings in this regard have already been made by a previous RTB Tribunal (TR0221-004671) which took place on 21 June 2021. The Tribunal refers to Finding 7.5 of that Tribunal Report and respectfully agrees with the conclusions of that Tribunal and is satisfied that the respondent landlord did not return and re-enter the dwelling in the period during which the appellant tenant was detained in the Dóchas Centre. The Tribunal in this case is not entitled to interfere with the findings made by that Tribunal.

### 7.3 Finding:

There was insufficient evidence presented to the Tribunal that valuable goods belonging to the appellant tenant were taken or damaged by the respondent landlord.

### Reasons:

1. The appellant tenant gave oral evidence to the Tribunal of items which she said were in the dwelling when she was arrested and brought to the Dóchas Centre.

2. She read out from a list of items which she said were missing, and she said that she had photographs of these items, comprising 42 pages.

3. These documents were not submitted to the Tribunal.

4. Many of the items were high-end designer clothing, handbags, art, furnishings and valuable jewellery.

5. No receipts were produced to prove purchase of these items. No insurance documents were produced by her to show that these items were covered by any insurance policy. The appellant tenant said that she had an inventory of goods that had been brought by her to the dwelling after she had moved in. This inventory was not provided to the Tribunal.

6. The respondent landlord denied that he had removed any items when the appellant tenant was in prison.

7. When the respondent landlord re-entered the dwelling in September 2021, he removed the appellant tenant’s belongings that were in the dwelling at the time and put them in storage. He made reference to a video recording taken at the time, which was not provided to the Tribunal.

8. The appellant tenant held up a painting to the screen during the Tribunal hearing, which she said was damaged by the respondent landlord at this time.

9. The appellant tenant gave evidence to the Tribunal of the poor condition of her belongings when she retrieved them from storage. No photographs or any corroborating evidence was provided to the Tribunal, except for the painting which she held up to the screen at the hearing. There was no evidence of the condition of the painting at the commencement of the Tenancy or prior to the ending of the tenancy.

10. No reports were provided in relation to any damage to any items of value. No independent evidence of any kind was provided to the Tribunal that any of these items were (a) owned by the appellant tenant or (b) in the dwelling at the time that she was brought to prison or (c) missing/damaged when she returned to the dwelling in April 2021, or (d) damaged or missing after the respondent landlord took possession and put her belongings into storage in September 2021.

11. In the circumstances, the Tribunal finds that the appellant tenant has not discharged the burden of proving that her goods were taken or damaged by the respondent landlord. The evidence provided is insufficient to discharge the burden on her.

12. Further, the Tribunal notes that findings in this regard have already been made by a previous RTB Tribunal (TR0221-004671) which took place on 21 June 2021. The Tribunal refers to Finding 7.5 of that Tribunal Report and respectfully agrees with the conclusions of that Tribunal in relation to the allegations regarding the appellant tenant's property. The Tribunal in this case is not entitled to interfere with the findings made by that Tribunal.

#### 7.4 Finding:

The Appellant tenant owes the sum of €4,035.51 in arrears of rent.

#### Reasons:

1. The rent for the dwelling was in the sum of €1,500.00 per month.

2. The previous Tribunal hearing (TR 0221-004671) dealt with arrears of rent up until 21 June 2021. It provided that from that date, rent would be payable at a rate of €1,500.00 per month or proportional part thereof at the rate of €49.31 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 Appellant tenant vacates and gives up vacant possession of the above dwelling.

3. The rent payable until she was deprived of possession of the dwelling therefore was as follows:

22 June 2021 - 21 August 2021 = €3,000.00 (€1,500.00 x 2)

22 August 2021 - 11 September 2021 (21 days) = €1,035.51 (€49.31 x 21)

Total: €4,035.51 (€3,000.00 + €1,035.51)

4. Section 16(a) of the Residential Tenancies Act 2004-2021 provides that the tenant shall pay to the landlord the rent provided for under the tenancy concerned on the date it falls due.

5. The appellant tenant was in breach of this provision of the Act in that she had not paid the rent due to the respondent landlord, Mr. Gavin Lennon.

6. No evidence was provided that any security deposit was paid by the appellant tenant or is being held by the respondent landlord.

#### 7.5 Finding:

There was insufficient evidence provided to the Tribunal of any concerted effort between the respondent landlord (Mr. Gavin Lennon) and the other respondents to the dispute to deprive the appellant tenant of possession of the dwelling.

#### Reasons:

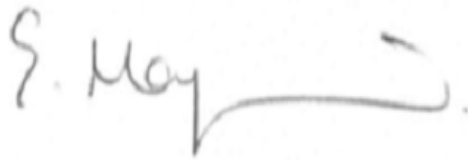
1. The previous Tribunal (TR 0221-004671) found that Mr. Gavin Lennon was the appellant tenant's landlord.
2. The appellant tenant asserted that the respondent landlord (Mr. Lennon) had acted in concert with Propmaster Ventures Ltd. and Mr. Norman Prendergast and Mr. Alan Prendergast to deprive her of possession of the dwelling and to install an alternative tenant so as to prevent her from re-entering.
3. Other than the appellant tenant's bare assertion, there was no evidence of any such concerted effort between the respondents to the dispute.
4. The Tribunal accepts the evidence of the respondent landlord (Mr. Lennon) that he was solely responsible for re-entering the dwelling and for changing the locks and installing another tenant into the dwelling. His evidence was consistent and his evidence has always been consistent that he was the sole landlord of the tenancy. There is no objective evidential basis on which to find that any other party was involved in the incidents that constituted the breaches of obligation in this case. Again, where the burden was on the appellant tenant and her evidence is no more than bare assertion, the Tribunal cannot uphold those allegations.
5. In the circumstances, the Tribunal does not uphold the appellant tenant's allegations in this regard.

#### 8. Determination:

In the matter of Farah Damji, Appellant, and Propmaster Ventures Ltd., Norman Prendergast, Alan Prendergast, Gavin Lennon, Alberto Baroso, Respondents, the Tribunal, in accordance with s. 108(1) of the Residential Tenancies Act 2004, determines that:

1. The respondent landlord Gavin Lennon was not entitled to re-enter the dwelling and take possession of it, and the appellant tenant was wrongfully deprived of the dwelling by the respondent landlord Gavin Lennon.
2. The respondent landlord Gavin Lennon shall pay the sum of €464.49 to the appellant tenant within 21 days of the date of issue of the Determination Order, being damages for the consequences of unlawfully terminating the appellant tenant's tenancy at Apartment 195 Bachelors Walk Apartments, Bachelors Walk, Dublin 1, D01 W274 in the sum of €4,500.00, less the arrears of rent of €4,035.51 owed by the appellant tenant in respect of the tenancy at the above dwelling.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 24/03/2022.

A handwritten signature in dark ink, appearing to read 'E. Maguire', with a long horizontal flourish extending to the right.

**Signed:**

**Elizabeth Maguire, Chairperson**

For and on behalf of the Tribunal.