

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1122-005816 / Case Ref No: 0822-79208

Appellant Tenant:	Arthur Kojo Bradford
Respondent Landlord:	OCP Belgrave 2 Ltd Partnership acting through its general partners OCP Belgrave General Partners Limited
Address of Rented Dwelling:	Flat 3, 2 Charleville Road, Rathmines, Dublin 6
Tribunal:	James Egan (Chairperson) Finian Matthews, Helen-Claire O'Hanlon
Venue:	Virtual
Date & time of Hearing:	03 February 2023 at 10:30 a.m.
Attendees:	Arthur Kojo Bradford, Tribunal Appellant Tenant Lena Linehan of Grayling Property Management, Tribunal Representative on behalf of the Respondent Landlord
In attendance:	Digital Logger provided by the RTB

1. Background:

On 19/08/2022 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 11/10/2022. The Adjudicator determined that:

"In the matter of OCP Belgrave 2 Ltd Partnership acting through its general partners OCP Belgrave General Partners Ltd [Applicant Landlord] and Arthur Kojo Bradford [Respondent Tenant], the adjudicator, in accordance with Section 97 of the Residential Tenancies Act, 2004, as amended, determines that:

1. The Notice of Termination with a date of service of 15th July 2022, served by the Applicant Landlord on the Respondent Tenant, in respect of the tenancy of the dwelling at Flat 3, 2 Charleville Road, Rathmines, Dublin 6, is valid.
2. The Respondent Tenant, and any other person/s residing in the above dwelling, shall vacate and give up possession of the above dwelling within 14 days of the date of issue of the Determination Order.
3. The Respondent Tenant shall pay the sum of €4,753.89 to the Applicant Landlord, within 14 days of the date of issue of the Determination Order, being rent arrears in respect of the tenancy of the above dwelling.
4. The Respondent Tenant shall also pay any further rent outstanding from 11th October 2022, being the date of the (virtual) adjudication hearing, to the Applicant Landlord, at the rate of €1,250 per month or proportionate part thereof at the rate of €41.10 per day, unless

lawfully varied, together with any other charges provided for under the terms of the tenancy agreement, for each month or part thereof, until such time as the above dwelling is vacated by the Respondent Tenant and any other person/s residing therein.

5. The Applicant Landlord shall refund the security deposit of €1,250 to the Respondent Tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.”

Subsequently the following appeal was received from the Tenant on 15/11/2022.

The RTB constituted a Tenancy Tribunal and appointed Finian Matthews, James Egan, and Helen-Claire O'Hanlon as Tribunal members pursuant to Section 102 and 103 of the Act and appointed James Egan to be the chairperson of the Tribunal (“the Chairperson”).

On 11/01/2023 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 03/02/2023 the Tribunal convened a hearing virtually, using MS Teams.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case files.

3. Documents Submitted at the Hearing Included:

Case Files 1 to 2 with no further documentation submitted.

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. In particular, he outlined 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 his case first, that there would be an opportunity for cross-examination by the Respondent, that the Respondent would then be invited to present its case, and that there would then 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. He reminded the parties that the hearing was a de novo hearing.

The Chairperson stressed that all evidence would be taken on affirmation 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. Prior to commencing evidence, the Chairperson reminded the parties that it was open to them to reach an agreement. The Chairperson advised the parties of the benefits of reaching an agreement and advised them

that any agreement reached would be capable of being confidential while retaining the enforceability of an order of the RTB. The Chairperson indicated that, if the parties wished to discuss matters among themselves, the Tribunal would rise and allow them to discuss matters. The parties did not avail of this opportunity.

All parties intending to give evidence entered an affirmation. The Tribunal asked the parties what matters could be noted as agreed. The list of matters referred to below were noted as agreed.

5. Submissions of the Parties:

The Appellant Tenant's evidence:

The Appellant Tenant (the Tenant) stated that he was paying rent with assistance from the Housing Assistance Payment (HAP). The Tenant stated that there were some mistakes with HAP which led to his payments being delayed and then stopped. The Tenant clarified a number of issues with the HAP department regarding the tenancy. The Tenant stated that he confirmed that he was residing in the dwelling and that his employment status had not changed. The Tenant stated he made a number of efforts to contact the Landlord to resolve the issue however he stated that they were not willing to compromise. The Tenant stated that he was paying arrears on top of his monthly rental payment. The Tenant said that when the HAP was stopped he made efforts to pay the whole amount. The Tenant stated that he was happy to pay arrears plus rent. The Tenant stated the issue with HAP was not through his negligence or mistake. The Tenant was hopeful of reaching a compromise. The Tenant confirmed that he paid €520.00 into the Landlord's account on the 30th of January 2023. The tenant stated that he would like the matter to reach a resolution. The Tenant confirmed that when the Landlord contacted him about any issue that he would engage immediately try and deal with any issues that arose during the tenancy. The Tenant stated that it took two to three months to regularise the situation with the HAP and the funds were then released to the Landlord's account.

Cross Examination:

The Tenant was asked if an agent from the Landlord had contacted him in respect of the arrears of rent that were accruing and he confirmed that he was in touch with someone from the Landlord's agency. It was put to the Tenant that he did not pay the top up and the Tenant stated that when HAP was stopped the arrears accumulated. The Tenant stated that an issue arose with his differential rent equivalent payment to the local authority and he contacted the Landlord to try and find a middle ground to resolve matters. The Landlord's agent asked who was withholding the top up payment and he stated that he was trying to pay the rent in full during the time that he was not being processed for HAP. The Tenant stated that €990.00 of the rent was paid from HAP and that he paid €260.00 to the Landlord. The Tenant confirmed that he also paid a differential rent equivalent payment to the HAP department which was based on a percentage of his income.

The Respondent Landlord's case:

The Landlord's agent stated that a notice of rent arrears was sent to the Tenant on the 15th of June 2022. The Landlord's agent stated that the Tenant did not contact their office within that 28 day period to clear the arrears or to enable a payment plan to be organised. The Landlord's agent stated that a notice of termination was served on the 15th of July 2022. The Landlord's agent stated that following the service of the notice of termination that the

Tenant approached them about agreeing issues however the Landlord's agent stated that they were not obligated to withdraw the termination notice. The Landlord's agent believed that there was a rent review on the 30th of October 2022 and that this gave rise to arrears in the sum of €2945.89. The Landlord's agent stated that she was seeking vacant possession of the dwelling together with the payment plan for the arrears of rent. The Landlord's agent stated that from and including the 30th October 2022, the rent had risen to €1293.00 per month, an increase of €43.00 per month.

Cross examination:

The Tenant asked if he called in relation to an agreement for the arrears of rent and the Landlord's agent disagreed that it was an agreement but he had discussed a plan. The Tenant asked if he looked for a compromise on the arrears and he asked if he called when he became aware of the arrears. The Landlord's agent stated that he did seek a compromise in respect of the arrears and that he did contact the office when the HAP was stopped. The Tenant asked why the Landlord moved to terminate the tenancy when difficulties arose instead of trying to resolve matters directly with him and the Landlord's agent stated that they had a right to serve the warning letters and the notice of termination.

Concluding Submissions:

The Tenant stated that it was frustrating that the Landlord would not come to terms of agreement with him regarding the arrears of rent. The Tenant stated that he would like to resolve the issue and that he would like to remain in the dwelling. The Landlord's agent stated that they were not willing to withdraw the notice of termination and that they would like vacant possession together with a payment plan for arrears of rent.

6. Matters Agreed Between the Parties:

The parties agreed that the address of the dwelling is Flat 3, 2 Charleville Road, Rathmines, Dublin 6. The tenancy commenced on the 30th October 2020. It was agreed that rent was in the sum of €1250.00 per month before October 2022 and a deposit of €1250.00 was paid at the start of the tenancy. The parties agreed that a warning letter dated 15th June 2022 was served on the Tenant in respect of rent arrears.

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 therefor are set out hereunder.

Finding 1: The Tribunal finds that the notice of termination served on 15th July 2022 is valid.

Reasons:

The Tribunal accepts that the Appellant Tenant had the benefit of a Part 4 tenancy in circumstances where he had resided in the dwelling for longer than 6 months without the service of a notice of termination. Part 4 tenancies may only be terminated on specified grounds by landlords, one of which is a breach of tenant's obligations. Under the Residential Tenancies Act 2004, as amended, section 16 (1) obliges a Tenant to pay rent:

"In addition to the obligations arising by or under any other enactment, a tenant of a dwelling shall—

(a) pay to the landlord or his or her authorised agent (or any other person where required to do so by any enactment)—

(i) the rent provided for under the tenancy concerned on the date it falls due for payment, and

(ii) where the lease or tenancy agreement provides that any charges or taxes are payable by the tenant, pay those charges or taxes in accordance with the lease or tenancy agreement (unless provision to that effect in the lease or tenancy agreement is unlawful or contravenes any other enactment)".

It was agreed by both parties that the Appellant Tenant had fallen into arrears with his rental payments. The cause of the arrears was not agreed on by the parties. In circumstances where the Appellant Tenant had fallen into arrears the Respondent Landlord was entitled to serve the warning letter dated 15th June 2022 which confirmed that there were arrears of €1733.89 outstanding. The Tribunal accepts that the arrears were not cleared within the 28 day warning period, giving rise to the service of the notice of termination on 15th July 2022.

The Appellant Tenant explained that he had run into arrears when the Housing Assistance payment (HAP) was stopped for a period of time during the tenancy. The Tribunal accepts that the Appellant Tenant may have been frustrated by the Respondent Landlord's approach because he had tried to engage with it on the issue of the arrears. While the Tribunal recognises the Appellant Tenant's grievance with the Respondent Landlord's approach, the Respondent Landlord was entitled to pursue the arrears of rent and ultimately terminate the tenancy when the shortfall in rent was not addressed within the timeframe provided. Furthermore, by virtue of the provisions of section 87 of the Act, any remedial action taken by the tenant subsequent to the receipt of the notice of termination may not be taken into consideration by the Tribunal in dealing with this dispute.

The Tribunal has reviewed the notice of termination (page 34 of case file 1) that has been advanced by the Respondent Landlord and finds that it complies with the statutory requirements under section 62 of the Act and has also been served on the Appellant Tenant.

In those circumstances where the notice of termination has been deemed valid by the Tribunal, it follows that the Appellant Tenant has been overholding at the dwelling from 16th August 2022 (termination date of 15th August 2022). The Tribunal finds that the Appellant Tenant must vacate the dwelling within 28 days of the Determination Order.

Finding 2: The Tribunal finds that there are rent arrears of €2,773.89 owed by the Appellant Tenant to the Respondent Landlord in respect of unpaid rent at the dwelling.

Reasons:

Section 16 of the Act provides that a Tenant shall pay to the Landlord or their agent the rent agreed by the parties. There was no dispute regarding this obligation and it was uncontroverted that the Appellant Tenant had found himself in arrears of rent. The Respondent Landlord submitted that there were current arrears of €2,945.89 outstanding. According to Ms. Linehan, this amount factored in rent due on 30th January, a credit of €520.00 from the Appellant Tenant dated 30th January 2023 together with the HAP contribution of €990.00. $[3162.89 + 1293 - 520 - 990 = €2945.89]$

The Tribunal notes the Respondent Landlord's calculations incorporated a rent review which provided for an increase in rent of €43.00 per month, for four months, since and

including October 2022. The rent review was not submitted as part of the Tribunal documentation however it was flagged by Ms. Linehan during the Tribunal. In the absence of the rent review documentation, the Tribunal is unable to determine if a valid rent increase occurred, particularly where the Appellant Landlord is relying on the review of rent to justify an increased rate of arrears. The Tribunal does not make a finding on the validity of the rent review, or otherwise, but finds that for the purposes of the dispute that the arrears are calculated on the basis of the prevailing rent when the notice of termination was served, that of €1250.00 per month. The Tribunal deducts the Appellant Landlord's rent calculation by €172.00.

In circumstances where the Tribunal has determined that rent arrears have accumulated over the course of the tenancy in accordance with the schedule of payments at page 3 of Case File 2 together with the updated calculation and adjustment, the Tribunal concludes that the rent outstanding to date is the sum of €2,773.89.

8. Determination:

In the matter of Arthur Kojo Bradford (Appellant Tenant) and OCP Belgrave II Limited Partnership, acting through its general partners OCP Belgrave General Partners Limited (Respondent Landlord), the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004 determines that:

1. The Notice of Termination with a date of service of 15th July 2022, served by the Respondent Landlord on the Appellant Tenant in respect of the tenancy of the dwelling at Flat 3, 2 Charleville Road, Rathmines, Dublin 6, is valid.
2. The Appellant Tenant is overholding at the dwelling Flat 3, 2 Charleville Road, Rathmines, Dublin 6 since 16th August 2022.
3. The Appellant Tenant and any other persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 28 days of the date of issue of the Determination Order.
4. The Appellant Tenant shall pay the total sum of €2,773.89 to the Respondent Landlord, in 10 consecutive monthly payments of €277.39 on the 28th day of each month, commencing on the 28th day of the month immediately following the date of issue of the Determination Order, being rent arrears of €2,773.89.
5. The enforcement of the Determination Order for such payment of €2,773.89 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments made by the Appellant Tenant to the Respondent Landlord on each due date until such time as the total sum of €2,773.89 has been paid in full.
6. For the avoidance of doubt, any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Respondent Landlord.
7. The Appellant Tenant shall also pay any further rent outstanding from 3rd February 2023, being the date of the virtual hearing, to the Respondent Landlord, at the rate of €1,250.00 per month or proportionate part thereof at the rate of €41.10 per day, unless lawfully varied, plus any other charges provided under the terms of the tenancy

agreement, for each month or part thereof, until such time as the dwelling is vacated by him and by all other current occupants.

8. The Respondent Landlord shall refund the entire of the security deposit of €1,250.00 to the Appellant Tenant, upon the Appellant Tenant vacating and giving up possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act and arising from the determination order.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 15/02/2023.



Signed:

James Egan, Chairperson

For and on behalf of the Tribunal.