

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1219-004124 / Case Ref No: 1019-57847

Appellant Landlord:	Ruth Kilkenny
Respondent Tenants:	James Foley, Teresa Hurley
Address of Rented Dwelling:	19 Eyre Square, Galway, H91TH7T
Tribunal:	John Keaney (Chairperson) John Keane, Claire Millrine
Venue:	Virtual tribunal via Microsoft Teams
Date & time of Hearing:	15 November 2021 at 2:30 p.m.
Attendees:	Tony Kilkenny, Appellant Landlord's Representative Daragh Glynn, Landlord's witness Michael Coleman, Landlord's witness James Foley, Respondent Tenant Teresa Hurley, Respondent Tenant Soifra McNamara, Tenants' witness Keith Moloney, Tenants' witness
In attendance:	Epiq stenographer/digital logger

1. Background:

On 16/10/2019 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 08/11/2019. The Adjudicator determined that:

"In the matter of Mr. James Foley (Applicant Tenant) and Ms. Teresa Hurley (Applicant Tenant) and Ms. Ruth Kilkenny (Respondent Landlord) the Adjudicator in accordance with Section 97(4)(a) of the Residential Tenancies Acts 2004 to 2019, determines that:

1. The Notice of Termination dated 9th February 2019 served by the Respondent Landlord on the Applicant Tenants in respect of the tenancy of the dwelling at 19 Eyre Square, Galway, Co Galway, H91 TH7T was valid.

2. The Respondent Landlord shall pay the total sum of €1,282.87 to Mr. James Foley (Applicant Tenant), within seven days of the date of issue of the Order, being the balance of the unjustifiably retained security deposit of €660.00 having deducted €377.13 in rent arrears in breach of Section 16(a)(i) of the Act together with adding damages of €1,000.00 for the consequences of the Respondent Landlord's unlawful termination of Mr. James Foley's Part 4 tenancy in breach of Sections 12(1)(a), 33 and 58 of the Act, in respect of the tenancy of the above dwelling.

3. The Respondent Landlord shall pay the total sum of €1,172.87 to Ms. Teresa Hurley (Applicant Tenant), within seven days of the date of issue of the Order, being the balance of the unjustifiably retained security deposit of €660.00 having deducted €487.13 in rent

arrears in breach of Section 16(a)(i) of the Act together with adding damages of €1,000.00 for the consequences of the Respondent Landlord's unlawful termination of Ms. Teresa Hurley's Part 4 tenancy in breach of Sections 12(1)(a), 33 and 58 of the Act, in respect of the tenancy of the above dwelling."

Subsequently the following appeal was received from the landlord on 13/12/2019. The grounds of the appeal: Rent arrears, Overholding, Damage in excess of normal wear and tear, Anti-social behaviour, Breach of tenant obligations, Standard and maintenance of dwelling. The appeal was approved by the Board on 08/01/2020.

The RTB constituted a Tenancy Tribunal and appointed John Keaney, John Keane, Claire Millrine as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Keaney to be the chairperson of the Tribunal ("the Chairperson").

On 20/01/2020 and 21/10/2021 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 15/11/2021 the Tribunal convened a Virtual tribunal hearing, via Microsoft Teams, in Dublin.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case files.

3. Documents Submitted at the Hearing Included:

Case Files 1-4

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 Respondents; that the Respondents would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellants.

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

The Chairperson indicated that the Tribunal would be willing to clarify any queries in relation to the procedures either then or at any stage during the course of the Tribunal hearing. It was also indicated that the Tribunal would be willing to consider an application made at any stage during the hearing for a short adjournment for the purpose of allowing the parties to try to negotiate, on a without prejudice basis, a consent settlement of the dispute.

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].

All those giving evidence were then sworn or affirmed.

The Appellant Landlord advised the Tribunal on the first day of the hearing which took place on the 11 February 2020 that a witness that he wished to call, a member of An Garda Síochána, was not attending due to an incorrect form of request having been made. He asked that the hearing be adjourned to allow for the witness to be subpoenaed. He said that the evidence was not vital but would verify the evidence of both parties.

The Tribunal decided that the matter would proceed to the point where the Appellant Landlord and his witnesses had given evidence and it would then be adjourned to allow the Appellant Landlord to subpoena the witness.

The Tribunal then heard evidence from the Appellant Landlord and his witnesses and then adjourned the matter.

The hearing reconvened on 15 November 2021 by way of a remote virtual Tribunal being held on the Microsoft Teams platform. The Chair reminded those that had previously taken an oath or made an affirmation that they were still subject to the obligations imposed by those.

The Chair advised the parties that the member of An Garda Síochána who had been subpoenaed would not be attending the Tribunal, as they had been advised by the RTB that he was unavailable until September 2022. The Tribunal advised the parties that although the evidence of an independent witness would have been of benefit to the Tribunal, the Tribunal would not adjourn the matter and in his absence the Tribunal could and would determine any conflict of evidence between the parties.

5. Submissions of the Parties:

Appellant Landlord's Case:

Deposit Retention

The Appellant Landlord stated that a number of weeks before vacating the dwelling the Respondent Tenants had stopped paying the rent and had told him to deduct it from the deposit. The parties then agreed during the Tribunal that the amount of rent arrears owing by the first-named Respondent Tenant, up to the date he vacated the dwelling, was €377.13 and the amount of rent arrears owing by the second-named Respondent Tenant, up to the date she vacated the dwelling was €487.13. The Appellant Landlord said that the house had been badly damaged as at the date the Respondent Tenants left and they had not made any effort to repair it.

He said that in addition, the charges for electricity were not being paid and there had been threats by the ESB to disconnect the supply.

Rent above the Market Rate

The Appellant Landlord said that in addition to the rent, the Respondent Tenants were each supposed to pay €26.00 per month for refuse charges but that none of the tenants had ever paid this. He accepted that the total payments to be made by all the tenants would be approximately the same as the annual maintenance charge imposed by the management company.

Validity of Notice of Termination

The Appellant Landlord said that prior to 09 February 2019, he had decided to sell the dwelling and had appointed auctioneers to deal with the sale. He said the tenants would not co-operate with the auctioneer so on 09 February 2019 he served a Notice of Termination on all the tenants with the prescribed statutory declaration by leaving the Notice of Termination in the hallway of the dwelling. He said that the tenants acknowledged having received the Notice of Termination.

Unlawful Termination

The Appellant Landlord said that although the Notice of Termination expired on 24 March 2019, he had agreed with the Respondent Tenants that they could remain in the dwelling until 05 April 2019. He said that he arranged with his witnesses to attend the dwelling on 06 April 2019 to carry out repair works to the dwelling. He said that when they arrived at the dwelling on the morning of 06 April 2019 there was a party in progress. He said that he was able to walk into the dwelling because the door was open. He said that the dwelling was in a state of complete disarray. He said there was a confrontation with some of the Respondent Tenants' guests. He said when his builders were "doing their stuff" there was what he described as heightened emotions. He said the Respondent Tenants initially agreed to leave but that the first-named Respondent Tenant started throwing his workmen's tools onto the driveway. He said the Respondent Tenants then refused to go and that eventually he advised his workmen to go for lunch. He said that he then telephoned An Garda Síochána and two Gardai attended at the dwelling. He said the Gardai asked two people who were not tenants to leave and they did so. He said that the first-named Respondent Tenant was in the front room at this point and was refusing to leave. He said that the Gardai reasoned with him for 20-30 minutes. He said that the second-named Respondent Tenant agreed with the Gardai that she would leave. He said that the Gardai left the house approximately 5 minutes later and that immediately after they left, the first-named Respondent Tenant left the dwelling. He said that the Gardai advised him that the house was now his and that he should secure it.

When cross-examined by the Respondent Tenants, the Appellant Landlord stated that the first-named Respondent Tenant had walked out of the dwelling immediately after the Gardai and they were talking to the second-named Respondent Tenant outside. He said that the Gardai were still in attendance when the first-named Respondent Tenant left the dwelling.

He agreed that he did not hear the conversation between the Gardai and the first-named Respondent Tenant and had not heard the Gardai advise the first-named Respondent Tenant that he was entitled to stay. He said that the house had been "ripped asunder" and that the Respondent Tenants had agreed that the builders could attend at the dwelling. He denied that the first-named Respondent Tenant had been pulled out of the house and denied that he had also been grabbed by the throat. He denied entering the

second-named Respondent Tenant's bedroom and packing up her belongings into black plastic bags.

He said that the water ingress into the shopping centre below the dwelling was caused by the Respondent Tenants breaking the pan of the toilet and agreed that he refused to repair it but said that this was because it was the Respondent Tenants' responsibility to repair the damage.

The Appellant Landlord described other damage that had been caused to the dwelling by the Respondent Tenants, but did not have any photographs to substantiate his claims and said that he had no idea of the costs involved in their repair.

He said that when the property did not sell straight away the auctioneers advised him to re-let it while it was being marketed for sale. He said that he did not have the contact details of either of the Respondent Tenants so as to be able to offer to re-let it to them. He said that the house was now sold subject to contract.

He said that each of the Respondent Tenants had signed a tenancy agreement and each had received a copy.

Appellant Landlord's First Witness

Daragh Glynn gave evidence on behalf of the Appellant Landlord. He said that he was a registered building contractor and that he regularly undertook work for the shopping centre management company. He said that after two cancelled appointments, he went with the Appellant Landlord to the dwelling on the morning of 06 April 2019, with the intention of starting renovation works. He said that after being introduced to the Respondent Tenants he started work. He said that whilst working he felt intimidated by the Respondent Tenants and warned them that he was prepared to complain to An Garda Síochána if he was assaulted. He said the first-named Respondent Tenant was constantly blocking his way, but not saying anything. He said even though he had been told by the Appellant Landlord that the house was in a bad state, he was surprised by the extent of the damage. He said that he refused to deal with the repair required to the toilet. He said that he moved furniture out of the dwelling after checking with the first-named Respondent Tenant as to whether it was his. He said the first-named Respondent Tenant told him that he could move it outside. He said that when he had most of the rooms cleared out, he went into the bedroom of the first-named Respondent Tenant where there were both the Respondent Tenants and another person. He said that the first-named Respondent Tenant said that he was staying as long as it takes and would "break that fecker's heart". He said the Appellant Landlord told him to go for lunch and that he would call the Gardai. He said that when he returned from lunch the Gardai attended and spoke to the first-named Respondent Tenant. He said that the first-named Respondent Tenant told the Gardai that he wasn't going even though he had been served with a Notice of Termination. He said that the Appellant Landlord was upstairs at this time. He said that eventually the Gardai walked out of the dwelling and were followed by the first-named Respondent Tenant, who was followed by the Appellant Landlord. He said the Gardai advised that they should barricade the door, because the lock in the door was broken.

When cross-examined the witness agreed that items were taken from the dwelling and left outside the front door. He said that he was sitting on the stairs when the first-named Respondent Tenant was talking to the Gardai. He said that the Gardai told him to lock the door but that he advised the Gardai that the lock was broken.

He denied that he, the Appellant Landlord, and another had dragged the first-named Respondent Tenant from the dwelling and denied throwing the Respondent Tenants' personal belongings out the windows.

Appellant Landlord's Second Witness

Michael Coleman then gave evidence for the Appellant Landlord. He said that he was a registered builder and that he had arrived at the dwelling sometime after the Appellant Landlord and the first witness. He said that while he was on his way to the dwelling he received a telephone call from the Appellant Landlord, in which the Appellant Landlord advised that the Respondent Tenants had not gone and that the situation was volatile. He said that he had no dealings with the first-named Respondent Tenant that day and only entered the dwelling once the Respondent Tenants had gone. He said that he assessed the damage that had been caused to the dwelling and in his view, it would have cost a fortune to put matters right.

Respondent Tenants' Case:

The first-named Respondent Tenant, James Foley, gave evidence first. He referred to the copy tenancy agreement that had been furnished by the Appellant Landlord and denied that it was his signature on the agreement. He said that all that was agreed was that the rent was €110.00 per week to be paid in cash, by being left in a letterbox at the bottom of the stairs. He alleged that the Appellant Landlord had been double charging tenants for bin charges and had never shown the tenants the amount he was being charged for the emptying of bins.

He said that neither of the Respondent Tenants had seen the Notice of Termination but two of the other tenants who were residing in the dwelling at the time informed him that it had been left at the dwelling. He said the first time he saw it was at the adjudication hearing. He said that the Notice was not served properly because it should have been served individually on each tenant. He said that he was in Spain at the time the Appellant Landlord says that he served the Notice and that he only had two weeks of the notice period left by the time he returned. He said that he tried to get in touch with the Appellant Landlord but that he was ignored. He said that after serving the notice the water supply was turned off by the shopping centre management company because the Appellant Landlord refused to attend to a repair of the toilet which led to water ingress to the shopping centre. He said that the Appellant Landlord refused to accept that it was his responsibility to repair and that they were without water until the end of their tenancy. He said that because of this they stopped paying their rent. He said that the Appellant Landlord threatened to evict them on several occasions for non-payment of rent.

He said that after receiving the Notice of Termination the other three tenants moved out but that he and the second-named Respondent Tenant decided to stay.

He said that on Saturday 06 April 2019, the Appellant Landlord and two other men let themselves into the house and started taking up carpets and removing furniture. He said that all their belongings were still in the house. He said that once they had cleared the common areas the Appellant Landlord and his men came into their bedrooms and put their belongings in bags and brought them outside. He said that things got very heated and there was a lot of shouting.

He said that the Appellant Landlord telephoned An Garda Síochána and two Gardai attended at the dwelling. He said that the Gardai told him that they couldn't force him to

leave but that in their view the house was uninhabitable. He said that he wanted to stay as it was too inconvenient to be made homeless on a Saturday with no money. He said that the Gardai left after 30-40 minutes and stood outside talking to the second-named Respondent Tenant trying to persuade her to leave. He said that when the Gardai walked away the Appellant Landlord and the two workmen grabbed him and tried to push him out of the house. He said that he called out to the Gardai but that they ignored him. He said that once they got him outside, they started throwing his belongings out of his bedroom window. He said that a lot of belongings were broken by the Appellant Landlord or put in bins. He said that the Appellant Landlord changed the locks on the front door and then left. He said that as a result of being made homeless he had to stay at various friends and that it was 3 weeks before he secured alternative accommodation.

When cross-examined by the Appellant Landlord, he denied having blocked the front door lock with glue. When the Appellant Landlord referred the first-named Respondent Tenant to the photographs of the interior of the dwelling contained in Tribunal Case File 4, he agreed that they showed the second-named Respondent Tenant and another person who was not a Respondent Tenant and that they showed the state of the rest of the dwelling at the date the photographs were taken.

The First-named Respondent Tenant said that the damage to the toilet was caused accidentally and this had been reported to the Appellant Landlord. He denied having signed the tenancy agreement. He agreed he had used the address of the dwelling for business purposes but did not think that he needed the permission of the Appellant Landlord. He said that he had not been told of the charge for the bin collection before moving in and was only told about this much later. He agreed that he had advertised for a tenant for one of the bedrooms but said that he was not sub-letting and that he had been asked by the Appellant Landlord to find a replacement tenant.

He accepted that even though he had not seen a copy of the Notice of Termination he had received a text message about it from one of the other tenants. He said that he had to leave half of his belongings behind him, that he had been staying with friends for at least two weeks and that the experience had been very stressful and disruptive to his business.

The second-named Respondent Tenant then gave evidence. She agreed with all the evidence given by the first-named Respondent Tenant.

She said that on 06 April 2019, two men entered the dwelling and proceeded to tear it up. She said that things in the dwelling had been constantly breaking down but that the Appellant Landlord just ignored their requests. She said that on the day in question the Appellant Landlord had been abusive towards her and others present. She said that the Appellant Landlord offered her €50.00 to leave and go and stay in a hostel.

She said that when she left she had nowhere to go to other than to her parents, as a result of which she missed two days work. She said that she then stayed with friends for a few weeks until she found alternative accommodation.

She said that after this she went back to the dwelling and spoke to the Appellant Landlord's new tenants.

When cross-examined, she said that the incident with the Appellant Landlord on 06 April 2019 lasted for a few hours and that it had started at 10.00 a.m. She denied that the Gardai had offered to bring her to her parents' house because they were concerned for

her. She said that on the Saturday morning there were only two other people in the house with her and the first-named Respondent Tenant. She denied there had been an all-night party and that she had left the dwelling the previous day. She denied that her belongings were in a suitcase outside the dwelling on that Saturday morning.

Respondent Tenants' First Witness

Soifra McNamara gave evidence on behalf of the Respondent Tenants. She said she was a former tenant of the dwelling. She said that she had never seen the Notice of Termination. She said that during her 18 months stay at the dwelling she had often tried to contact the Appellant Landlord but unless it was about paying the rent, he was not interested. She said that when they were served with the Notice of Termination she tried to contact him but without success. She said he did reply to one text from which she thought there may be a chance of them remaining in the dwelling.

She said that on the day in question, she left the dwelling some time between 1.30 p.m. and 1.45 p.m. She said she was present when the Gardai arrived. She said that the Appellant Landlord had been abusive and disrespectful towards her and the other tenants. She said that before this the Appellant Landlord had entered her room and thrown out two bags of her belongings. She said that she found some of her belongings in the bin and that they were unsalvageable.

When cross-examined, she confirmed that the Appellant Landlord had more contact with her than the first-named Respondent Tenant. She said that another tenant had found her as tenant and not the first-named Respondent Tenant.

Respondent Tenants' Second Witness

Keith Moloney then gave evidence for the Respondent Tenants. He said he was present on the day the Appellant Landlord and his workmen called. He said that they packed up the Respondent Tenants' belongings against the Respondent Tenants' will. He said that anything the Respondent Tenants packed was to prevent it being thrown out. He said that the Appellant Landlord and his men were ripping up carpets and pulling the place apart. He said that he left once the Gardai arrived.

When cross-examined, he agreed that the Gardai had asked him to leave. He said that there was an extensive amount of work done before he left which included taking doors off their hinges. He confirmed that he was one of the people depicted in the photographs in Case File 4.

Each of the parties, then made their closing submissions.

6. Matters Agreed Between the Parties

The parties agreed the following:

- (I) That each Respondent Tenant was responsible for paying €110.00 per week as rent.
- (II) That the first-named Respondent Tenant was in arrears of rent in the sum of €377.13
- (III) That the second-named Respondent Tenant was in arrears of rent in the sum of €487.13
- (IV) That each Respondent Tenant had paid a deposit of €660 at the commencement of the tenancy and that the deposits have been retained by the Appellant Landlord.

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 therefore are set out hereunder.

Finding 1: The Tribunal finds that the Appellant Landlord has unlawfully retained €455.74 of the Respondent Tenants' deposit.

Reasons:

1. It was agreed that the Respondent Tenants had each paid a deposit of €660.00 at the commencement of the tenancy.
2. Pursuant to section 16(a)(i) of the Residential Tenancies Act ("the Act") a tenant is obliged to pay the rent on the date it falls due for payment. The Act does not allow a tenant to withhold rent if the landlord is in breach of his obligations in relation to repair. There is a remedy for the tenant in such a situation but it is not withholding rent.
3. The parties agreed that the first-named Respondent Tenant was in arrears in the amount of €377.13 and the second-named Respondent Tenant was in arrears in the sum of €487.13.
4. Pursuant to section 12(d) of the Act a landlord is obliged, subject to sub-section (4) of s.12, to return promptly any deposit paid by the tenant on entering into the lease.
5. Sub-section (4)(b) of s.12 permits a landlord to deduct from the deposit any outstanding rent owed by the tenant at the end of the tenancy. The Appellant Landlord was therefore entitled to deduct €377.13 from the first-named Respondent Tenant's deposit and €487.13 from the second-named Respondent Tenant's deposit.
6. Pursuant to s.16(a)(ii) a tenant is also obliged to pay any charges provided for in the tenancy agreement unless the provision is unlawful or contravenes any other enactment.
7. The Appellant Landlord asserted that the Respondent Tenants were in breach of this obligation as they failed to pay the bin collection charges of €26.00 per month each, as provided for in the tenancy agreement.
8. The Respondent Tenants asserted that there was never a written tenancy agreement signed by them and that they were not made aware of such charges until some weeks after they moved in.
9. It is the view of the Tribunal that a total of €130.00 per month (€26.00 per tenant) for bin charges is excessive and did not reflect the cost incurred by the Appellant Landlord. Bin charges were imposed on the Appellant Landlord as part of the annual maintenance charge levied by the management company. The annual maintenance charge covers building and public liability insurance and maintenance of the building. The cost of these items must be borne by the Appellant Landlord pursuant to s.12(1)(b) and (c) of the Act. The Appellant Landlord accepted that the amount he sought to recover from the tenants was the same as the annual maintenance charge levied by the management company. The Tribunal is of the view that the €26.00 per month was an attempt to recover the annual maintenance charge from the tenants and the demand for this payment was unlawful. As the actual amount of the bin charges included in the annual maintenance charge was not separately claimed, the Tribunal is not in a position to calculate any such amount.

10. The Appellant Landlord therefore was not entitled to deduct from the deposit any alleged arrears of the bin charges.

11. Sub-section (4)(b) of s.12 also permits a landlord to deduct from the deposit any costs that would be incurred in remedying any breach of the tenant's obligation pursuant to s.16(f) of the Act, namely not to cause any deterioration in the condition of the dwelling other than normal wear and tear, having regard to the length of occupation and the extent of occupation the landlord must have reasonably foreseen would occur.

12. The Appellant Landlord gave evidence that the property was in disarray when he attended on 06 April 2019 but had no idea of the costs involved in remedying the situation. His witness, Daragh Glynn, said that he was surprised by the extent of the damage. His other witness, Michael Coleman, opined that it would have cost a fortune to put matters right. The Respondent Tenants did not dispute the Appellant Landlord's claim about the condition of the house. The only explanation they gave was in relation to the damage to the toilet and that explanation was not, in the opinion of the Tribunal, plausible.

13. The Tribunal is satisfied on the balance of probabilities that the Respondent Tenants did allow the condition of the dwelling to deteriorate during their occupation in a way that was in excess of normal wear and tear, having regard to the length and the extent of the occupation.

14. However, the Tribunal is unable to make any award to the Appellant Landlord in respect of the Respondent Tenants' breach of obligation as the Appellant Landlord did not have any details of costs or expenses that the Appellant Landlord incurred in remedying the breach and so the Tribunal has no information on which to assess an award for damages. The assertion that it would cost a fortune is simply too vague.

15. As the Tribunal makes no award in relation to sub-section (4)(b) of s.12 the balance of the deposit is repayable to the Respondent Tenants, being €282.87 to the first-named Respondent Tenant and €172.87 to the second-named Respondent Tenant.

Finding 2: The Tribunal finds that the Respondent Tenants' claim for rent above the market rate is not upheld.

Reason:

The Respondent Tenants' complaint regarding the bin charges does not come within the ambit of this head of claim and is dealt with in the above section.

Finding 3: The Tribunal finds that the Notice of Termination served on the Respondent Tenants on 09 February 2019 is valid.

Reasons:

1. The Notice of Termination satisfies the requirements of a valid Notice of Termination as set out in s.62 of the Act.

2. It was accompanied by the statutory declaration required when terminating a Part 4 tenancy on the grounds that the Appellant Landlord intended to enter into a binding agreement for sale within 3 months after termination of the tenancy. The Tribunal accepts the Appellant Landlord's evidence that he intended to sell the dwelling on gaining possession. The Respondent Tenants did not dispute that the Appellant Landlord had appointed an auctioneer before serving the Notice of Termination nor did they dispute the Appellant Landlord's evidence that, as at the date of the first Tribunal he had sold the

property subject to contract. The Tribunal notes that the Appellant Landlord did re-let the dwelling pending sale but accepts that as at the date of service of the Notice the Appellant Landlord had the requisite bona fide intention.

3. As each Respondent Tenant had been in occupation less than two years when the notice was served the then correct minimum period of notice was given.

4. Pursuant to section 6 of the Act the Appellant Landlord was entitled to serve the Notice by leaving it at the address at which the recipient ordinarily resides, in this case the dwelling. The service of the Notice was therefore valid.

5. As there can only be one Part 4 tenancy in existence at any dwelling then only one Notice of Termination was required and not 5 individual notices as asserted by the Respondent Tenants.

6. As the Respondent Tenants are no longer in occupation of the dwelling no order is required pursuant to this finding.

Finding 4: The Tribunal finds that the Respondent Tenants' claim for unlawful termination of the tenancy is upheld.

Reasons:

1. The Respondent Tenants had the benefit of a Part 4 tenancy under the Act.
2. Such a tenancy can only be terminated pursuant to the provisions of the Act.
3. Section 58 of the Act prohibits a landlord from terminating the tenancy by, amongst other means, re-entry or any process or procedure not provided for by Part 5 of the Act.
4. Unless a tenant voluntarily vacates a landlord cannot recover possession of the dwelling without lawful process, that being an application to the RTB for relief.
5. It is the Appellant Landlord's case that the Respondent Tenants voluntarily vacated the dwelling. The Respondent Tenants dispute this.
6. Even if the Tribunal accepted all of the Appellant Landlord's evidence (which it does not) the Tribunal could not agree with the Appellant Landlord's assertion that the Respondent Tenants voluntarily vacated the dwelling on 06 April 2019.
7. The Appellant Landlord arrived at the dwelling to find the Respondent Tenants in occupation with friends present. The Appellant Landlord asserted that a party was in progress. At that point, it should have been apparent to the Appellant Landlord that the Respondent Tenants had no intention of vacating the dwelling that day. Instead of retreating, the Appellant Landlord and his workmen proceeded to remove interior doors, take up carpets and remove personal belongings from the bedrooms.
8. The Appellant Landlord and his witness gave evidence that the first-named Respondent Tenant followed the witness from room to room and behaved in a way that intimidated the witness. This behaviour is consistent with someone who has no desire to leave the dwelling.
9. The Appellant Landlord's second witness gave evidence that when the Appellant Landlord telephoned him, he described the situation as volatile. Again, this is not consistent with someone voluntarily giving up possession of the dwelling.
10. According to the Appellant Landlord, at some point the Respondent Tenants found themselves outside the dwelling with the front door of the dwelling sealed behind them.

Whether they came to be there because, as the Appellant Landlord asserted, they walked out of the dwelling of their own accord or whether one or both of them were physically forced to leave the dwelling is irrelevant (and is not something on which the Tribunal needed to hear evidence of from a member of An Garda Síochána). Given all the circumstances leading up to the Respondent Tenants ceasing to occupy the dwelling, the Tribunal finds that this was a forced eviction and for which the Tribunal awards each of the Respondent Tenants €4,000.00 damages for the stress, inconvenience and loss of property each of them suffered as a consequence.

8. Determination:

In the matter of Tony Kilkenny and Ruth Kilkenny (Appellant Landlords) and James Foley and Teresa Hurley (Respondent Tenants), in accordance with Section 108(1) of the Residential Tenancies Act, 2004, the Tribunal determines that:

1. The notice of termination served by the Appellant Landlords on the Respondent Tenants on 09 February 2019, in respect of the tenancy of the dwelling at 19 Eyre Square, Galway, County Galway is valid.
2. The Appellant Landlords shall pay the total sum of €4,282.87 to the first-named Respondent Tenant within 14 days of the date of issue of the Determination Order, being €282.87 the balance of the unjustifiably retained security deposit of €660.00 having deducted €377.13 for rent arrears together with damages of €4,000.00 for unlawful termination of the tenancy, in respect of the tenancy of the dwelling at 19 Eyre Square, Galway, County Galway.
3. The Appellant Landlords shall pay the total sum of €4,172.87 to the second-named Respondent Tenant within 14 days of the date of issue of the Determination Order, being €172.87 the balance of the unjustifiably retained security deposit of €660.00 having deducted €487.13 for rent arrears together with damages of €4,000.00 for unlawful termination of the tenancy, in respect of the tenancy of the dwelling at 19 Eyre Square, Galway, County Galway.
4. The Respondent Tenants' claim in relation to the rent being above the market rent is not upheld.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 30/11/2021.

Signed:



John Keaney, Chairperson

For and on behalf of the Tribunal.