

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1221-005209 / Case Ref No: 0821-71693

Appellant Tenant:	Aamir Raza
Respondent Landlord:	Paul Traynor
Address of Rented Dwelling:	57 Rialto Court, Dublin 8, D08AK25
Tribunal:	Suzy Quirke (Chairperson) John Keaney, Peter Shanley
Venue:	Virtual
Date & time of Hearing:	14 April 2022 at 10:30 a.m.
Attendees:	For the Appellant Tenant: Aamir Raza (Appellant Tenant) Keivon Sotoodeh (Appellant Tenant's Legal Representative) Sadaf Raheel (Appellant Tenant's Interpreter) For the Respondent Landlord: Paul Traynor (Respondent Landlord)
In attendance:	Recording Technician, Epiq Global

1. Background:

On 10/08/2021 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 13/10/2021. The Adjudicator determined that:

"In the matter of Aamir Raza [Applicant Tenant(s)] and Paul Traynor [Respondent Landlord(s)] the Residential Tenancies Board, in accordance with section 121 of the Residential Tenancies Act 2004, determines that:

The Applicant Tenant's application, regarding unlawful termination of tenancy, in respect of the tenancy of the dwelling at Apartment 57, Rialto Court, Rialto, Dublin 8, D08AK25, is not upheld."

Subsequently the following appeal was received by the RTB from the tenant on 15/12/2021. The appeal was approved by the Board on 11/02/2022.

The RTB constituted a Tenancy Tribunal and appointed John Keaney, Peter Shanley and Suzy Quirke as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Suzy Quirke to be the chairperson of the Tribunal ("the Chairperson").

On 22/03/2022 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 14/04/2022 the Tribunal convened a Virtual tribunal hearing.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case files.

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 giving evidence to the Tribunal. The Chairperson confirmed with the Parties that they had received the relevant papers from the RTB and that they had received and understood the RTB document entitled "Tribunal Procedures".

The Chairperson explained the procedure which would be followed and that the Tribunal was a formal procedure but that it would be conducted in a manner that would be as informal as possible - that the person who appealed (the Appellant Tenant) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent would then be invited to present their case, and that there would be an opportunity for cross-examination on behalf of the Appellant. Both parties would be afforded an opportunity to present a final summation.

The Chairperson stressed that all evidence would be taken on civil affirmation and reminded the parties that knowingly providing false or misleading 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.

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.

The Chairperson asked were there any queries on the procedures; there were no queries.

The Chairman reminded the parties that the hearing was a de novo hearing and that the Tribunal was in no way bound or influenced by the decision of the Adjudicator.

The Chairperson indicated that the Tribunal would be willing to consider a short adjournment for the purpose of allowing the parties to try and negotiate a settlement or agreement of the dispute should they so wish. The parties declined the opportunity to negotiate a settlement. The parties intending to give evidence made a civil affirmation and the hearing proceeded.

5. Submissions of the Parties:

The Appellant Tenant's Case:

The Appellant Tenant's Legal Representative, Mr Sotoodeh, opened by asking his client about the Notice of Termination dated 10 June 2020 (seen at page 14 of Tribunal Case File 5). The Appellant Tenant said that the Notice had been emailed to him and that the grounds for termination was that the Respondent Landlord needed the flat for himself. The Appellant Tenant said that he didn't believe this reason and thought that the reason the Respondent

Landlord wanted to terminate the tenancy was because he had not been able to increase the rent due to the RTB rent reviews rules.

The Appellant Tenant stated that on receipt of the Notice of Termination he went to his solicitor for advice and to initiate a case for dispute resolution with the RTB about the increase in rent which the Respondent Landlord was proposing. He stated that a further Notice of Termination dated 28 July 2020 was served by registered post but that when he went to the Post Office to collect the letter, the envelope was empty. The Appellant Tenant said that he told the Respondent Landlord that it was unlawful to serve a Notice of Termination during the Covid-19 period of emergency. The Appellant Tenant stated that around this time the Respondent Landlord told him he just wanted €1,000 per month or else he could leave the property. The Appellant Tenant stated that he would not have known that there was a second Notice of Termination if the RTB had not contacted him to tell him.

The Appellant Tenant stated that he got home from working all night (as a taxi driver) around 3 o'clock on the afternoon of 5 January 2021 to find that all his documents such as his passport etc were missing as was the spare key for his car. He stated that he called the Guards to the property. He said that the following morning he got a phone call from an unknown person telling him to pay the arrears of rent which at that time was €1,500 subsequent to an Adjudication hearing of 29 September 2020. (The transcript of this call is seen at page 18 of TCF5 and referred to as Transcript No. 2). The caller told him to leave the apartment and leave the keys in the apartment and if he called the Guards, his taxi would be burnt.

The Appellant Tenant said that the only person other than himself who had a key to his flat was the Respondent Landlord and he surmised that it was the Respondent Landlord who had let himself into the flat and stolen the documents and car.

The Appellant Tenant said that he vacated the property on 15 January 2021 and the following day got a second phone call from an unknown person telling him where to find his taxi and that he would receive all his documents when he had paid the Respondent Landlord the money he owed him.

The Appellant Tenant said that he had no source of income from 6 January 2021 to 16 January 2021, the date on which he retrieved his car from behind the Lidl store on Cork Street. He said that he estimated that his loss of earnings was approximately €1,000.

He said he continued to engage by text message with the Respondent Landlord and asked if there was any mail for him. He stated that on 16 February 2021 the Respondent Landlord agreed to open the flat for him to get his post and a bag with his documents was found inside the front door along with the spare key to his car. He said over the months of January and February the Respondent Landlord continued to seek the money he alleged was owed in rent arrears.

The Appellant Tenant said that the Guards had put forward a case of the theft of the car to the DPP but that the file had been closed (due to lack of evidence).

He said that he was still mentally tortured by the events and that he was now 'temporarily living' approximately 40 km from Dublin which made it more expensive for him to work as a taxi driver.

The Appellant Tenant's legal Representative explained to the Tribunal that the €1,100 paid by his client to the Respondent Landlord was in accordance with the Determination Order

(DR 0720 - 63467) but that this was founded on an unlawful rent review and his client had successfully appealed the Adjudicator's decision. This decision had been appealed by the Appellant Tenant and the Determination Order (TR 1220 - 004595) directed the Respondent Landlord to pay the sum of €7,480 to the Appellant Tenant.

The Respondent Landlord's evidence:

The Respondent Landlord opened his evidence by referring the Tribunal to page 3 of TCF3 which was a letter from the RSA notifying the recipient of the removal of penalty points and addressed to the person at the dwelling. The Respondent Landlord said that this proved that the Appellant Tenant was subletting the accommodation which was unlawful. He also directed the Tribunal to various emails to the RTB which he referred to as 'witness statements' and which were concerned with the Appellant Tenant littering the street with taxi receipts, having a conversation with another man and parking his car in an uncooperative manner. He said that he only found out that the Appellant Tenant was subletting after the latter had vacated the flat on 15 January 2021.

The Respondent Landlord stated that he knew nothing about the phone calls made to the Appellant Tenant on 6 January 2021 and on 16 January 2021.

He said that the Appellant Tenant vacated the flat of his own free will and that the WhatsApp message exchange between them on 7 January 2021 states 'I will leave' and that on 15 January 2021 he left as he said he would. He stated that the Appellant Tenant told him on a telephone call in December 2020 that he would leave in January 2021.

The Respondent Landlord refuted that he had unlawfully terminated the tenancy.

He explained that he had 'won' the RTB Adjudication for rent arrears in September 2020 but that the appeal overturned that decision. However he said that as at January 2021 when he was asking the Appellant Tenant to pay the arrears as per the Adjudicator's determination, that he was entitled to do so.

The Respondent Landlord suggested that the person who was subletting from the Appellant Tenant would have had a key and perhaps that person was responsible for the missing documents and car.

Summing up by Mr Sotoodeh:

Mr Sotoodeh submitted on behalf of the Appellant Tenant that the Notices of Termination were both served during the Emergency Period during which it was unlawful to serve a new Notice of Termination. He said that the 'witness statements' submitted by the Respondent Landlord were not supported by the presence of any witnesses that could be questioned. He said that there were no allegations of anti-social behaviour or subletting on which to ground a termination of tenancy.

He said the DPP chose not to prosecute (the theft of the car and documents) because they would have had to prove the case 'beyond reasonable doubt' and that this was a difficult burden of proof. He said that the only logical explanation for the phone calls was that the Respondent Landlord had hired a third party to make them in order to intimidate the Appellant Tenant into leaving the dwelling. He stated even if the Appellant Tenant had sublet the flat why would such a person make such demands as 'you'll get, everything back, when you paid the landlord all the money' as suggested by the Respondent Landlord? He said it made no sense.

Mr Sotoodeh said that given the breach of Section 12 (1) (a) and given the forced unlawful termination of the tenancy, the mental distress suffered by his client and his loss of earnings, that he was asking the Tribunal to award damages at the 'higher end of the threshold'.

Summing up by Mr. Traynor:

Mr. Traynor summed up his evidence by stating that the Appellant Tenant's allegations were false and that there was no proof of an eviction. He said he had not enclosed the actual witness statements but had redrafted them because he didn't want to give names and thought that he shouldn't for data protection reasons.

He said it was there in the WhatsApp messages that the Appellant Tenant said he would leave and he did.

6. Matters Agreed Between the Parties:

The following points were agreed by the parties at the hearing:

- The address of the dwelling is Apartment 57, Rialto Court, Rialto, Dublin 8.
- The tenancy commenced on 4 June 2012 and terminated on 15 January 2021.

7. Findings and Reasons:

Having considered the evidence provided and based on the balance of probabilities, the Tribunal has made the following findings:

Finding 7.1

The Tribunal finds that the Respondent Landlord unlawfully terminated the Appellant Tenant's tenancy in respect of the tenancy of the dwelling at 57 Rialto, Rialto Road, Dublin 8 and shall pay the total sum of €10,000 to the Respondent Tenant within 90 days of the date of issue of the Determination Order, being damages for the unlawful termination and for breach of peaceful and exclusive occupation of the dwelling.

Reason:

In considering the actions of the parties in this dispute the Tribunal has had regard to whether the tenancy was lawfully terminated under the provisions of the Residential Tenancies Act, 2004 (as amended) (hereinafter known as 'the Act') and if not terminated lawfully by the Respondent Landlord, if the actions of the Appellant Tenant could be interpreted as his voluntarily leaving the dwelling.

Section 34 of the Act provides for the grounds on which a landlord may lawfully terminate a Part 4 tenancy. A part 4 tenancy is a tenancy of greater than duration of six months and it is not disputed that the Appellant Tenant was in occupation of the dwelling since June 2012 thereby entitling him to Part 4 rights under the Act.

The Notices of Termination (pages 14 and 16 of Tribunal Case File 5) were dated 10 June 2020 and 28 July 2020. Before assessing the validity of the notices it is necessary to consider them in the context of Covid-19. Under Section 5 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 ('the 2020 Act') no new notices of termination were permitted to be served during this emergency period which originally ran from 27 March 2020 for a period of three months but was extended to 1 August 2020. So regardless of

the correctness or otherwise of the June and July 2020 Notices of Termination, the emergency legislation precluded their being served during this period.

The Tribunal therefore finds that neither notice had any legal effect being unlawful, and that it is therefore not necessary to go deeper into their validity or otherwise outside of the Covid-19 emergency measures. The Tribunal finds that the tenancy was therefore not validly terminated by the Respondent Landlord since the only lawful termination of a tenancy is in accordance with the provisions of the Act.

The Tribunal next considered if the Appellant Tenant left the dwelling of his own free will as alleged by the Respondent Landlord. He gave direct evidence that he and the Appellant Tenant had a conversation by phone in December 2020 during which the Appellant Tenant said he was going to vacate the flat in the New Year. The Respondent Landlord also directed the Tribunal to the exchange of WhatsApp messages seen at page 19 of TCF1 where the Appellant Tenant says at 16.20 of 7 January 2021 'I will leave but can't we leave as good friends'. The Respondent Landlord sought to rely on these messages as an indication that the Appellant Tenant left the dwelling of his own volition.

The Tribunal finds that at this point (January 2021) the Adjudicator (following an application for rent arrears brought by the Respondent Landlord and heard on 29 September 2020) had found in favour of the Respondent Landlord and the Determination Order (page 25 of TCF1) shows that the Adjudicator directed the Appellant Tenant to pay €1,500 in rent arrears to the Respondent Landlord. However the Appellant Tenant lodged an appeal on 8 December 2020 and in an overturning of the Adjudicator's finding, by Determination Order dated 21 July 2021 the Respondent Landlord was directed to pay a sum of €7,480 being overpayment of rent as a result of an unlawful rent review.

At the date of the WhatsApp messages - between 5 January 2021 and 15 January 2021 - the Respondent Landlord was seeking the payment of €1,500 as per the Adjudicator's Determination Order which was appealed, as set out above, by the Appellant Tenant. The messages also show the Respondent Landlord repeatedly asking when the Appellant Tenant will leave the dwelling. The Tribunal finds that the agreement by the Appellant Tenant to vacate the dwelling was a result of the Respondent Landlord's intimidation by means of the taking of the car and documents.

The Tribunal finds that the Respondent Landlord was the only party with keys to the dwelling other than the Appellant Tenant and that accordingly, on the balance of probabilities and being the only party with any motive, he was responsible for the taking of the car and documents. In questioning by the Appellant Tenant's Legal Representative the Respondent Landlord denied any knowledge of the missing car and documents or of the calls from the unknown party to the Appellant Tenant directing him to 'pay the landlord all the money' (page 18 TCF5). The Respondent Landlord's case rested solely on the allegation that the Appellant Tenant had been subletting the flat and he suggested that it was the subtenant who had made the phone calls. The Tribunal finds that an alleged subtenant, if they existed, would not have had any motive to take the Appellant Tenant's car, documents or make phone calls of an intimidating nature to him.

The Respondent Landlord admitted not realising until after the Appellant Tenant had vacated the dwelling that he had been subletting as alleged. He did not seek to terminate the tenancy on the grounds of an unlawful subletting but sought to rely on it at the date of the hearing.

The Tribunal now considers the question of the forced termination of the tenancy by means of extortion and intimidation. It also considers the Respondent Landlord's breach of Section 12 (1) a) of the Act, being -

12.—(1) In addition to the obligations arising by or under any other enactment, a landlord of a dwelling shall—(a) allow the tenant of the dwelling to enjoy peaceful and exclusive occupation of the dwelling.

The entering of the dwelling by the Respondent Landlord which the Tribunal finds to be the case on the balance of probabilities, without the consent of the Appellant Tenant clearly comprises a breach of Section 12 (1) (a) which sets out a tenant's entitlement to 'enjoy peaceful and exclusive occupation of the dwelling'. The entering of the dwelling for the purpose of taking the Appellant Tenant's possessions must be considered to be a breach of the most serious nature. The Tribunal finds that damages in the amount of €5,000 is an appropriate quantum in this instance.

In respect of the forced, unlawful termination of the tenancy by means of coercion and intimidation, the Tribunal finds damages in the amount of €5,000 to be an appropriate quantum in this instance.

In arriving at the total sum of €10,000, the Tribunal has had regard to the distress and disturbance caused to the Appellant Tenant, the inconvenience and loss of earnings from 5 January 2021 and 15 January 2021 and the ongoing increased cost of earning his living by reason of his current living arrangements being 40 km from his market.

8. Determination:

In the matter of Aamir Raza (Appellant Tenant) and Paul Traynor (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlord shall pay the total sum of €10,000 to the Appellant Tenant within 90 days of the date of issue of the Determination Order, being damages of €10,000 for the unlawful termination of the tenancy and breach of landlord's obligation to allow peaceful and exclusive occupation of the dwelling, in respect of the tenancy of the dwelling at Apartment 57, Rialto Court, Rialto, Dublin 8.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 20/04/2022.

Signed:



Suzy Quirke, Chairperson

For and on behalf of the Tribunal.