

**Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR1222-005844 / Case Ref No: 0822-79514**

**Appellant Landlord:** Don Stokes

**Respondent Tenant:** Deirdre O'Carroll

**Address of Rented Dwelling:** Apartment 1, The Square, Dromcollogher,  
Co. Limerick, P56 HP98

**Tribunal:** Ciara Doyle (Chairperson)  
Andrew Nugent, Michelle O'Gorman

**Venue:** Virtual

**Date & time of Hearing:** 17 January 2023 at 10:30 a.m.

**Attendees:** For the Appellant Landlord:  
Brian O'Brien, Solicitor for the Appellant Landlord  
Dan Stokes, Appellant Landlord  
For the Respondent Tenant:  
Sinead Chambers, Legal Representative for the  
Appellant Tenant  
Deirdre O'Carroll, Appellant Tenant

**In attendance:** RTB appointed stenographer/logger

**1. Background:**

On 29/08/2022 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 04/10/2022. The Adjudicator determined that:

- "1. The notice of termination dated 10th June 2022 served by the Respondent Landlord on the Applicant Tenant is invalid.
2. The Respondent Landlord shall pay €8000 to the Applicant Tenants, within 42 days of the date of issue of the Determination Order, being damages for an illegal eviction in respect of the Tenancy located at apartment 1, The Square, Drumcollogher, Limerick.
3. The Applicant Tenant shall be permitted to resume possession of the dwelling within 10 days of the issue of the Determination Order.
4. The Applicant Tenant shall continue to pay rent from 4th October 2022 being the date of the Adjudication Hearing, to the Respondent Landlord at the rate of €600.00 per month, unless lawfully valid, 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 above dwelling is vacated by the Applicant Tenant and any other persons residing therein."

Subsequently the following appeal was received from the Landlord on 02/12/2022. The grounds of the appeal: Validity of notice of termination (if you are disputing the validity of a

termination notice issued), Standard and maintenance of dwelling, Breach of landlord obligations. The appeal was approved by the Board on 12/12/2022.

The RTB constituted a Tenancy Tribunal and appointed Ciara Doyle, Andrew Nugent, and Michelle O'Gorman as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Ciara Doyle to be the chairperson of the Tribunal ("the Chairperson").

On 14/12/2022 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 17/01/2023 the Tribunal convened a virtual hearing, using MS Teams.

## **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 attending the Tribunal. The Chairperson confirmed with them 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, she 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 Landlord) would be invited to present his case first, that the Respondent Tenant would then be permitted to cross examine. The Respondent Tenant would then be invited to present her case and the Appellant Landlord would then be permitted to cross examine. She reminded the parties present that the hearing was a de novo hearing involving a full rehearing of the case on the facts.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official stenographer present, and she reminded the party present 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.

All parties present then stated an affirmation.

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

Submissions of the Appellant Landlord:

The Appellant Landlord's solicitor submitted that the Landlord had issued a lease to the Respondent Tenant, but it had not been signed, despite being sent back and forth between

the parties. He said there was a strict prohibition within the lease on smoking in the property but the Tenant had breached her obligation in this regard. He said the building comprising the dwelling consisted of 2 apartments, 1 upstairs and 1 downstairs, the latter being the subject of this dispute.

He submitted that within 2 weeks of the tenancy commencing, issues had arisen between the parties and it was not a harmonious relationship. He said the Tenant's behaviour had annoyed the Tenants in the apartment upstairs to the extent that they had terminated their tenancy on 22nd September 2021 leaving the Landlord with no rental income from the upstairs unit.

The Appellant Landlord's solicitor said originally the Landlord had invested in the property for his pension but he now intended to sell both the apartment upstairs and the apartment downstairs due to the issues which had arisen with the Tenant.

He accepted that certain issues in respect of the tenancy had been determined by the RTB previously and he accepted these matters were not currently before this tribunal but mentioned by way of background to this dispute.

He submitted that it had been very difficult for his client to deal with the RTB procedures. He accepted unequivocally that the Notice of Termination that the Landlord had served on the Tenant on the 10th June 2022 was invalid by reason of not having an accompanying Statutory Declaration and giving insufficient notice to the Tenant. He claimed the Landlord was ignorant of the correct procedures to terminate the tenancy.

#### Appellant Landlord's Evidence:

The Appellant Landlord confirmed that he received a message at approximately midnight on 17th August 2022, from an unknown number advising him of a power outage. He said he had not heard from the Tenant at this stage, that there was a problem. He engaged an electrician to attend at the property. When his electrician attended the property, he determined that there was an earth bondage problem which meant that the whole premises needed to be rewired. His electrician suggested the cost of the rewiring would be in or around €10,000 for each apartment and the Landlord submitted that he did not have the money to pay for these works.

He said he gave a report from his electrician to the Tenant, and he referred to that report on the case file. He said the Tenant had then insisted on calling the electricity provider and he had paid a charge for their call-out despite the issue having already been established by his own electrician.

He said the mains water was pumped through the premises by a pump operated electrically and without electricity there was no water in the property. Further there was no fire alarm and there was the risk of the Tenant falling in the dark, causing an injury to herself and his insurers told him that he was open to a claim. He confirmed there is currently no insurance on the dwelling as a result of the electrical issues.

He submitted that the Tenant had installed a generator in the premises which his electrician had said was extremely dangerous and he received complaints from neighbours in respect of the noise. At that point after asking the Tenant to leave on numerous occasions for her own safety, he said he had no option but to change the locks.

He said he apologised to the Tenant for the inconvenience and offered her a room in his own home which she had refused. On the 26th August 2022, he proceeded to board up the dwelling.

He said he decided to board it up rather than change the locks as due to the Tenant's refusal to leave, he feared she would simply get a locksmith to put in a new lock. He said he did this for her safety and to protect himself against any future claims. He said his auctioneer had instructed him that he would take photographs and put the property on the market for sale when the Tenant's belongings are removed. He said the property will be sold as is, as he cannot afford to fix the electrics. He said he had offered the Tenant many opportunities to collect her personal belongings, but she refused to do so. He said he had also received communication from the Tenant's sister about her niece whose belongings were also in the property as the Tenant had sublet the property to her niece, in contravention of her lease. The Landlord referred in the case file to a health and safety report dated the 28th November 2022. He said that an inspection had taken place within 2 weeks of the electricity problem, but the report had not issued until the 28th November as the consultant was busy.

Under cross examination by the Tenant's representative, the Appellant Landlord confirmed he had no written estimate in respect of the cost of the remedial works, that he had no letter from his insurers advising him of any insurance issues and he had no documentation from the fire authority confirming the property was uninhabitable. He denied that he was continuing to receive any HAP payment or rent from the Tenant and said he had received no payment in respect of the property since last November. When questioned by the Tenant's representative as to his means to carry out the remedial works, he confirmed he had a refrigeration business which only paid him a wage and the other business referred to, was his wife's business. He said the cause of the power outage was an act of nature and it was out of his control.

#### Submissions of the Respondent Tenant:

The Tenant's representative confirmed the tenancy commenced on 1 April 2021. On the 17th August 2022 the electricity went off and it had not been fixed since. She said the Tenant had called the ESB and she had put a generator into the property as she suffered from sleep apnoea and needed the generator for her medical equipment. She said Threshold had previously informed the Landlord that the Notice was invalid, but the Landlord had told them she would be removed anyway.

She left the dwelling on the morning of 26th August 2022 to do some jobs and when she returned, the dwelling was boarded up. There was a public sign displayed on the outside of the dwelling for all to see stating she had been evicted. The Landlord had not contacted her that day to make her aware of his intentions. He had no report from the fire authority condemning the building. He knew she had nowhere else to go and that all her belongings were inside.

On the night of 26th August, she slept in her car. She then slept in her parents' house for the second and third night before taking a room in a local house at a rate of €100 per week which she is now paying. She said she has been homeless for 145 days, that lies had been told about her, that the Landlord had threatened her throughout the tenancy, that she lived in fear of him, that all her belongings remain in the property. While she accepted the Landlord had offered to allow her access to get her belongings, she said she was afraid of going to the dwelling with him and she has replaced many of the items at this stage.

She submitted that before the house was boarded up, the Landlord had threatened to call down to the dwelling and move in while she was there. As a result of his actions, she said she suffered depression and sleepless nights and all she wanted was to be left alone. She

said that when the generator was in the property she had access to cold water and the toilets were flushing. She said she continues to make the €32 per week contribution to HAP and having made enquiries with HAP, they informed her that the Landlord continues to receive the full rent for the dwelling.

Cross examination by Mr. O'Brien:

Mr. O'Brien asked the Tenant if she recalled the Landlord's electrician attending the property. She said she did not, but did accept that she had seen the report on the case file. Mr. O'Brien asked if the Tenant accepted it was unsafe for anybody to live in the property and she said she couldn't answer that yes or no.

He asked her did she accept that the Landlord had not received any rent for upstairs or downstairs for several months, and that it was not favourable to him that he was receiving no income in respect of the property. She said that was not her fault. When questioned as to why she did not return for her belongings she said she was afraid to go back and was waiting to get her home back. She accepted she could have gone back for some of her belongings with the assistance of a friend. She confirmed to the Tribunal she wanted the dwelling back, with strict boundaries in place between the parties going forward.

Closing submissions of the Landlord:

The Landlord accepted the Notice of Termination was invalid. He said he was appealing the quantum of damages awarded against him, which were excessive, and the determination that the Tenant should be allowed to re-occupy the dwelling, which was not feasible. By way of mitigation in respect of his actions on 26th August 2022 he submitted:

1. He had no option but to remove the Tenant from the dwelling in circumstances where there was no electricity, for her own safety and to protect himself from claims.
2. The Tenant had breached her obligations over a prolonged period which had been the subject of previous disputes and the entirety of the relationship between the parties and the history of the tenancy should be considered.
3. The use of the generator by the Tenant was dangerous.
4. The Landlord is out of pocket with no rent being received for the entire building.
5. Damages should be a sufficient remedy and the Landlord would be penalised twice, if the Tenant is permitted to re-occupy.
6. The Tenant seems to think she owns the property and while he recognises that she has rights as a Tenant, she does not own the property, he does.

Closing submission of the Tenant:

The Landlord unlawfully removed the Tenant by boarding up the dwelling. He did so without any proper fire authority declaration and on the back of a report from a local electrician. He should have terminated the tenancy in a proper manner, instead the way he terminated the tenancy was cruel and unacceptable. He provided no proof of insurance problems, and if he is out of pocket, it is his own business and not due to the actions of the Tenant. He could have and should have served a valid Notice of Termination, instead he took the view that he was getting her out. While the Tenant knows she does not own the property, it is her home, and she just wants to be reinstated into the property.

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

1. The address of the dwelling is Apartment 1, The Square, Dromcollogher, Co. Limerick, P56 HP98.
2. The Rent is €600 per month.
3. There was no deposit paid.
4. The Tenancy commenced on 1st April 2021.

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

Finding 1: The Notice of Termination dated 10 June 2022 is invalid.

Reasons:

It was accepted by the Appellant Landlord there was no accompanying Statutory Declaration of intention to sell and insufficient notice was given and that the notice was invalid.

Finding 2: The Appellant Landlord shall pay the sum of €8,000 to the Respondent Tenant within 42 days of the issue of the Determination Order being damages in respect of the unlawful termination of the tenancy, illegal eviction and failure to comply with his obligations under Section 12(b) of the Act in respect of the tenancy located at Apartment 1, The Square, Dromcollogher, Co. Limerick, P56 HP98.

Reasons:

On 26th August 2022 the Landlord accepted that he attended at the dwelling, while the Tenant was out and proceeded to board up the dwelling, locking the Tenant out of the dwelling with all her personal belongings inside.

The Landlord was aware that the Notice of Termination he had served was invalid and that he ought to have served a valid notice in order to lawfully terminate the tenancy. Instead, he decided to adopt his own procedure, wilfully disregarding the law and the Tenant's rights, by locking the Tenant out of the dwelling, boarding it up, and locking the Tenant's belongings inside. He also put up a public notice of eviction on the building, for all to see. His actions caused significant stress and inconvenience to the Tenant, who was forced to sleep in her car for a night and left without her possessions.

While the Tribunal accepts the Landlord offered an opportunity to the Tenant to retrieve her personal belongings, it also accepts the Tenant was intimidated by the Landlord's actions and this prevented her from attending at the dwelling. The behaviour of the Landlord towards the Tenant, as outlined in the Tenant's evidence, was not denied by him in his evidence.

While the Tribunal accepts the Landlord may have had concern for the safety of the Tenant and the dwelling, he failed to adduce sufficient expert evidence as to the cause of the electrical fault, the costs associated with remedying it or evidence from the fire authority as to the hazard. Under Section 12(1)(b) of the Act, a Landlord is obliged to carry out repairs to a dwelling and comply with the regulations for minimum standards for housing. In this case he failed to repair an electrical fault, in contravention of his obligations under the Act. While the Landlord gave evidence that he could not afford to fix the issues that had arisen, the financial means of the Landlord is not relevant to the finding of the Landlord's breach of obligations in this regard.

Taking into account all of the evidence before it, the Tribunal considers the sum of €8,000 to be an appropriate sum of damages in this case for the unlawful termination of the tenancy, illegal eviction and failure by the Landlord to comply with his obligations under section 12(1) of the Act. In making this finding the Tribunal has taken into account the deprivation of the Tenant's right to a lawful termination of her tenancy and the Landlord's wilful disregard for the termination process which is clearly set out in the legislation and for breach of his obligations under the Act to carry out necessary repairs to the dwelling to ensure the structure complies with the prescribed standards for houses.

The Tribunal does not make any determination that the Tenant can return to the dwelling as provided for under Section 115(2)(g) of the Act. In circumstances where it appears there has been a complete breakdown of relations between the parties, this is not considered to be an appropriate remedy in this matter. Further the Tribunal cannot ensure the Landlord carries out the necessary works to remedy the electrical fault and the Tenant in her own evidence confirmed she needs electricity for life saving equipment. The Tribunal considers that it would not be appropriate for her to return to the dwelling in the circumstances and the matter is sufficiently dealt with by way of an award of damages against the Landlord for breach of his obligations under the Act.

#### **8. Determination:**

In the matter of Don Stokes (Appellant Landlord) and Deirdre O'Carroll (Respondent Tenant) the Tribunal, in accordance with Section 108 (1) of the Residential Tenancies Act, 2004, determines that:

1. The Notice of Termination dated 10 June 2022 served by the Appellant Landlord on the Respondent Tenant is invalid.
2. The Appellant Landlord shall pay the sum of €8,000 to the Respondent Tenant within 42 days of the date of issue of the Determination Order, being damages for the unlawful termination of the tenancy, illegal eviction and breach of his obligations under Section 12 (1) (b) of the Act, in respect of the tenancy of the dwelling at Apartment 1, The Square, Dromcollogher, Co. Limerick, P56 HP98.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 26/01/2023.



**Signed:**

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**Ciara Doyle, Chairperson**

For and on behalf of the Tribunal.