Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1222-005872 / Case Ref No: 1022-80404

Appellant Landlord:	Colin O'Sullivan
Respondent Tenants:	McKenzie Lake, Gabriela Lake
Address of Rented Dwelling:	Carrigillihy, Union Hall, Skibbereen, Co. Cork, P81P023
Tribunal:	Michelle O'Gorman (Chairperson) Helen-Claire O'Hanlon, Healy Hynes
Venue:	virtual
Date & time of Hearing:	17 February 2023 at 2:30 p.m.
Attendees:	Colin O'Sullivan, Appellant Landlord Joe Dunne, Respondent Tenants' Representative McKenzie Lake, Respondent Tenant Gabriela Lake, Respondent Tenant Colette Riordan, Respondent Tenants' Witness Fiona Fenwick, Respondent Tenants' Witness
In attendance:	RTB appointed stenographer

1. Background:

On 07/10/2022 the Tenant made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 78 of the Residential Tenancies Act 2004, ("the Act"). The matter was referred to an Adjudication which took place on 04/11/2022. The Adjudicator determined that:

"In the matter of Gabriela Lake, Applicant Tenant and Colin O'Sullivan, Respondent Landlord, the Residential Tenancies Board, in accordance with Section 97 of the Residential Tenancies Act, 2004, as amended, determines that:

1. No valid Notice of Termination was served by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of the dwelling at address Carrigillihy, Union Hall, Skibbereen, Cork.

2. The eviction of the Applicant Tenant from the above dwelling, and the termination of the Applicant Tenant's tenancy, in September 2022, by the Respondent Landlord were unlawful.

3. The Respondent Landlord will provide the Applicant Tenant and her family reasonable access to the above dwelling to collect their belongings with 28 days of the date of issue of the Determination Order.

4. The Respondent Landlord shall pay the sum of €14,500 to the Applicant Tenant within 28 days of the date of issue of the Determination Order, such sum being of €1500 for kennel

fees at €50 per day for 30 days, €1000 for the return of the Applicant Tenant's deposit and €12,000 in damages for loss, inconvenience and distress caused by the unlawful termination of the tenancy."

Subsequently the following appeal was received from the Landlord on 22/12/2022 and thereafter approved by the RTB on 12/01/2023.

The RTB constituted a Tenancy Tribunal and appointed Healy Hynes, Michelle O'Gorman, Helen-Claire O'Hanlon as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Michelle O'Gorman to be the chairperson of the Tribunal ("the Chairperson").

On 23/01/2023 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 17/02/2023 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:

None.

4. Procedure:

The Chairperson opened the Hearing by asking the Parties attending the Virtual Hearing to identify themselves and to identify in what capacity each was attending the Tribunal. The Chairperson confirmed with the Parties attending 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 Appellant Landlord would be invited to present his case; that there would be an opportunity for cross examination of this evidence by the Respondent Tenants; that the Respondent Tenants would then be invited to present their evidence, that there would be an opportunity for cross examination of this evidence by the Appellant Landlord and at the end of this process both Parties would be invited to make their final submissions to the Tribunal.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official stenographer/recording technician present and she reminded the Parties attending 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 the hearing was a de novo hearing and 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.

The Tribunal offered the parties an opportunity to enter into discussions to see if an agreement could be reached. The parties declined.

Those giving evidence gave their affirmations.

5. Submissions of the Parties:

The following is a summary of the relevant facts and allegations based on the parties' oral evidence to the Tribunal.

Evidence of the Appellant Landlord.

The Appellant Landlord stated that the Tribunal had all the evidence before it and that on the 5 September, 2022 the Respondent Tenants owed four months' rent. He also stated that there had been an agreement between the parties that the dogs would not be allowed upstairs, as it was carpeted. He stated that on the 22 September, 2022 the dogs soiled the carpets upstairs and he referred the Tribunal to the photographic evidence on the case files. In relation to the itemised list of belongings on the case file, the Appellant Landlord stated that he had an antiques dealer value the furniture but that he had not submitted this valuation to the Tribunal.

The Appellant Landlord stated in evidence that new mattresses were bought for the dwelling but he did not have any receipts for this purchase as he was just after starting the works. He confirmed that he was charging €650.00 to move the Respondent Tenants' items into the garage. The Appellant Landlord stated that 2 internal doors were replaced and varnished but that he did not have receipts for this work as the job was not yet finished. He stated that the external back door was all scratched at the bottom. It was the Appellant Landlord's evidence that he had dumped the sofas, but that he had not purchased new sofas. According to the Appellant Landlord the showers had to be tiled and the toilet seat cover has yet to be put on. He confirmed that there were no receipts for any of the Items in the 'Bill of Quantities' at page 41 of Case file one. He stated that all the works listed had to "be done". The Appellant Landlord also stated that grease was washed down the kitchen sink and therefore the drains 'had to go', that this problem had only just arisen and that the sewer was blocked. He confirmed that he had no plumber's report in relation to this issue but that he was relying on his experience and he had to "fix it". The Appellant stated in evidence that there were 'hidden costs' relating to the tenancy, that he has not even come across yet. The Appellant Landlord indicated that he had to pay €185.00 to reconnect the electricity, as the Respondent Tenants had not paid the electricity for a number of months. The Appellant Landlord also stated that the refuse bill was not paid and the bins had not been collected. The Appellant Landlord denied that any security deposit was paid at the commencement of the Tenancy. He referred the Tribunal to the photographs on the file and he was happy that he had presented all his evidence to the Tribunal.

Cross examination of the Appellant Landlord by Ms. Gabriela Lake, Respondent Tenant.

The Appellant Landlord confirmed that the damage to the dwelling had been caused when McKenzie Lake left the two dogs alone, in the house for two nights in September, 2021. He stated that he had moved back into the dwelling as the Respondent Tenants had not paid the rent. The Appellant Landlord stated that he had moved into the dwelling in early September 2022, and that he had waited to make a claim for damages until after the Respondent Tenants had initiated a dispute as he explained that he had taken photos thereafter.

Cross examination of the Appellant Landlord by Mr. Joe Dunne, Threshold.

The Appellant Landlord stated that he had not submitted the receipts for the mattresses he purchased as he had not paid for them yet. It was put to the Appellant Landlord that there was no evidence of payment for the works outlined in the 'Bill of Quantities'. The Appellant

Landlord explained that he had “only started the job” and as a builder he gets credit. He stated that he had sent Jim Scannell photos of the damage to the dwelling and Mr. Scannell then prepared the bill of Quantities. The Appellant Landlord confirmed that he had not submitted the bill from the ESB for the reconnection of the power as “there was no point”. It was put to the Appellant Landlord that the Adjudicator had given him time to submit receipts for works done pursuant to the bill of quantities, but no receipts had never been received.

Evidence of Gabriela Lake, Respondent Tenant.

Ms. Lake stated that when they moved into the dwelling on the 9 October, 2018, there was “substantial damage” to the house evident. She stated that the previous tenants had a pit-bull which had scratched doors within the dwelling. She stated that the dwelling had been rented for one year prior to her tenancy commencing. Ms. Lake confirmed that she paid a deposit of €1000.00 cash to the Appellant Landlord. It was Ms. Lake’s evidence that the landlord owned the field next to the dwelling and he would be in the dwelling every single day. She indicated that there were always issues with the showers and that the only shower that worked was the one adjacent to her bedroom and this was the one her children used. Ms. Lake stated that the Appellant Landlord tried to fix the other showers in the house and had told her that the hot water and cold water were piped incorrectly. She stated that the shower in the jacuzzi room had stopped working and when the Appellant Landlord went to fix it, he broke the shower-head. Ms. Lake agreed that the dogs had soiled areas in the house on the 22 September, 2021 but that this had been rectified and when she had returned from America, the Appellant Landlord had told her that there was no need for her to move out. That incident was over a year before the Landlord had terminated their tenancy. It was Ms. Lake’s evidence that she had bought the paint for the Appellant Landlord when the house required painting and she stated that she paid to have the garden landscaped. Ms. Lake stated that the Appellant Landlord was always in the dwelling and that no issue arose with the standard and maintenance of the dwelling between September, 2021 and September, 2022. She stated that the Appellant Landlord would have been in the house during this period and that he regularly mowed the lawn. Ms. Lake stated that she had left for America in May, 2022 and her children then joined her for a month or two. She stated that when the Appellant Landlord texted her about the rent on the 5 September, 2022, only two months rent (July and August) had been due at that point, as the rent for September was due on the 9th of the month. She said that she paid the rent for the outstanding months and informed the Appellant Landlord that she would take care of September’s rent on return from America. It was her evidence that she heard nothing further from the Appellant Landlord and assumed that everything was fine.

Ms. Lake said that the 5th October, 2022 when McKenzie tried to access the dwelling, the Appellant Landlord was living in the dwelling and told her that he had moved in three weeks ago. She said that the Appellant Landlord yelled at McKenzie. The gardai intervened and McKenzie was able to retrieve some of her belongings. McKenzie also retrieved some jewellery, her father’s ashes and some books. Ms. Lake stated she contacted the Gardai, a solicitor and the RTB on the 6 October, 2022. She stated that while she was in America she had placed her two dogs in kennels and that they were due to return to the dwelling on the 5 October, 2022. The dogs had to be further kennelled until she found alternative accommodation on the 12 December, 2022. The alternative accommodation was two hours away from the dwelling. Ms. Lake stated that the keys to her two cars had been inside the house and she was refused entry to the dwelling to retrieve the keys. She later found out

that her black Fiat was burned out and the silver Chrysler was missing. She stated that, because much of her clothes and belongings remained at the dwelling she had to purchase new clothes, bedlinen and towels. Ms. Lake stated that an agreement was made with the Appellant Landlord that on the 28 December, 2022 she could collect her belongings. She stated that she rented a car and when she arrived at the dwelling, she was informed by phone that the Appellant Landlord was at work, and he would be at the dwelling at 5.00 pm. She stated that on that occasion she was not let into the dwelling but that she was directed to the garage where all her possessions had been placed. She referred the Tribunal to the list of outstanding goods (Case file 4, pages 2-4) she had yet to retrieve and explained that the figures she had placed on the value of the goods were just an estimate. Ms. Lake stated that there had been solicitor's letters sent in an attempt to retrieve her belongings and she also made a criminal complaint in an attempt to get her belongings back.

Ms. Lake stated that when she left, the shower-head in her bedroom had been in pristine condition. She stated that the white sofa, chenille sofa and the leather sofa, photos of which are included in the case file, belong to her, as do the two leather red reclining chairs. She stated that she also owned one of the mattresses. Ms. Lake stated that they could not have damaged the mattresses as it was their practice to use mattress covers and bed warmers under the beds sheets. It was her evidence that at the commencement of the tenancy there was very little furniture in the dwelling. She stated that there had been a sofa there, but its cushions were sagging and the zips were broken. She stated that the doors were not scratched before she left the house. She pointed out that the scratches were horizontal and she stated that dogs would not scratch doors in such a manner. She also indicated that her dogs were English Mastiffs and as the scratches were at a low level on the doors, her dogs could not have been the cause of the scratches. Ms. Lake stated that prior to her moving in there had been some water damage to the wooden floors and some of the timber had been lifting. She stated that any damage to the floor was natural wear and tear and that was evident from the photographs on the file.

Ms. Lake stated that when she moved into the dwelling the only items of furniture present were:

3 beds, two sofas, a dining room table, two TV's and she stated that everything else remaining in the house belonged to her, down to the last fork. She stated that the Appellant Landlord took their birth certificates, her husband's death certificate and the Appellant Landlord read her private letters and put details of these in his appeal.

Ms. Lake stated that the Appellant Landlord attended at the dwelling and placed his rubbish in her refuse bins on a weekly basis, and that if there had been any damage to the external PVC door during the tenancy, the Appellant Landlord would have noticed this.

Evidence of Fiona Fenwick.

Ms. Fenwick stated that when she attended at the dwelling, with Ms. Lake, prior to the commencement of the tenancy, she could see that two internal doors were scratched along with the frames of the door and she and Ms. Lake had a discussion about the damage. She said that when she visited Ms. Lake at the dwelling, the house "looked fine" and "always looked nice". She confirmed that she had no knowledge of damage to the PVC door to the back.

Evidence of Colette Riordan.

Ms. Riordan introduced herself by stating that she knew the Respondent Tenants as her son was in a relationship with Gabriela Lake's daughter, McKenzie. She stated that she had 'dog sat' at the dwelling for the Respondent Tenants on two occasions in 2022. It was her evidence that the house was like a normal family home. Ms. Riordan said that she had seen recent photos of the original scratches on the doors but it was her evidence that those scratches were not on the doors when she stayed in the dwelling. She said that during one of her dog-sitting stints, she was in the house for about a week. During this time she stated she had to use the shower in Ms. Lake's room and that the shower was functioning perfectly at this time, as was the shower-head. She said that the PVC door into the garage could not be locked and that when she stayed there she just locked the back brown door.

Ms. Riordan stated that on the 5 October, 2022, she drove McKenzie to the dwelling and she saw a man in the house. She stated McKenzie had been trying to have the dogs returned to the dwelling during the day. Ms. Riordan stated that the Appellant Landlord came to the back door and she saw that he was angry and upset. He only allowed Ms. Riordan into the dwelling to collect McKenzie's clothes and belongings. She said that the Appellant Landlord said that there was no way he was going to allow Ms. Lake back into the dwelling, that he was going to put the Respondent Tenants' belongings into the shed and that he was going to burn the cars as they were only pieces of junk. She said that he had told her that he had "come back into the house because of the state of the place". Ms. Riordan said that the Appellant Landlord locked the door every time she came out of the dwelling and she had advised McKenzie and her son to remain in the car. Garda James Crowley arrived and spoke to the parties. He went in to speak with the Appellant Landlord. He returned with a box and questioned McKenzie about the ownership of the box. The Garda was informed that the Respondent Tenants did not own the box, and the Garda informed McKenzie that the Appellant Landlord had given him the box and that it contained an illicit substance.

Ms. Riordan stated that the cushion on the sofa in the kitchen was not torn when she was in the house, but she stated that the cushions were dishevelled. She stated that in December when she went to help Ms. Lake retrieve belongings, she could see that Ms. Lakes' belongings were still there. She stated at the time there was evidence that some other party was living in the house as there were flowers in a vase and cards up around the kitchen. Later, a lady answered the door, prior to the Respondent Tenants being given access to the garage. Ms. Riordan stated that their belongings were all piled up and thrown in the garage, and she stated that the garage was unheated. She stated that she was able to see that some of the jumpers were cut and torn and were no longer wearable. She stated that there were knives and jewellery all mixed up in the clothes they were trying to salvage. Ms. Riordan also stated that there was a monitor mixed up among the clothes. Ms. Riordan confirmed that she managed to salvage most of the personal belongings from McKenzie's room, but was unable to salvage anything that had been in the bathroom (toiletries, perfume, makeup etc.).

Evidence of McKenzie Lake.

McKenzie said that the majority of her clothes were retrieved, and the two Michael Kors bags were retrieved. She confirmed that her furniture remains in her bedroom in the dwelling as does all the bed linen.

McKenzie stated that on the 5th October, 2022 when she went to the dwelling, the Appellant Landlord was yelling and pointing at her. She said it was scary due to their disparity in height and she said that when she stated she was going to call the Gardai, the Appellant

Landlord started mocking her. Later that night she stated that she had no choice but to go back and live with the Riordan's until her mother sourced alternative accommodation for them on the 12 December, 2022. She stated that when she had gone to the dwelling on the 5th October, 2022 she had no idea that there was any issue with her returning to the dwelling.

Cross-examination by the Appellant Landlord.

The Appellant Landlord asked Ms. Riordan if she found a metal tin in the bedroom, and Ms. Riordan stated that she hadn't and that it was the Garda who brought the tin can out from the house.

Ms. Lake stated that an illicit substance had been placed in the dwelling, that it did not belong to her and that she tried to file a complaint with the Gardaí about the placing of the tin can in the dwelling. Ms. Lake stated that Garda Crowley informed her that the Appellant Landlord had given him the tin can.

Closing submissions on behalf of the Appellant Landlord.

The Appellant Landlord stated that if the Respondent Tenants had paid rent and kept the house tidy "there would have been no problem". He stated that the dwelling was his home, that he had survived illness and a recession and he never missed a mortgage payment. He submitted that it took him six years to build the dwelling and it is his pride and joy. He stated that the Respondent Tenants wrecked the dwelling.

Closing submissions on behalf of the Respondent Tenants.

The Respondent Tenant submitted that the Landlord terminated the tenancy illegally and he has tried to justify his actions. She stated that he has damaged her furniture, ruined her belongings and burned one of her cars and got rid of the other one. She submitted that he has not returned her belongings and that this has caused her severe emotional stress and medical issues and she now cannot sleep. The Respondent Tenant submitted that the Appellant Landlord has no regard for the law and she is worried that he will ruin the remainder of her personal belongings and furniture. Ms. Lake stated that she wants to have access to her belongings and to retrieve them.

On behalf of the Respondent Tenants, Mr. Dunne stated that this illegal eviction was at the severe end of the scale of such evictions. He stated that the Appellant Landlord ignored calls from the RTB and if he had felt that there was damage to the dwelling or rent due there was a procedure in place to deal with such issues. It was submitted that the Respondent Tenants were prevented from accessing their property and that the Appellant Landlord had complete disregard for the law.

6. Matters Agreed Between the Parties:

1. The tenancy commenced on the 9 October, 2018.
2. The rent was €1,000.00 per month payable on the 9th of each month.
3. A Notice of Termination was not served.

7. Findings and Reasons:

Having considered all of the documentation before it and having considered the evidence presented to it by the parties at the appeal hearing, the Tribunal's findings and reasons therefor are set out hereunder.

Finding 1:

The Tribunal finds that the Appellant Landlord breached Section 58 (1) of the Act as he unlawfully terminated the tenancy the subject matter of this dispute.

Reasons:

Pursuant to Section 58 (1) of the Residential Tenancies Act 2004, a tenancy may only be terminated by a notice of termination that is compliant with Part 5 of that Act. As the Respondent Tenants' tenancy commenced on the 9 October, 2018, the Tenants had the benefit of a "Part 4" tenancy. Part 4 tenancies may only be terminated based on certain grounds as set out in the Table to Section 34 of the 2004 Act (as amended), and pursuant to a notice of termination which is compliant with Section 62 of the 2004 Act. In particular, Section 58 (1) of the Act prohibits the termination of a tenancy by a landlord by means of re-entry.

The Appellant Landlord's direct evidence was that the basis for the re-entry was due to the fact that the Appellant Tenants were in arrears of rent and had damaged the dwelling. It is common case that no warning letters or notice of termination were served on the Respondent Tenants pursuant to Section 67 and/or Section 34 and Section 62 of the Act. While it was accepted that there were arrears of rent on the 5 September, 2022, the Landlord was not entitled to re-enter and attempt to terminate the tenancy unilaterally, without following the correct legal procedure. The preponderance of the evidence was that the Respondent Tenants had not vacated the dwelling and the relevant warning letters and/or Notice of Terminations were not served, pursuant to the Act.

The Tribunal accepts that when McKenzie Lake attempted to enter the dwelling on her return from America on the 5 October, 2022 she was denied entry by the Appellant Landlord who told her that he had moved into the dwelling in early September. The Tribunal is also satisfied, on both parties' evidence, that substantial property belonging to the Respondent Tenants remained in the dwelling when the Appellant Landlord re-entered the dwelling in early September, 2022.

The Tribunal was satisfied that the Landlord's re-entry of dwelling at some point in early September, 2022 unjustly deprived the Respondent Tenants of the dwelling and amounted to an unlawful termination of the tenancy.

The Respondent Tenants are entitled to damages for the loss, damage and inconvenience suffered due to the unlawful termination. In determining the appropriate award of damages for the unlawful termination the Tribunal has had regard to the fact that the Respondent Tenants lost the safety and security of a Part 4 tenancy, to which they were entitled for two further years: the Tenancy commenced on the 9 October, 2018 and the tenancy should, in its ordinary course, have continued for six years thereafter, up until October 2024. It is clear that the Respondent Tenants suffered considerable inconvenience, cost and displacement and that they had to source alternative accommodation for themselves, their pets and some belongings without any notice, which the Tribunal accepts must have been very difficult, particularly as the country is in the midst of a 'housing crisis'. Further, the Respondent Tenants had to use public transport, and depend on the kindness of friends for transport as

they could not access the dwelling to retrieve the keys to their cars, which again, would have been inconvenient, costly and time consuming for the Respondent Tenants. Having heard the evidence and reviewed the submitted documentation, the Tribunal accepts that the Respondent Tenants' personal documentation and belongings were interfered with, bagged and thrown into a shed, and this interference would have been deeply upsetting to the Respondent Tenants. It is also evident that some of the Respondent Tenants' clothes were damaged as they were stored in an inappropriate manner in the shed (photos, pages 6-16, Case file 3). Medical evidence (Case file 5) on the file recounts the severe effect the unlawful termination had on one of the Respondent Tenants and recounts how the Respondent Tenants now have moved away from West Cork and have lost the comfort of neighbours and established friendships. Considering the severe nature of the consequences of the unlawful termination, the Tribunal finds that an award of damages of €12,000.00 is appropriate, in all the circumstances.

The Respondent Tenants were required to keep their dogs in kennels as Gabriela Lake could not return to the country due to lack of accommodation caused by the illegal eviction. The Appellant Landlord was aware that the Respondent Tenants had two dogs, that the dogs were in kennels, therefore he would have known that the abrupt termination of the tenancy would have caused a problem for the Respondent Tenants in seeking accommodation for the dogs. The kennel cost is claimed at €50.00 per day, which is deemed a reasonable cost for the care of two large dogs in kennels. It was Gabriela Lake's unchallenged evidence that the dogs were to be returned from the kennels on the 5 October, 2022, but had to remain at the kennels until she sourced alternative accommodation on the 13 December, 2022. Accordingly, the Tribunal find that the Respondent Tenant has incurred a cost of €3,500.00 for the 70 days' from the 5 October, 2022 to the 13 December, 2022 inclusive and that the Appellant Landlord is liable for this cost.

The Respondent Tenant is claiming €1,500.00 for a Silver Chrysler minivan and €500.00 for a Black Ford Fiat 500 which she left on the property prior to travelling to America. The Respondent Tenant's unchallenged evidence was that the keys for her cars remained inside the dwelling, after she left for America in May, 2022. It was her evidence that on her return, she could not retrieve the car keys as she had no access to the dwelling. Sometime in December, 2022, the Respondent Tenants found that the Fiat was burnt out (page 73,79 & 80 Case file 1) and the Chrysler minivan could not be located. The Appellant Landlord was the only person with access to the car keys and the dwelling and he confirmed in correspondence that he had, at one point, moved one of the cars (page 8 Casefile 4, Part 1). Ms. Riordan's evidence was to the effect that the Appellant Landlord had told her on the 5 October, 2022, that the Respondent Tenant's cars were junk and that he was going to burn them. This evidence was unchallenged and the Tribunal found Ms. Riordan to be a credible and fair witness. The Tribunal is satisfied, on the balance of probabilities, that the Appellant Landlord is responsible for the loss and damage to the two vehicles and the Tribunal therefore awards the Respondent Tenants €2,000.00 for the said loss.

Both parties accept that personal belongings and furniture belonging to the Respondent Tenants remain at the dwelling, and the photographs on the case files bear this out. The Respondent Tenant has provided a list of these items at Case file 4, part 1, pages 2-4. The Appellant Landlord did not dispute the itemised list produced by the Respondent Tenants, save to say that he had the Respondent Tenants' furniture valued by an antiques dealer, but the valuation was not submitted to the Tribunal. The Respondent Tenants have

collected a number of personal items from the dwelling and some items were returned on the evening of the 5 October, 2022. The Respondent Tenant accepted at the appeal hearing that they were able to retrieve the majority of McKenzie's clothes, shoes, personal items and her two Michael Kors handbags and that these items can be taken off the itemised list of goods submitted in Case file 4. The Tribunal accepts that the goods listed at Case file 4, part 1, pages 2-4 remain in the possession of the Appellant Landlord and that the Respondent Tenants are entitled to the return of these goods. The Tribunal directs the return of the listed items at Case file 4, part 1, pages 2-4, undamaged, to the Respondent Tenants, within 21 days of the issue of this determination. If the Appellant Landlord fails to return the items listed in Case file 4, part 1, pages 2-4, undamaged, to the Respondent Tenants, it is open to the Respondent Tenants to refer a new dispute to the RTB seeking damages in the sum of the items that have been irretrievably lost or damaged.

Finding 2:

The Appellant Landlord has failed to provide sufficient evidence to substantiate the claim that the Respondent Tenants breached their obligations under Section 16(f) of the 2004 Act.

Reasons:

The Appellant Landlord has claimed that the Respondent Tenants were in breach of their duties under section 16(f) of the 2004 Act, by causing damage or deterioration to the dwelling beyond normal wear and tear.

In support of his claim the Appellant Landlord supplied photographs of the dwelling from before the tenancy commenced, and images of the dwelling from the 22 of September 2021. On that date, the Respondents Tenants' dogs had been left in the dwelling alone overnight and had soiled the floors. The issues that arose on the 22 September, 2021 were resolved (see photographs submitted at Case file 2), the relevant areas of the house were cleaned and the parties' relationship of Landlord and Tenant continued up to September/October, 2022. The Respondent Tenants' evidence was that any damage to floors was pre-existing and was caused by the previous tenants who had pit-bull dogs and/or owing to normal wear and tear. In support of this the Respondent Tenants submitted photos of the dwelling taken during the tenancy that show the areas of floor the Appellant Landlord highlighted in good condition. Having viewed the photographs on file, the Tribunal accepts that any alleged damage to the floor is minimal and is due to normal wear and tear. The evidence of the witness Ms. Fenwick, was to the effect that when she went with Gabriela Lake to view the dwelling, prior to the commencement of the tenancy, she could see that there were scratches to doors and the frames of the said doors. It was the Respondent Tenants uncontested evidence that the Appellant Landlord was in the dwelling on a regular basis during the course of the tenancy; had there been scratches in the internal doors, it is likely that he would have brought this damage to the Respondent Tenants' attention at an earlier point in time. There is no photographic evidence as to the condition of the doors prior to the commencement of the Tenancy and having regard to the fact that the dwelling was rented prior to the commencement of this tenancy, there is insufficient evidence before the Tribunal for the Tribunal to determine that the Respondent Tenants caused the damage to the doors. It was the Respondent Tenant's evidence that much of the furniture the Appellant Landlord was seeking to replace, belonged to her, and that the shower head had been broken by the Appellant Landlord himself, when he was attempting to repair the shower due to faulty water temperature. There is a direct conflict of evidence

as to who caused the damage to the shower head, and there is insufficient evidence before the Tribunal to reconcile this conflict.

The Appellant Landlord submitted an undated 'Bill of Quantities' produced by Jim Scannell and Co. When questioned on the details of the bill and what works had been actually completed, the Appellant Landlord was not forthcoming and his evidence was vague and contradictory. He also indicated that many of the works outlined had yet to be completed. No receipts, or any vouching documentation to support and confirm outlay by the Appellant Landlord has been submitted. The burden of proof rests with the Appellant Landlord, to prove that the Respondent Tenants breached Section 16 (f) of the Act and that he suffered financial loss in rectifying the alleged damage. In the absence of receipts for the works done, and actual proof that the alleged damage was caused by the Respondent Tenants, the Tribunal finds that there is insufficient evidence before it to find that the Respondent Tenants caused damage beyond normal wear and tear to the dwelling. Further, as the Appellant Landlord re-entered the dwelling and prevented the Respondent Tenants' return, the Respondent Tenants were not afforded any opportunity to rectify any alleged damage which may have been caused to the dwelling. The Tribunal finds, on the balance of probabilities, that the Appellant Landlord has failed to provide sufficient evidence to substantiate the claim that the Respondent Tenants breached their obligations under section 16(f) of the 2004 Act.

Finding 3:

The Respondent Tenants are entitled to the return of the security deposit in the sum of €1,000.00.

Reasons:

Section 12(1)(d) of the Residential Tenancies Act 2004, as amended ("the Act") states:

"In addition to the obligations arising by or under any other enactment, a landlord of a dwelling shall, subject to subsection (4), return or repay promptly any deposit paid by the tenant to the landlord on entering into the agreement for the tenancy or lease".

The Appellant Landlord did not return the security deposit at the end of the tenancy. At the appeal hearing the Appellant Landlord disputed that any deposit was paid at the commencement of the tenancy. No evidence was provided to substantiate this claim. The Respondent Tenants always maintained that a deposit of €1,000.00 was paid. As a deposit of a month's rent is normal in most private tenancy agreements and as the Appellant Landlord has provided no grounds on which he disputed the provision of a deposit, the Tribunal finds, on the balance of probabilities, that the Respondent Tenants paid a deposit of €1,000.00 to the Appellant Landlord at the commencement of the Tenancy and that they are entitled to the return of this deposit.

The net position is thus, that the Appellant Landlord shall pay to the Respondent Tenants the total sum of €18,500.00. This comprises the sum for damages of €12,000.00 as outlined above, plus the return of the deposit in the sum of €1,000.00, the cost of the dog kennels at €3,500.00, and the value of the irretrievable cars at €2,000.00.

Given the size of this sum and the right of the Respondent Tenants to a prompt remedy, this should be paid within 28 days of the date of issue of the determination order of the Board.

8. Determination:

In the matter of Colin O'Sullivan (Appellant Landlord) and McKenzie Lake and Gabriela Lake (Respondent Tenants) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004 determines that:

1. The tenancy of the dwelling at Carrigillihy Union Hall, Skibbereen, Co. Cork, P81P023 was unlawfully terminated by the Appellant Landlord.

2. The Appellant Landlord shall pay the Respondent Tenants the sum of €18,500.00 which said sum comprises €12,000.00 damages for the said unlawful termination, €1,000.00 being the entire of the unjustifiably retained security deposit, €3,500.00 for the cost of kennelling the dogs, and €2,000.00 for the value of the Respondent Tenants' cars, the said sum of €18,500.00 to be paid within 28 days of the date of issue of the Determination Order of the Board.

3. The Tribunal directs that the Appellant Landlord shall return all personal items and furniture listed at Case file 4, part 1, pages 2-4, undamaged to the Respondent Tenants, within 21 days of the date of issue of the Determination Order of the Board.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 11/03/2023.

Signed: 

Michelle O'Gorman, Chairperson
For and on behalf of the Tribunal.