

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0418-002939 / Case Ref No: 0318-41794

Appellant Tenant:	Remigiusz Macuga, Sona Macuga
Respondent Landlord:	Conor O'Brien
Address of Rented Dwelling:	2 Seaview Avenue, Eastwall , Dublin 3,
Tribunal:	Monica Brennan (Chairperson) Simon Noone, John Conran
Venue:	Tribunal Room, RTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	11 July 2018 at 10:30
Attendees:	Sona Macuga, Appellant Tenant Sherry Fitzgerald Lettings Ltd, Landlord Representative Owen Duggan (Threshold Representative)
In Attendance:	Stenographers

1. Background:

On 27 February 2018 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 05 April 2018. The Adjudicator determined that

The Respondent landlord shall pay the sum of €2500.00 to the Applicant tenants within 21 days of the date of issue of the Order, being damages for the unlawful termination of the Applicant tenant's tenancy of the dwelling at 2, Seaview Avenue, Eastwall, Dublin 3.

Subsequently an appeal was received from the Tenants.

The RTB constituted a Tenancy Tribunal and appointed Monica Brennan, John Conran, Simon Noone as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Monica Brennan to be the chairperson of the Tribunal ("the Chairperson").

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 11 July 2018 the Tribunal convened a hearing at Tribunal Room, RTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

1. RTB File

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 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 Respondent; that the Respondent would then be invited to present his case, and that there would be an opportunity for cross-examination by the Appellant.

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

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present and she 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].

5. Submissions of the Parties:

Appellant Tenant's Case:

The Appellant Tenants' case centres on the level of damages that they feel should be awarded for the unlawful termination of their tenancy. The Respondent Landlord accepts that the tenancy was unlawfully terminated but the Appellant Tenants do not believe that the award made by the Adjudicator takes sufficient account of the upset and upheaval to their lives as well as to the additional costs that they now incur as a result of having to vacate the dwelling.

The Appellant Tenant gave evidence of the difficulty she and her husband had in finding alternative accommodation when they received the Notice of Termination from the Respondent Landlord. She said that they were unsuccessful in finding any alternative accommodation in Dublin as they simply did not receive responses to phone calls or emails when searching for a place to live. They felt forced to relocate to Athboy, Co. Kildare in order to ensure they had somewhere to move to.

The Appellant Tenant says that this has substantially impacted on their lives as they now have a considerable commute to work each day. In the dwelling the subject of this dispute, the Appellant Tenants were 10 mins away from their places of work and had no transport costs to and from work each day. Now, they have a minimum of an hour long

commute at a significantly increased cost which includes the cost of a new car (€3600) to facilitate the commute, bus expenses (€3016 per year) and diesel costs (€3100 per year). Including the cost of a moving van, the Appellant Tenant's estimate their expenses at approximately €9,856.

The Appellant Tenant also noted that they would have happily stayed in the dwelling if it had been offered back to them because it was so close to work and their community of friends and neighbours. She notes that they are quite isolated now, being 3 to 4 km away from the nearest bus stop and unable to get broadband for a considerable period of time in order to communicate with their families abroad. She says also that the move has significantly impacted their ability to purchase a property as they had to use their savings to buy the new car and the increased transport and commuting costs mean that they are no longer able to save at the level that they once did as their income remains the same. The Appellant Tenant did note that their current rent is marginally less at €1200 per calendar month, making a saving of €48 per month, but she states that the commuting costs far outweigh this.

The Appellant Tenants are seeking meaningful redress for the considerable disruption to their lives and increased costs that they have incurred as a result of the Respondent Landlord's unlawful termination of their tenancy.

Respondent Landlord's Case:

The Respondent Landlord accepts that the termination of the tenancy was unlawful. His evidence was that due to financial constraints he simply had no choice but to increase the rent on the dwelling in order to mitigate the arrears that existed and cover the monthly mortgage payments. Evidence was given that his family home was tied to the financial status of the dwelling and as he was afraid of losing everything he had no choice but to act. He stated that he sympathised with the Appellant Tenants, but in order to secure the financial position of the dwelling he was forced to increase the rent and intended to do so by substantially refurbishing it so that he could gain a higher rent.

The Respondent Landlord accepts that the works required to affect a substantial refurbishment of the dwelling were not carried out and he says this was due to being denied funds from the bank. He states that he did carry out some works to the cost of approximately €8000.

6. Matters Agreed Between the Parties

The following matters were agreed between the Parties:

1. That the tenancy was unlawfully terminated. The Respondent Landlord accepts that the termination of the tenancy was in breach of the provisions of the Residential Tenancies Acts (as amended).
2. That the substantial works required to affect a greater than 4% increase to the rent of the dwelling were not carried out.
3. That the Appellant Tenants were not re-offered possession of the dwelling following the works that were carried out.

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 thereof, are set out hereunder.

7.1 Finding: The Tribunal finds that the termination of the tenancy was unlawful.

Reasons:

1. The parties entered into a further fixed term tenancy on 14 June 2017. Pursuant to section 58 of the Residential Tenancies Acts, in order for a landlord to terminate a fixed term tenancy before the expiry of the fixed term period, there must be some failure by the party to whom the notice is served to comply with any obligations of the tenancy. It is accepted in this case that there was no such breach of obligation by the Appellant Tenants. The Respondent Landlord was therefore not entitled to serve a notice of termination purporting to terminate on the basis that substantial works would be carried out and the termination of the tenancy is therefore unlawful.

2. Further, even if the fixed term agreement had not been breached, the Respondent Landlord gave as the reason for termination on the notice that he intended to carry out substantial refurbishments to the dwelling. It is possible to terminate a Part 4 tenancy on this ground pursuant to paragraph 5 of the Table to section 34 of the Residential Tenancies Acts, however, this does not apply in the case of a fixed term tenancy. It is also accepted by the Respondent Landlord that the works that he intended to do were not in fact carried out after the Appellant Tenants moved out. In such circumstances, had the tenancy been validly terminated, a landlord is obliged to re-offer the dwelling back to the tenants, and that was also not done in this case.

3. The Tribunal is satisfied that the Respondent Landlord was in breach of the provisions of the Residential Tenancies Acts when attempting to terminate the Appellant Tenants' tenancy. While the Tribunal understands the financial difficulties that the Respondent Landlord found himself in, this does not excuse a failure to comply with his statutory obligations under the Residential Tenancies Acts. He was not entitled to terminate the tenancy when he did so and the termination is therefore unlawful.

7.2 Finding: We find that the Appellant Tenants are entitled to damages in the amount of €5,500 for the unlawful termination of their tenancy.

Reasons:

1. Having accepted that the termination of the tenancy was unlawful, the Tribunal finds that the Appellant Tenants are entitled to damages. Their lives have been considerably impacted by both the termination by the Respondent Landlord of their tenancy and, further, by his failure to re-offer the dwelling to them. The Tribunal accepts that they have suffered a substantial loss of amenity, particularly as regards their increased travel time to and from their places of work.

2. The Tribunal accepts the evidence of the Appellant Tenant in relation to the increased costs that she and her husband now incur, including the necessity for additional transport to commute to their employment, including fuel and public transport costs.

3. In all the circumstances, the Tribunal finds that the amount of €5,500 is reasonable in the circumstances and awards same to the Appellant Tenants for the inconvenience and expenses incurred as a result of the unlawful termination of their tenancy.

8. Determination:

Tribunal Reference TR0418-002939

In the matter of Remigiusz Macuga, Sona Macuga (Tenant) and Conor O'Brien (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlord shall pay the sum of €5,500 to the Appellant Tenants within 21 days of the date of the issue of the Order, being damages for the unlawful termination of the tenancy of the dwelling at 2 Seaview Avenue, East Wall, Dublin 3.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 13 July /2018.

Signed:



Monica Brennan Chairperson

For and on behalf of the Tribunal.