

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0218-002840 / Case Ref No: 1217-39695

Appellant Landlord:	Brian Kane
Respondent Tenant:	Sherzad Ali, Zainab Azizi
Address of Rented Dwelling:	15 Cartron Drive, Athlone , Westmeath,
Tribunal:	(Chairperson) Elizabeth Maguire, John Keaney, Eoin Byrne
Venue:	Ante Chamber, Athlone Municipal District, Civic Centre, Church Street, Athlone, Co. Westmeath
Date & time of Hearing:	01 June 2018 at 11:00
Attendees:	Brian Kane, Appellant Landlord Sherzad Ali, Respondent Tenant Zainab Azizi, Respondent Tenant Joseph Kane Witness for Appellant Landlord Martin Kane Witness for Appellant Landlord Liliana Bulgari Witness for Respondent Tenants
In Attendance:	Stenographer

1. Background:

On 18 December 2017 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 29 January 2018. The Adjudicator determined that In the matter of Zainab Azizi and Sherzad Ali [Applicant Tenants] and Brian Kane [Respondent Landlord], the Residential Tenancies Board, in accordance with Section 97 of the Residential Tenancies Act, 2004, determines that:

1. The Respondent Landlord shall pay the total sum of €3,420 to the Applicant Tenants within 28 days of the date of issue of the Order, being damages of €3,000 for the consequences of unlawfully terminating the Applicant Tenant's tenancy, plus the sum of €750 in respect of the retained deposit, having deducted the sum of €330 in respect of damage to the dwelling in excess of normal wear and tear, in respect of the tenancy of the dwelling at 15 Cartron Drive Athlone, Co. Westmeath.

Subsequently an appeal was received from the Landlord and the grounds of the appeal were: Deposit retention, Unlawful termination of tenancy (Illegal eviction).

The RTB constituted a Tenancy Tribunal and appointed Elizabeth Maguire, John Keaney, Eoin Byrne 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").

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 01 June 2018 the Tribunal convened a hearing at Ante Chamber, Athlone Municipal District, Civic Centre, Church Street, Athlone, Co. Westmeath, Athlone.

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 her 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 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 intending to give evidence were then sworn or affirmed.

5. Submissions of the Parties:

Appellant Landlord's Case

Joseph Kane.

He said that he was present at both meetings with the Respondent Tenants on the 12th and 13th of December 2017.

He said that on the 12th December 2017 Sherzad Ali said that he wanted all of his belongings left outside the dwelling by 5.00 PM on the 13th December because he wanted them there before it became dark. He said that he telephoned Sherzad Ali on the 13th December 2017 to tell him that the items had been left out. He said that on the 12th December 2017 Sherzad Ali had said that he had wanted his deposit returned in full and that he expected the Appellant Landlord to refund 100% of the deposit when the Appellant Landlord put his goods on the lawn. He said that on the 12th December 2017 the Appellant Landlord knew that there was an issue with the boiler but did not know what the cost would be to rectify it.

He said it had been agreed that the Respondent Tenant would leave in advance of the 18th December 2017, being the date that the Notice of Termination expired, but the Respondent Tenant had said he wanted all of his deposit back. He said the Respondent Tenant had facilitated viewings to allow potential tenants to view the dwelling. He said that the Respondent Tenant had left the key outside the dwelling so that a potential tenant could be shown round in his absence. He referred to a letter in Case File 1 on page 156 from the current tenant confirming the circumstances in which he was shown around the dwelling. He said the Respondent Tenant had left the key inside the front door. He said that he was present on the 13th December 2017 when Sherzad Ali arrived and had been expecting him to bring a trailer, to remove his items.

He said that Sherzad Ali telephoned him whilst on his way and asked about the deposit. He said that when he arrived Sherzad Ali said that he did not want the cheque for €420 and he said his stuff was not to be left outside. The witness said he was surprised by this change of heart on the part of the tenant. He said that Zainab Azizi was not present on the 12th December 2017 when Sherzad Ali told him and his father (the Appellant Landlord) to leave the goods outside the dwelling. He said that Sherzad Ali refused to accept any responsibility for the damage to the boiler. He commented that if the things were valuable the Respondent Tenant should not have left them outside and that he had expected the Respondent Tenant to take them away and then argue as to the rights and wrongs of the situation. He said that over the next few days the Respondent Tenant returned and they took a few things away such as bicycles.

He said that he and his father removed the rest of the goods on the 19th and 20th December 2017 and took an inventory at that time. He said they had had the goods valued at €500. He said that Sherzad Ali made some point about the Quran being left outside. He said that he had not seen such a book and he would not have done such a thing deliberately. He said that he and his brother Martin took the goods out of the house. He said that they had gained entry as they still had a key to the side door of the dwelling. He said that the Respondent Tenant was not there but that this was not necessary as there had been an element of trust and co-operation between them at that time. He said the issue of the damage to the boiler changed this attitude. He said it was not clear until the 13th December the term that his father would be deducting money from the deposit.

He said the tenant wanted to conclude matters on the 12th December 2017 but that his father had not made a final determination on that date. He said the Appellant Tenant's attitude changed when he arrived on the 13th December 2017. He said that he had not

taken any items or any money or jewellery. He said they had made a meticulous inventory of the Respondent Tenant's possessions.

In cross-examination he said that he denied having broken the lock to gain entry to the dwelling. He denied having removed the Quran from the dwelling. He said that there was no way that he would leave the Quran outside. He said that they did not leave the freezer and wardrobe outside because of the weather and that these were moved to the storage shed. He said the remainder of the contents of the house were moved to the storage shed on the 19th and 20th December 2017. He said that Sherzad Ali had left the key inside the door and they had to change the lock because they could not get him. He agreed that he had taken the handle off the door and said this was because it was showing signs of wear and tear and needed replacement. He denied that he done anything improper.

Appellant Landlord.

He said that Zainib Azizi always referred to him as "daddy". He said that she was a good tenant. He said that she told him that she had received "a box on the nose" from Sherzad Ali and was leaving the dwelling. He said he tried to mediate but that she said that she had had enough. He said that she came back to the dwelling in early December 2017 and took away a lot of belongings from the dwelling. He said Sherzad Ali was not present. He said that she spoke to him and told him that she was staying in Carrick-on-Shannon.

He said that a few days later he met her in Carrick-on-Shannon when she gave him a note to the effect that Sherzad Ali had repaid her share of the deposit and that she had no further interest in the dwelling. He referred to the note on page 148 of Case File 1. He said he then spoke to Sherzad Ali who said he was staying with friends and that he was only "backwards and forwards" to the dwelling. He said that they met some days later, the 7th December 2017 or so, and that Sherzad Ali told him to find new tenants because he would not be keeping the dwelling. He said that they were viewings by two potential tenants. He said that Sherzad Ali was present at one of these. He said the Respondent Tenant checked everything and there was no reference to any money or jewellery being in the dwelling. He said that someone else also viewed the property the same day.

He said the following Wednesday Sherzad Ali told him that he would not be at the dwelling the following Monday but that he would leave a key out and agreed that he could show a potential tenant around the house. On the 12th December 2017 he said that he instructed a service man John Colum (who was already working on the house at number 16) to look at the boiler of the dwelling and check all was well in the dwelling. He said that John Colum reported to him that there was something wrong with the boiler and that it was not as in the same condition as it was when he had serviced it in March. He said that the boiler was not working and that it was comprised of old parts. He said that John Colum told him that the burner would need to be replaced and the boiler serviced. He said that this was on the 12th December 2017 and John Colum could not tell him at that time as to what the cost would be.

He said that he told Sherzad Ali about the problem with the boiler. He said the Sherzad Ali got very upset and became abusive. He said he denied any wrongdoing and insisted he wanted his full deposit returned. He said that the Respondent Tenant said that if he had the full deposit the next day he would remove his goods and that he wanted it ready to take away at 5 o'clock. The Appellant Landlord said that he told him that this was not possible. He said that it was impossible for him to be at the dwelling on the 13th of

December 2017 so he asked his two sons to go and have the goods out of the house and ready on the lawn. He said he in no way had he interfered with the Respondent Tenant's goods without the full permission of the Respondent Tenant. He said that he did exactly what the Respondent Tenant asked of him.

In relation to the boiler he said that this was in a shed at the rear of the garden. He said that John Colum was able to gain access to check the boiler. He confirmed that on the 19th and 20th December 2017 he removed the Respondent Tenant's goods from the lawn and placed them in his shed. He said that the new tenants in the adjoining dwelling told him that the Respondent Tenants were removing their own goods. New tenants moved in to the dwelling on the 16th December 2017. He said that they had viewed the dwelling on around the third or fourth of December 2017. He said that he agreed on the 12th or 13th December with the new tenants that they could move in because Sherzad Ali had told him that he was leaving to go and live in Carrick on Shannon. He said that he had no recollection of Sherzad Ali handing over to him the keys of the dwelling.

In relation to the value of the goods left on the lawn he stated that at the earlier adjudication Zainab Azizi could not put a value on the goods and that she had to be pushed by the adjudicator before she could agree a value of €3000. He said that he had obtained an independent valuation of the goods after they had been dry cleaned and valeted and that they were valued at €500. He said that over the Christmas period Zainab Azizi asked if she could recover the freezer and a barbecue. He said that he agreed with her that she could but then heard nothing further from her. He confirmed that all the goods work in proper order and were available for collection as per the inventory that he had prepared and that he had the goods with him as at the date of the Tribunal hearing. He commented that Sherzad Ali seemed to have put no value on the goods as he could not understand why they had left them on the lawn.

On cross-examination the Appellant Landlord said that the tenants at a neighbouring dwelling saw people taking goods from the lawn. He denied having said that the tenants had reported seeing the Respondent Tenants doing this. He confirmed that the burner had been removed from the boiler in the dwelling at number 14 and 15 only. He said there was nothing wrong with boiler at number 16. He denied that his plumber had taken a part from the boiler in number 15 to use to repair the boiler in number 14. He denied that his plumber had returned later and repaired the boiler in number 15 unbeknown to the Respondent Tenants. He said that he did not think it possible that Zainab Azizi had brought personal goods back to the former marital home and give them to her husband. He denied having put his fist up to the cheeks of Sherzad Ali.

Martin Kane.

He confirmed that he and his brother had removed the Respondent Tenant's goods from the dwelling. He said the weather was dry at that stage. He said it was his understanding that Sherzad Ali was to come to the dwelling that day to collect them. He said that when Sherzad Ali came he "threw back" a cheque which he had been given in the sum of €420. He said that Sherzad Ali left the cheque on the windscreen of his car.

Tenants' Case.

Zainab Azizi

She said that she and her husband had paid rent up to the 18th of December 2017. After that payment a conflict arose between them on the 20th November 2017 and because of

this she decided to leave the dwelling. She said that she took her clothes and some of the children's clothes. She said that on the 23rd November 2017 she gave a note to the Appellant Landlord asking for the return of the deposit. She said that she had intended that the note was to request the return of the deposit on the 18th December 2017, the date that the tenancy terminated. She said that the Appellant Landlord had advised that the deposit would have to be divided 50/50. She said that her husband gave her half of the deposit so that she could use it to secure tenancy of another dwelling. She said that she then gave her husband a note to ensure that the Appellant Landlord returned all of the deposit to her husband.

She said that she removed two beds from the dwelling for the children and that she also removed her personal belongings. She said that on the 12th December 2017 she met Sherzad Ali and gave him €501 being €375 deposit and €126 of his Back To Education Allowance. She said that she had obtained a loan from her sister to be able to do this. She said that between 6 and 7 o'clock in the evening her husband called her and said he had been hit and accused of theft. She said that in response to this she called An Garda Siochana but they were not interested. She said that she drove to the dwelling and when she arrived the Appellant Landlord was present. She said she asked the Appellant Landlord as to what the problem was. She said that he was using bad language. She said that she asked the Appellant Landlord if she could consult a solicitor and if the advice was that they were responsible for the loss of the burner on the boiler that they would reimburse the cost. She said he did not care. She said that at 9.00 PM that evening her and her husband left the dwelling but before doing so they placed €501 and her jewellery in a wardrobe upstairs in the dwelling as they thought that this would be the safest place. She said that her husband put a key in the front door lock to stop the Appellant Landlord from being able to use his key.

She that on the 14th December 2017 she and her husband went back to the dwelling and took a video of their belongings. She said that she saw the plumber John Colum and asked him some questions. She said that he knew that he was being videoed. She said she asked him why he had not told her that he had replaced the new burner. She said that he told her that he would not speak against the Appellant Landlord because he would lose his job. She said that she did not care about her belongings anymore because she was upset.

She said that she found a copy of the Quran outside and that it was wet. She said that she took a fishing rod because it belonged to her brother. She did not bring the couch as the new property already had a couch. She said her parents and other family members helped her out with refurnishing her new property. She accepted that some of the goods would not have been damaged. However she said that she had not wanted to prejudice the case against the Appellant Landlord by taking back any of the items. She said that she had bought duvets, sheets, mattresses, and electrical items, and that she did not want any of their former items back.

She said that she and her husband had not used the boiler at any stage during their occupation of the dwelling.

On cross-examination she said that she had never spoken to the Appellant Landlord about personal matters. She said the Appellant Landlord asked her for one month's notice. She said that she told the Appellant Landlord to give the deposit to her husband and she denied having said that she had nothing to do with the dwelling any more. She said she still had her children's belongings at the house and that she had paid rent with

her husband until the 18th of December 2017. She said that they still had five days of the tenancy left to run, and it was not the Appellant Landlord's job to remove their belongings and place them outside. She asserted that it was the Appellant Landlord who broke the handle on the front door. She said she refused the Appellant Landlords offer to deliver the freezer and barbecue to her because at that time they had already applied to the Residential Tenancies Board to resolve the dispute between them. She confirmed that she and husband were not reconciled as of the 12th December 2017 but that she still had respect for him and still talked to him because he was still the father of her children. She said that on the 12th December 2017 she had agreed to reimburse the Appellant Landlord for the burner of the boiler if a solicitor told them that it was their responsibility. She referred to a print of a text she received from the Appellant Landlord (page 69 Case File 1) saying he had tried to put her off making an application to the Residential Tenancies Board. She confirmed that her husband had moved in to the property with her on the 14th of December 2018.

Sherzad Ali

He said that a few days before the 12th December 2017 the Appellant Landlord and his son Joe Kane came and told him that they had some new tenants to view the dwelling. He said the Appellant Landlord said that he needed a key and that he agreed to leave a key outside to allow a viewing to take place. On the 12th of December 2017 he met the Appellant Landlord's plumber. He said that the Appellant Landlord's plumber told him that someone had stolen a new burner from the boiler at the dwelling and had left an old one. He said that he had denied that it was him. He said the shed was not locked and that anyone could have taken it. He said that at this the Appellant Landlord became very angry and so he decided to speak to his son Joe. He said the Appellant Landlord placed his fist on each of his, Sherzad Ali's, cheeks and then placed his hand across his mouth and said that he was the boss and that he was not to speak to his son. He said that the Appellant Landlord would not listen to him. He said that he telephoned his wife and asked her to call An Garda Siochana.

He said he asked the Appellant Landlord for his deposit to be returned in full on the 18th December 2017. He said that he told the Appellant Landlord that he would leave the dwelling early if the Appellant Landlord returned his full deposit. He said that he was still living in the dwelling at this time. He said that on the 13th December 2017 he was at his wife's new dwelling with the children. He said he received a telephone call from the Appellant Landlord's son Joe in which she was told that all of his belongings were outside the dwelling and that he should collect them. He said when he asked why this is happened he was told that it was the Appellant Landlord's decision.

He said he arrived at the dwelling approximately an hour later and was shocked to see all of his belongings outside. He said that it was raining and snowing. He said that he did not take any of his belongings on that day. He said that he returned the following day and removed two items one being the Quran and the other his brother-in-law's fishing rod. He said that he did not come back at any other time to remove any property. He did accept that the inventory prepared by the Appellant Landlord was a full list of this property with the exception of two children's bicycles, the sum of €500 and a silver jewellery box.

In cross-examination he said that Martin Kane was present when the prospective new tenant was shown around. He agreed that he had left a key outside the dwelling to facilitate a second viewing. He confirmed that he would have been happy to leave the dwelling on the 13th December 2017 once his deposit had been repaid in full but only if

he had found a new dwelling and that he could use the deposit for a new dwelling. He had put the money and jewellery box in the dwelling on the night of the 12th of December 2017 as it was safe because he was living in the dwelling at the time. He denied returning to the dwelling to remove bicycles.

Liliana Bulgari

She said she could confirm being present outside the dwelling on the 13th December 2017 and saw the tenants' property being placed in the garden. She said it included two armchairs, couch, children's belongings, electrical items, children's bicycles and shoes. She said that Sherzad Ali told her that the Guards were coming and she waited and gave her name to An Garda Siochana. She said that Sherzad Ali showed her that he could not get into the house. She confirmed that on the day it was raining and snowing. She did not know if there had been any prior agreement between the Appellant Landlord and the Respondent Tenant. She said that nobody had said anything to her about an agreement. She said that at the time she was there the Appellant Landlord and his sons were not present.

Landlords summing up

The Landlord said that the Respondent Tenants were trying to maximise the value of a claim by leaving their goods outside in bad weather. He said there was no justification even though the instruction has been given to him by a couple who were divided at the time. He was not surprised that Zainab Azizi could not give the value for the goods but that he had an independent valuation. He pointed out that the Respondent Tenants had not provided their own valuation. He pointed out that the goods were second-hand but in the same condition as when they were removed from the property because he restored them even though any damage was not his fault.

Tenant summing up

Zainab Azizi said they had paid the rent until the 18th December 2017. She said she had moved out on the 20th November 2017 giving one month's notice. She said she confirmed to the Appellant Landlord that the husband was entitled to all of the deposit. On the 13th of December 2017 the Appellant Landlord entered the dwelling and money and a jewellery box had gone missing. She said that her husband had left the money and jewellery box in the wardrobe of the house on the 12th of December 2017. She said that it been hard to place a value on the goods because they had been acquired over eight years and were not all been purchased the same time. She estimated the value to be €2500 to €3000 including the missing money totalling €501. She said they returned on the 14th of December and took a video of items. She said that they returned again on the 19th December 2017 to find all the goods had been removed. She said afterwards she received a letter and a card from the Appellant Landlord "seeking peace" but had not responded because of the pending application to the Residential Tenancies Board. Finally she said that they had a received text from the Appellant Landlord saying that they were "going to lose". She indicated that they were not seeking the return of the goods in question.

6. Matters Agreed Between the Parties

The rent was €750 per month

2. A deposit of €750 was paid at the commencement of the tenancy of which €420 had been repaid.

3. Zainab Azizi left the dwelling on the 20th December 2017 and from that date was living at an address in Carrick on Shannon.

7. Findings and Reasons:

Finding Number 1: The Appellant Landlord unlawfully terminated the tenancy of the dwelling at 15 Cartron Drive Athlone County Westmeath.

Reasons

1. The tenants had given notice to terminate the tenancy on the 18th of December 2017 and this notice had been accepted by the Appellant Landlord.

2. On the 13th of December 2017 the Appellant Landlord's two sons attended at the dwelling and removed the Respondent Tenant's belongings from the dwelling and placed them in the front garden. They then removed the handle from the front door of the dwelling to prevent the Respondent Tenants from being able to re-gain access to the dwelling.

3. The Tribunal does not accept the Appellant Landlord's evidence that there was a prior agreement with the Respondent Tenant that they should remove the contents of the dwelling on the 13th of December 2017 by 5.00 p.m. and leave them in the garden of the dwelling. It does not make sense that anyone would agree to have their goods left outside and exposed to the elements in the middle of December. The Tribunal accepts that one of the items left outside was the Quran belonging to the Respondent Tenants.

4. On a number of occasions in his evidence the Appellant Landlord asserted that the Respondent Tenant had said that if his full deposit was returned that he would vacate the dwelling on the 13th December 2017. Even if that is correct then the Respondent Tenant had not agreed to vacate the dwelling on the 13th December 2017 because it was common knowledge between the parties on that date that the Appellant Landlord was not going to return the full deposit because of the allegation that the Respondent Tenant had taken some part of the boiler. If it was a precondition to the Respondent Tenant vacating the dwelling on the 13th December 2017 that a full deposit be returned then the Appellant Landlord knew that condition was not going to be satisfied and therefore the Respondent Tenant would not be vacating.

5. In addition the Tribunal accepts the evidence of Sherzad Ali that before leaving the dwelling on the evening of 12th December 2017 he placed a key in the lock of the front door inside the dwelling to prevent anyone from being able to use a key to gain access from the outside of the dwelling. This shows that the Respondent Tenant had not agreed to vacate the dwelling.

6. The Respondent Tenants are entitled to the return of five days rent for the early termination of the tenancy. This amounts to €123.28 calculated as follows:

$$€750 \times 12 \div 365 \times 5 = €123.28.$$

7. The Respondent Tenants failed to mitigate the loss that they incurred as a result of the Appellant Landlord removing the goods from the dwelling. They made no attempt at any stage to recover the goods. The Tribunal does not accept that the goods were damaged beyond repair as the Respondent Tenants were unable to give any evidence as to their

state and condition because they had chosen not to inspect the goods even though there was an opportunity to inspect the goods on the date of the Tribunal. In addition the Respondent Tenants did not furnish any independent evidence as to the value of the goods for the cost of their replacement. Further, they indicated that they do not want the goods to be returned to them. Even though a number of months have passed, and though they were exposed to the elements for a number of days, this indicates that the tenants do not ascribe a high value to them. It is also evidence that the loss of the goods did not cause them significant loss, as they were unwilling even to inspect the goods in question.

8. The Tribunal accept that both Sherzad Ali as the tenant and Zainab Azizi as a former tenant nonetheless suffered distress as a result of seeing their goods on the lawn, and especially seeing the Quran outside exposed to the elements, and as a result of the Appellant Landlord's action in unlawfully terminating the tenancy and also inconvenience in having to seek replacement goods and for this stress and inconvenience the Tribunal awards the sum of €1500 damages.

9. The Tribunal finds that the Respondent Tenants failed to discharge the onus of proof on them in that they failed to persuade the Tribunal that on the balance of probabilities the Appellant Landlord was responsible for the loss of the sum of €501.00 and a jewellery box. No supporting evidence was furnished as to the existence of these items or any cogent reason as to why Zainab Azizi should give them to her husband on the evening of the 12th December 2017 or, if she did, why Sherzad Ali would leave them in an unoccupied house. In the circumstances the Appellant Tenants claim for damages for these two items is not upheld.

Finding number two

The Appellant Landlord has unlawfully withheld part of the Respondent Tenant's deposit.

Reasons:

1. Pursuant to section 12 (d) of the Act a landlord is obliged to return promptly any deposit paid by the tenant at the commencement of the tenancy unless the tenants have caused any deterioration in the condition of the dwelling beyond normal wear and tear.

2. It is accepted that the Respondent Tenants paid a deposit of €750 at the commencement of the tenancy and that the Appellant Landlord had returned €420 of this. The Appellant Landlord deducted the sum of €330 in respect of the cost of replacing a burner in the boiler at the dwelling.

3. The Tribunal finds that the Appellant Landlord failed to discharge the onus of proof on him in that he failed to persuade the Tribunal that on the balance of probabilities the Respondent Tenants were responsible for the removal of the oil burner. There is no evidence to suggest why the Respondent Tenants would have interfered with the boiler. The Tribunal does not accept that they did so at any stage. The Tribunal accepts the evidence of the Respondent Tenants that they did not use the boiler at any stage during their occupation of the dwelling. In the circumstances the Respondent Tenants are entitled to the return of that part of the deposit retained by the Appellant Landlord.

8. Determination:

Tribunal Reference TR0218-002840

In the matter of Brian Kane (Landlord) and Sherzad Ali, Zainab Azizi (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord shall pay the total sum of €1,953.28 to the Applicant Tenants within 28 days of the date of issue of the Order, being damages of €1,623.28 for the consequences of unlawfully terminating the Respondent Tenants' tenancy and for breaching their entitlement to peaceful occupation thereof, together with the sum of €330.00, being the unjustifiably retained portion of the security deposit, in respect of the tenancy of the dwelling at 15 Cartron Drive, Athlone, County Westmeath.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 14 June 2018.

A handwritten signature in dark ink, appearing to read 'E. Maguire', with a long horizontal flourish extending to the right.

Signed:

Elizabeth Maguire Chairperson

For and on behalf of the Tribunal.