

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0423-006147 / Case Ref No: 0223-82801

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| Appellant Landlord: | Joseph Greene |
| Respondent Tenant: | Profira Pantazi |
| Address of Rented Dwelling: | Apartment 401, Block C, Market Court, Cornmarket Row, High Street , Limerick, V94VP03 |
| Tribunal: | John Keaney (Chairperson) Rosemary Healy Rae, Michelle O' Gorman |
| Venue: | Virtual |
| Date & time of Hearing: | 19 September 2023 at 10:30 |
| Attendees: | Anthony McGann, , Tribunal Representative, Profira Pantazi, Tribunal Respondent, Tenant, |
| In Attendance: | Epiq digital Logger Camelia Draghici- Interpreter |

1. Background:

On 05/02/2023 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 Mediation which took place on 05/04/2023. The Mediator determined that

Subsequently the following appeals were received:

Landlord : received on 12/04/2023. The grounds of the appeal: Overholding, Breach of landlord obligations ; APPROVED by the Board ON 17/04/2023

Tenant : received on 13/04/2023. The grounds of the appeal: Breach of tenant obligations, Validity of notice of termination (if you are disputing the validity of a termination notice issued), Unlawful termination of tenancy (Illegal eviction) ; APPROVED by the Board ON 08/05/2023

The RTB constituted a Tenancy Tribunal and appointed John Keaney, Rosemary Healy Rae, Michelle O' Gorman 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").

On 23/08/2023 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 19/09/2023 the Tribunal convened a hearing at Virtual, Virtual.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB 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 then 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; the Applicant Landlord's Representative would be invited to present the Applicant Landlord's case first; that there would be an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present her case, and that there would be an opportunity for cross-examination by the Applicant Landlord's Representative. The Chairperson explained that the Tribunal may ask questions of both parties. The Chairperson explained that following the evidence, the parties would be given an opportunity to make final submissions.

The Chairperson explained that all evidence would be taken on affirmation 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 up to €4,000 or up to 6 months' imprisonment or both. The Chairperson noted that the proceedings were being recorded by the appointed digital logger and that any other unauthorised recording of the proceedings could result in a prosecution for an offence under the contempt provisions of the Act.

The Chairperson also reminded the parties that as a result of the hearing, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only.

The Chairperson indicated that the Tribunal would be willing to consider a short adjournment for the purpose of allowing the parties to try and negotiate a settlement or agreement of the dispute should the parties so wish. The Parties availed of this opportunity but were unable to agree a resolution.

All parties giving evidence and the interpreter then made their affirmation.

5. Submissions of the Parties:

Applicant Landlord's Case

Anthony McGann from the Respondent Landlord's letting agent represented the Applicant Landlord. He said that he would be referring to the documents furnished to the Tribunal as Case File 2

He explained that the documents at pages 20 to 42 related to a brothel that the Respondent Tenant had been operating at another address and that in February 2022 the Respondent Tenant had agreed to surrender the tenancy of that property. He said this information was submitted as additional evidence of the Respondent Tenant having run a brothel at a different address.

He went on to say that pages 43 to 56 contained details of the rent arrears that had accrued in relation to the dwelling. He stated that an arrears notice had been served in April 2023 when the arrears stood at €580.00. He said that he had submitted a statement of account which showed that the current arrears amounted to €1,920.00.

He then referred the Tribunal to the documents at pages 57 to 75 which he said were copies of the Notice of Termination issued to the Respondent Tenant and correspondence with the RTB. He said that pages 69 to 75 contained emails that he had received in May and June of 2023 from neighbours of the Respondent Tenant regarding her illegal activities.

He said that on 01 February 2023 he witnessed a young lady taking a gentleman up in the lift to Apartment 401. He said that at page 71 he documented what he had seen on 09 March 2023 when he spoke to a "gentleman caller" who was intending to visit Apartment 401. He said that the same woman came down in the elevator but when she saw him she did not step out of the elevator but closed the doors and ascended in the elevator. He said the gentleman caller left when he told him that he was going to call An Garda Síochána.

He said that page 72 contains a letter he received from a landlord of another tenant in the building, in which that landlord stated that his tenant had complained of someone knocking on their door and soliciting sexual services. Mr. McGann said that the apartment in question is close to Apartment 401. He said he was told that the tenants of this apartment subsequently left.

He went on to say that page 73 contains a letter received by him on 31 January 2023 from another concerned neighbour of the Respondent Tenant. He then referred the Tribunal a copy of a newspaper article at page 75 and read to the Tribunal the content of that article, which related the Respondent tenant's conviction for running a brothel at an address in Drogheda some years before.

When cross-examined by the Respondent tenant, Mr. McGann said that Respondent Tenant's illegal activity was causing fear in other people, the same as it had done at the previous address. He said that on the previous occasion the Respondent Tenant agreed to vacate within seven days in return for An Garda Síochána not being involved. He denied ever having tried to force his way into the apartment. He said that on 09 March 2023 he had knocked on the door and that the Respondent Tenant had shouted at him to go away. He said that on that occasion he could smell marijuana coming from the apartment. He said that the Applicant Landlord wanted the apartment back because he had evidence of other residents being terrified when walking around the building because of the activities in Apartment 401.

When asked by the Tribunal he confirmed that the Notice of Termination had been served by hand at the dwelling and a copy sent on the same day by email to the Respondent Tenant. He confirmed that the €580.00 which the Respondent Tenant said that she had paid in response to the arrears warning letter had been taken into account in the statement of account.

In his closing statement the Applicant Landlord's representative referred to the complaints received prior to the service of the Notice of Termination and the complaints received from other residents since then confirming the illegal activity. He said that other residents were afraid to step outside their front door as they did not feel safe. He said that one set of tenants had left because of the activities in Apartment 401 and that the Applicant Landlord would like it to stop immediately.

Respondent Tenant's Case

The Respondent Tenant said that she had been renting the property for ten years. She said that initially it was from a letting agency run by the father of Ericka O'Shaughnessy (an employee of the Applicant Landlord's letting agent) and then the letting was taken over by Rooneys. She said that there had been no problems until the Applicant Landlord's representative took over the management and had asked for her to give up the tenancy of the other property within seven days.

She said that between January and March 2023 she had been in hospital and so the apartment was "closed" -that there was no-one there. She said that on 09 March 2023 Mr. McGann had put his foot in the door to stop her from closing it after she had told him to go away. She said that in March 2023 she was admitted to hospital for surgery and did not return to the apartment until 10 April 2023. She said that when she returned she did not find any Notice of Termination. She said the apartment was raided by An Garda Siochana on 21 April 2023 but they only found her husband, her son and his girlfriend present and found no sign of illegal activity. She apologized for the rent arrears and said this was because she was only in receipt of rent allowance and had needed to save to pay the rent. She agreed with the figure for arrears as contained in the statement of account furnished. She said that the accusations regarding illegal activity were not true. She said that the complaints had started with her drying clothes and had escalated to these accusations of illegal activity. She said that there was no proof of people paying for sexual services and that it was not true. She said that as she was only in receipt of €220 benefit payments and had medical problems there was nowhere she could go.

When cross-examined by the Applicant Landlord's representative she explained that when she referred to the apartment being closed between January and March she meant that she was not there but her husband and her son were there. She went on to say that she was there some of the time during these months. She said she had no record of the date of the raid by An Garda Siochana and so it may not have been on 21 April 2023. She confirmed the situation in relation to the HAP payments and her contribution. She said that she had received a copy of the Notice of Termination by email from the Applicant Landlord's agent when she was in hospital.

In her closing statement the Respondent Tenant said that she just wanted fair treatment, to be left alone to pay her rent and for her medical problems to be taken into account.

6. Matters Agreed Between the Parties

1. The tenancy began on or before 05 April 2015.
2. The Respondent Tenant paid a deposit of €700.00 at the commencement of the tenancy which sum is still held by the Applicant Landlord.
3. The rent for the dwelling is €870.00 per month.

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 finding and reasons therefor are set out hereunder.

Finding 1: The Notice of Termination served by the Applicant Landlord on the Respondent Tenant on 02 February 2023 is valid.

Reasons:

1. Having been in occupation of the dwelling since the 5 April 2015 or earlier, at the time the Notice of termination was served the Respondent Tenant had the benefit of a Part 4 tenancy. Such a tenancy can only be terminated on one of the grounds in the Table referred to in S.34 of the Act.

2. Paragraph 1 of the Table provides the following as a ground for termination:

“The tenant has failed to comply with any of his or her obligations (other than the obligation to which paragraph (a) of section 16 applies) in relation to the tenancy (whether arising under this Act or otherwise) and, unless the failure provides an excepted basis for termination—

(a) the tenant has been notified in writing of the failure by the landlord and that notification states that the landlord is entitled to terminate the tenancy if the failure is not remedied within a reasonable time specified in that notification, and

(b) the tenant does not remedy the failure within that specified time.”

3. The statutory obligations of a tenant during the continuance of a tenancy are set out in S.16 of the Act. These obligations include, at s.16 (h) of the Act an obligation to:

“not behave within the dwelling, or in the vicinity of it, in a way that is anti-social or allow other occupiers of, or visitors to, the dwelling to behave within it, or in the vicinity of it, in such a way”

4. S.17 of the Act sets out three definitions of the phrase “behave in a way that is anti-social”. These are:

“(a) engage in behaviour that constitutes the commission of an offence, being an offence the commission of which is reasonably likely to affect directly the well-being or welfare of others,

(b) engage in behaviour that causes or could cause fear, danger, injury, damage or loss to any person living, working or otherwise lawfully in the dwelling concerned or its vicinity and, without prejudice to the generality of the foregoing, includes violence, intimidation, coercion, harassment or obstruction of, or threats to, any such person, or

(c) engage, persistently, in behaviour that prevents or interferes with the peaceful occupation—

(i) by any other person residing in the dwelling concerned, of that dwelling,

(ii) by any person residing in any other dwelling contained in the property containing the dwelling concerned, of that other dwelling, or

(iii) by any person residing in a dwelling (“neighbourhood dwelling”) in the vicinity of the dwelling or the property containing the dwelling concerned, of that neighbourhood dwelling.”

5. Based on the evidence heard by the Tribunal, it is the Tribunal’s view that it is the first of these three definitions, paragraph (a), that is relevant to this case.

6. The case for the Applicant Landlord is that the Respondent Tenant has been involved in illegal activities by operating a brothel from the premises.

7. In support of the Applicant Landlord's case, his representative Anthony McGann, who is employed by Rooneys, the Applicant Landlord's managing agent, described what he had seen on 01 February 2023 (a young lady taking a gentleman up in the lift to the dwelling) and referred the Tribunal to two letters received, one on 02 February 2023 from a landlord of an apartment close to the dwelling reporting complaints by his tenant about someone attempting to solicit sexual services and one from a resident on 31 January 2023 complaining of strange men in the building looking for girls and being escorted to and from the dwelling. It was as a result of these incidents that he served a Notice of Termination on the Respondent Tenant.

8. There was other evidence of incidents that occurred after the service of the Notice of Termination, such as Mr. McGann's encounter with another "gentleman caller" on 09 March 2023 and the content of an email dated May 26 2023. In addition the Respondent Landlord's representative advised the Tribunal (and this was not disputed by the Respondent Tenant) that a year previously her tenancy of another apartment had been terminated because she was operating a brothel from that property. He also referred the Tribunal to an article in a newspaper reporting the Respondent Tenant's previous conviction for operating a brothel from another address. Again, this was not denied by the Respondent Tenant. All of this evidence was supportive of the Applicant Landlord's conclusion in February 2023 that the Respondent Tenant was operating a brothel from the dwelling.

9. In contrast, the Respondent Tenant could only make a general denial that the allegation was untrue. She put forward no explanation in relation to the written complaints received by the Applicant Landlord's agent, nor the evidence of what Mr. McGann had witnessed. She did not dispute having operated a brothel from another address the previous year or her previous conviction.

10. In all the circumstances the Tribunal finds that there was sufficient evidence to come to the conclusion that the Respondent Tenant was operating a brothel from the dwelling immediately prior to the service of the Notice of Termination and that this was a breach of the Respondent Tenant's obligation to not behave in a way that is anti-social.

11. The Tribunal finds that the behaviour complained of comes within definition (a) of s.17 as operating a brothel constitutes the commission of an offence and, based on the evidence of the Applicant Landlord's representative as to the effect this activity was having on other resident in the building, it is an offence which is reasonably likely to affect the well-being or welfare of others.

12. The Tribunal finds that the Notice of Termination, a copy of which is at page 5 of Case File 1 complies with the requirements of a valid Notice as set out in s.62 of the Act.

13. The Respondent Tenant asserted that she did not receive the Notice of Termination except by email while she was in hospital. The Applicant Landlord is not obliged to prove that the Respondent Tenant received the original Notice only that it was served. It is the finding of this Tribunal that the original of the Notice of Termination was delivered by hand to the dwelling by an employee of the Applicant Landlord's managing agent on 02 February 2023, the same day that a copy was emailed to the Respondent Tenant. Service in this manner is permitted by s.6 of the Act. The Tribunal is therefore satisfied that the Notice was properly served.

14. Ordinarily, for a landlord to be able to terminate a tenancy for breach of a tenant's obligations the landlord must first serve a warning notice advising the tenant of the breach,

giving the tenant a reasonable period of time within which to remedy the breach and then, if the breach is not remedied within that time, the landlord may serve a notice of termination on the grounds of that breach.

15. However, Ground 1 in the Table referred to in S.34 provides that a warning notice does not have to be served before serving a Notice of Termination where the failure provides an excepted basis for termination. S.35 (3) provides:

“In paragraph 1 of the Table the reference to a failure that provides an excepted basis for termination is a reference to a failure to comply with section 16(h) where the behaviour in question falls within paragraph (a) or (b) of the definition of “behave in a way that is anti-social” in section 17(1).”

As the Tribunal finds that the behaviour complained of falls within paragraph (a) of the definition of anti-social behaviour it follows that no prior warning notice was required.

16. The Notice of Termination gave a period of 7 days’ notice to terminate the tenancy. Ordinarily a Notice of Termination based on a breach of obligation by a tenant requires a minimum period of 28 days’ notice. However, S.67 (2) provides that only 7 days’ notice is required if the tenancy is being terminated for anti-social behavior that falls within definition (a) or (b) in S.17. The period of 7 days’ notice was therefore correct.

17. In all the circumstances the Tribunal finds that the Notice of Termination is valid and that the Respondent Tenant is overholding. As the Notice of Termination provided for the tenancy to terminate within 7 days the Tribunal finds that it is appropriate to order that the Respondent Tenant vacate the dwelling within 7 days of the issue of the Determination Order.

Finding 2: As at the date of the Tribunal the Respondent Tenant is in arrears of rent in the sum of €1,454.60.

Reasons:

1. At pages 53 to 56 of Case File 1 the Applicant Landlord’s agent set out a detailed statement of account in relation to the rent arrears that had accrued. Up to and including 05 October 2023 the arrears amounted to €1,920.00.

2. The Respondent Tenant accepted that this figure was correct and this is also the finding of this Tribunal.

3. The Tribunal notes from the statement of account that the Respondent Tenant has constantly been in arrears to some extent since 06 February 2023.

4. The Tribunal can only award rent arrears up to the date of the Tribunal hearing and order the tenant to pay the rent due thereafter.

5. The arrears therefore up to the date of the Tribunal are €1,050.00 as at 05 September 2023 plus 14 days (06.09.23 -19.09.23) at €28.60 per day (€870 X 12/365) being €404.60 making a total of € 1,454.60.

6. Balancing the ability of the Respondent Tenant to pay the arrears against the right of the Applicant Landlord to receive these arrears on a timely basis the Tribunal orders that the arrears be paid by 12 monthly instalments following the issue of the Determination Order.

8. Determination:

Tribunal Reference TR0423-006147

In the matter of Joseph Greene (Landlord) and Profira Pantazi (Tenant) the Tribunal in accordance with section 121 of the Residential Tenancies Act 2004, determines that:

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1. The Notice of Termination with a date of service of 02 February 2023 served by the Applicant Landlord on the Respondent Tenant, in respect of the tenancy of the dwelling at Apartment 401, Block C, Market Court, Cornmarket Row, High Street, Limerick, V94 VP03 ("the Dwelling") is valid.
2. The Respondent Tenant and any other persons residing in the Dwelling shall vacate and give up possession of the Dwelling within 7 days of the date of issue of the Determination Order.
3. The Respondent Tenant shall pay the total sum of €1,454.60 to the Applicant Landlord, by way of 12 consecutive instalments at the rate of €121.21 per calendar month, on or before the 28th day of each month, commencing the next month after the issue of the Determination Order. This sum represents rent arrears of €1,454.60 in respect of the tenancy of the Dwelling for the period from 06.02.23 to 19.09.23.
4. The Respondent Tenant shall continue to pay any further rent outstanding to the Applicant Landlords from 19 September 2023 being the date of the Tribunal, at the rate of €870.00 per month, or proportionate part thereof at the rate of €28.60 per day, unless lawfully varied, 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 Dwelling is vacated by the Respondent Tenants and any other persons residing therein.
5. The enforcement of the Determination Order for such payment of €1,454.60 will be deferred and the total sum owing will be reduced by the cumulative sum paid, in monthly instalments, by the Respondent Tenant to the Applicant Landlords, on each due date, until such time as the total sum of €1,454.60 has been paid in full.
6. For the avoidance of doubt, any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Applicant Landlords.
7. The Applicant Landlord shall refund the security deposit of €700.00 to the Respondent Tenant, upon the Respondent Tenant vacating and giving up possession of the Dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

This Order was made by the Residential Tenancies Board on the [].

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 05/12/2023.

Keaney.

Signed:

John Keaney Chairperson

For and on behalf of the Tribunal.