

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0223-005989 / Case Ref No: 1122-81391

Applicant Landlord:	Lascara Limited
Respondent Tenant:	Yosra Waly Higgins
Address of Rented Dwelling:	Apartment 52, The Courtyard, Citysquare, Cork
Tribunal:	John Keane (Chairperson) Fintan McNamara, Mary Doyle
Venue:	Virtual hearing via Microsoft Teams
Date & time of Hearing:	07 July 2023 at 2:30 p.m.
Attendees:	For the Applicant: Michelle Savage (called the "Landlord's Representative" in this report) For the Respondent: No person appeared on behalf of the Respondent
In attendance:	Recording Technician

1. Background:

On the 19 November 2022, Lascara Limited (called "the Landlord" or "Applicant Landlord" in this report) made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 76 of the Residential Tenancies Act 2004 to 2022 ("the Act"). The Tenant is Yosra Waly Higgins (called "the Tenant" or "Respondent Tenant" in this report). The matter was referred to Mediation. The parties failed to reach agreement at mediation.

Subsequently an appeal was received on the 13 February 2023 from the Applicant Landlord which was approved by the Board on the 27 February 2023. The grounds of the appeal related to rent arrears, overholding and breach of the Tenant's obligations. The RTB constituted a Tenancy Tribunal and appointed Mary Doyle, John Keane and Fintan McNamara as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Keane to be the chairperson of the Tribunal ("the Chairperson"). The Parties were provided with details of the date, time and venue set for the hearing.

The Tribunal convened a virtual hearing on Microsoft Teams on the 7 July 2023.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case file.

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

The Chairperson asked the Party present to identify herself and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the Party present that she had received the relevant papers from the RTB in relation to the case and that she had received the RTB document entitled "Tribunal Procedures". The Chairperson said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

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 Landlord's Representative's would be invited to present the Landlord's case.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the recording technician and that based on that recording a transcript could be made available to the Tribunal if necessary to assist it in preparing its report on the dispute, or to the parties for a fee. He reminded the Landlord's Representative 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 said that members of the Tribunal would ask questions from time to time to assist in clarifying the issues in dispute between the parties.

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.

The Tenant was not present at the Microsoft Teams meeting for the hearing on the 1 June 2023. The Chairperson adjourned the meeting to check with the Case Officer if the Tenant had received notification of the hearing. The case officer confirmed that the Tenant had been notified by email only. The hearing was adjourned to the 7 July 2023 so that the Tenant could be served with notice of the hearing by recorded post.

The Landlord's Representative and the Tenant were not present on Microsoft Teams when the hearing commenced on the 7 July 2023. The Case Officer contacted both parties. The Landlord's Representative joined the hearing. The Case Officer informed the Chairperson that she spoke to the Tenant by phone and the Tenant confirmed that she would not be participating in the hearing. The Tribunal hearing proceeded in her absence.

5. Submissions of the Parties:

Applicant Landlord's case:

The Landlord's Representative outlined to the Tribunal that the Tenant had not paid any rent to the Landlord since the previous Determination Order for case reference DR1020-65972 following the Adjudication hearing which took place on the 12 February 2021. The Determination Order for case reference DR1020-65972 determined that the Tenant owed rent arrears of €10,206.72. She also submitted another Determination Order for case reference DR0120-60171 where the Tenant was ordered to pay rent of €16,851.28 following an Adjudication hearing which took place on the 4 March 2020. She also referred to Determination Orders for rent arrears in favour of a Receiver prior to the property being purchased by the Landlord.

The Landlord's Representative referred to a Rental Statement showing the rent arrears due as at the 1st February 2023 being €53,376.30. She said that no rent has been paid since the 1st February 2023 to the date of the Tribunal hearing. She clarified that the Rental Statement included the amount ordered to be paid to the Landlord in the two Determination Orders. She explained that she took over the management of the property from the 1 July 2021 and that the balance brought forward for rent arrears at that stage was €32,996.30.

The Landlord's Representative confirmed that rent was payable on the 1st day of each month in advance and that a deposit of €700 was paid. She clarified that there were a number of reviews of the rent. The rent was increased from €927.92 to €989.00 per month effective from the 1st January 2021. There was another increase to €1,039.00 effective from the 1st March 2022.

The Landlord's Representative referred the Tribunal to a Formal 28 day Warning for Rent Arrears with a service date of the 18 November 2022 which stated that arrears of rent of €50,259.30 were outstanding at the 18 November 2022. She confirmed that the Formal 28 day Warning for Rent Arrears was sent by post and hand delivered to the dwelling. She referred to a letter dated the 28 November 2022 from the RTB acknowledging receipt of the Formal 28 day Warning for Rent Arrears served on the 18 November 2022.

She said that she served the Notice of Termination with a service date of the 29 December 2022 by tracked post. She served a further Notice of Termination with a service date of the 23 January 2023 by tracked post as it was not clear from An Post that the Notice of Termination with a service date of the 29 December 2022 had been delivered. She said that both Notices of Termination were forwarded to the RTB.

Respondent Tenant's case:

The Tenant did not attend the hearing.

6. Matters Agreed Between the Parties:

No matters were agreed as the Tenant did not attend the hearing.

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 Notices of Termination served by the Landlord on the tenant on the 29 December 2022 and 23 January 2023 are invalid.

Reasons:

Section 67(3) of the Act provides that prior to serving a Notice of Termination where there are rent arrears; a landlord is required to give the tenant and the RTB notification in writing that an amount of rent specified has not been paid to the landlord. Following the service of this notice on the tenant and the RTB, the Landlord can proceed to serve a Notice of Termination if the amount of rent due as stated on the notice has not been paid to the landlord within 28 days from the later of -

(a) the date of the receipt of notification by the tenant or

(b) the date of receipt of notification by the RTB.

The Landlord's Representative gave evidence that the Formal 28 day Warning for Rent Arrears, dated the 18 November 2022 was served on the Tenant by post and hand delivered to the dwelling. The Landlord referred to a letter dated the 28 November 2022 received from the RTB acknowledging receipt of the Formal 28 day Warning for Rent Arrears on the 18 November 2022.

The rent arrears stated as due on the 18 November 2022 in the Formal 28 day Warning for Rent Arrears was €50,259.30. The Tribunal calculates the arrears due on the 18 November 2022 as follows:

Rent arrears due as per Determination Order for case reference DR0120-60171 following an Adjudication which took place on the 4 March 2020	€16,851.28
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Rent arrears due as per Determination Order for case reference DR1020-65972 following an Adjudication which took place on the 12 February 2021	€10,206.72
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Rent due from the 13 February 2021 to the 28 February 2021

16 days @ €32.51 per day (daily rate €989.00X12/365)	€520.16
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Rent from the 1 March 2021 to the 28 February 2022

12 months @ €989.00 per month	€11,868.00
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Rent from the 1 March 2022 to the 18 November 2022

9 months @ €1,039.00 per month

(The rent was reviewed to €1,039.00 effective from the 1 March 2022. A full month's rent is payable for November 2022 as the rent is payable on the 1st day of each month in advance.)

	€9,351.00
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Total rent due as at the 18 November 2022 =	€48,797.16
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While the Tribunal accepts that there was a large amount of arrears due at the 18 November 2022 and the Tenant had not made any effort to address the arrears, there was no detailed calculation as to how the figure for rent arrears stated on the Formal 28 day Warning for Rent Arrears in the amount of €50,259.30 was calculated. Based on the calculation of the Tribunal the amount owed on the 18 November 2022 was €48,797.16 to include the arrears ordered to be paid under the previous Determination Orders. The amount of €50,259.30 is incorrect and this amount was not owed as at the 18 November 2022. Accordingly the Formal 28 day Warning for Rent Arrears dated the 18 November 2022 is invalid due to the incorrect amount of rent being sought by the Landlord. It follows that the subsequent Notices of Termination served on the 29 December 2022 and 23 January 2023 are also invalid.

7.2 Finding: The Tenant is in breach of her obligation under Section 16 (a) of the Act to pay rent on the day it falls due and the arrears of rent due at the date of the Tribunal hearing (7 July 2023) are €28,212.28 which are reduced to €24,936.00 pursuant to Section 115 (3) (b) of the Act.

Reasons:

The rent arrears are calculated from the 13 February 2021 to the date of the hearing. There are two Determination Orders ordering the payment of rent prior to the 13 February 2021.

Rent due from the 13 February 2021 to the 28 February 2021 -

16 days @ €32.51 per day (daily rate €989.00 x 12/365) €520.16

Rent from the 1 March 2021 to the 28 February 2022 -

12 months @ €989.00 per month €11,868.00

Rent from the 1 March 2022 to the 30 June 2023 -

16 months @ €1,039.00 per month

(The rent was reviewed to €1,039.00 effective from the 1 March 2022.)

€16,624.00

Rent due from the 1 July 2023 to the 7 July 2023 -

7 days @ €34.16 per day (daily rate €1,039.00 x 12/365) €239.12

Total rent due from the 13 February 2021 to the 7 July 2023 = €29,251.28

Under the provisions of Section 115 (3) (b) of the Act, the Tribunal can award a maximum of the greater of €20,000 or an amount equal to twice the annual rent for the dwelling. Accordingly, the rent arrears awarded are €24,936.00 (€1,039.00 x 12 x 2 years). As the Tribunal cannot make an award in excess of €24,936.00 for rent arrears in respect of the referral of this dispute, no provision is made in the Determination for rent or charges payable from the hearing date.

8. Determination:

In the matter of Applicant Landlord, Lascara Limited, and Respondent Tenant, Yosra Waly Higgins, in accordance with section 108 of the Residential Tenancies Acts 2004 - 2022 the Tribunal determines that:

1. The Notices of Termination served by the Applicant Landlord on the Respondent Tenant on the 29 December 2022 and 23 January 2023 requiring the Respondent Tenant to vacate the dwelling in respect of the tenancy at Apartment 52, The Courtyard, Citysquare, Cork are invalid.
2. The Respondent Tenant shall pay the total sum of €24,936.00 to the Applicant Landlord in 12 consecutive monthly payments of €2,000 on the 28th day of each month followed by one further instalment of €936.00 on the 28th day the immediately succeeding month, commencing on the 28th day of the month immediately following the date of the issue of the Determination Order by the Board. This sum represents rent arrears of €24,936.00 arising over the period from the 13 February 2021 to the 7 July 2023 in respect of the tenancy of the dwelling at Apartment 52, The Courtyard, Citysquare, Cork.
3. The enforcement of the Order for such payment of €24,936.00 will be deferred and the total sum owing will be reduced by the cumulative sum paid in the monthly

instalments made by the Respondent Tenant to the Applicant Landlord on each due date until the total sum of €24,936.00 has been paid in full.

4. For the avoidance of doubt any default in the payment 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 Landlord.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 16/07/2023.

Signed:

A handwritten signature in black ink that reads "John Keane". The signature is written in a cursive style with a large initial 'J' and 'K'.

John Keane, Chairperson

For and on behalf of the Tribunal.