Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0424-007462 / Case Ref No: 1023-89903

Appellant Landlord:	Roth Morgan Investment Pty Ltd
Respondent Tenant:	Kaedee Jay Trabajo..
Address of Rented Dwelling:	31 Brickfield, Skehard Road , Cork, T12VX5E
Tribunal:	Healy Hynes (Chairperson) Karen Ruddy, Suzy Quirke
Venue:	Virtual
Date & time of Hearing:	08 July 2024 at 10:30
Attendees:	Daniel Kolomanski, Appellant Landlord Representative John Powell, Appellant Landlord Legal Representative Fionna O'Regan BL, Appellant Landlord Legal Representative Kaedee Jay Trabajo, Respondent Tenant Eleanora Taylor, Respondent Tenant Legal Representative
In Attendance:	Audio recording technician

1. Background:

On 06/10/2023 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 adjudication which took place on 23 February 2024 at 2:15pm. The Adjudicator determined that -

In the matter of Kaedee Jay Trabajo [Applicant Tenant] and Roth Morgan Investment PTY Limited [Respondent Landlord], the Residential Tenancies Board, in accordance with Section 97 of the Residential Tenancies Act, 2004, as amended, determines that:

1. The Notice of Termination dated the 2nd October 2023, served by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of the dwelling at 31 Brickfields, Skehard Road, Cork, is invalid.

2. The Notice of Rent Review dated the 19th August 2023, served by the Respondent Landlord on the Applicant Tenant in respect of the tenancy of the dwelling at 31 Brickfields, Skehard Road, Cork, is invalid.

3. The Respondent Landlord shall pay the total sum of €3000.00 to the Applicant Tenant within 28 days of the date of issue of the Determination Order, being damages of

€3000.00 for the consequences of unlawfully terminating the Applicant Tenant's tenancy of the above dwelling.

Subsequently a valid appeal was received from the Landlord by the RTB on 25/04/2024 and approved by the Board on 02/05/2024.

In accordance with Sections 102 and 103 of the Act, the RTB constituted a Tenancy Tribunal and appointed Healy Hynes, Karen Ruddy and Suzy Quirke as Tribunal members, pursuant to Section 102 and 103 of the Act and appointed Healy Hynes to be the chairperson of the Tribunal ("the Chairperson").

On 08 July 2024 at 10:30 the Tribunal convened a virtual hearing on Microsoft Teams.

2. Documents Submitted Prior to the Hearing Included:

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 their 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 affirmation 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].

The Tribunal asked the parties did they wish to have discussions around reaching an agreement, the terms of which could be adopted by the Tribunal as part of its order. The parties declined the opportunity. All parties giving evidence were duly affirmed.

5. Submissions of the Parties:

Appellant Landlord's Case:

The Appellant Landlord Legal Representative stated that the matter was not subject to RTB jurisdiction.

Ms. Fionna O'Regan made the case that the RTB does not have jurisdiction. She said that the matter of licence or lease was prejudged by the board of the RTB and it was biased in advising the Respondent. In relation to adjudication, she said the landlord did not appear but the factual basis of the hearing was not correct and incorrect test applied to the terms of licence.

Landlord evidence

She said that the terms of agreement were that the owner shall retain their own set of keys and others may access entry to the room at any time. She said that for so long as the Respondent occupied the room, licensees had use of the front door, kitchen and communal living areas, in common with the owner and other licensees

She pointed to Section 6.4 of the agreement which stated that licensees did not have exclusive possession and the owner could access rooms to provide services such as repairs.

She pointed to Section 19.1 which said that licences may be ended by the owner if the licence fee was not paid. She said that Section 19.3 allowed either party to end the agreement. She said that the title of the agreement is "licence for occupation of room" she said this is a binding document. She said that at the end of the signing page, there is an advisory that if the signee does not understand the document, to consult a legal advisor. She said those are the words, they exhibit the intention of the parties as to how the occupation is to be operated.

The Appellant Landlord said that before preparing the agreement, they had discussions with the RTB. He said they were also told to use the RTB chat system and they spoke with Eimear on 29th October 2019. He said that he told Eimear they he was looking at moving into a house and renting a room. He said that he told Eimear the house was not occupied at the moment and he was given a licence as a lease cannot be given as occupiers did not want to be responsible for each other. He said that Eimer replied to say that a license was not subject to the RTB jurisdiction.

On being asked was there a principal party to the tenancy he said they have a managing agent, all rooms are in individual agreements, separate amounts, separate commencement and expiry dates. He said the occupiers did not all come in together, and that they were unknown to each other. He said they were interviewed by the landlord and the landlord made determination as to who moved in.

In terms of access, he said the landlord and agents access the property when they have a requirement. He said the landlord shares this dwelling with the occupants. He said he himself uses cupboards for storage. He keeps office equipment there. He said that Roth Morgan Investment Pty Limited is the landlord and their printers, computers, clothes and fishing equipment are kept there. He said he would access this 4-5 times a year. He said he did not seek permission but he did arrange a time as a courtesy. He said these cupboards are exclusive to the landlord. He said that the Respondent Tenant's room is the largest in the property. He said the landlord does not store goods in the Respondent

Tenants room. He said that the licence allows the landlord to move people from room to room at its discretion.

Reference was made to a letter dated 18 October 2023, to the CEO of the RTB. He said the Respondent Tenant refused to extend their licence agreement and refused to pay two months licence fees. He said the Respondent retained the licence fees for two other occupants and refused to pay same to the licensor.

He said there were discussions with the agent on increasing the licence fee. He said the tenant said he would be leaving and would continue to occupy on the old fee. He said this offer was sent to the agent. He said the Respondent Tenant's solicitors then contacted the agents regarding the Respondent Tenant occupying the dwelling until he left to buy his own house. This was within a few weeks. (the purchase of the house??)

He said they advised the Respondent Tenant that this was not satisfactory. The Landlord said that during negotiations, the Respondent Tenant did not pay rent and took others rent; he did this for months. He said that the Respondent Tenant improperly took the fee from others and did this for his exclusive use. He said that before the Respondent Tenant paid the amount over, they issued a Notice of Termination.

He said that people paid rent directly and occasionally together; it varied. He said that so long as the landlord got the total amount around when it was due they did not mind.

He said that one of the reasons the licence agreement format arose is that under a lease, there was an obligation for joint tenants to pay for a room if someone defaulted. He said that people did not want that. He said the Respondent Tenant had disputes with another party in the house and Gardai were called. He said that the landlord intervened on urging from other occupants regards other party. He said that the other party was paid to leave and they were not present for disputes.

He said that when the Respondent Tenant vacated, they returned the deposit. He said the dispute arose through the Respondent Tenant's solicitors pushing the matter. He said that the Respondent Tenant apologised for his conduct.

Reference was made to emails with the RTB dated 13 Nov 2023. These were on Page 114 of the case file. The landlord said the judgement of the adjudicator was tainted.

Reference was made by the Appellant Landlord Legal Representative to RTB Tribunal decision in O'Driscoll & Mulvaney from 4th October 2016 (TR0915-001354). She said there are similar facts in that the terms and manner of occupation was consist with a licence not a lease. She said the occupant did not have exclusive possession; the landlord retained the right to move the tenant. She said the parties also paid their own licence fee and were not responsible for each other. In essence there was no unity of interest.

Reference was made by the Appellant Landlord's Legal Representative to AG Securities & Vaughan. Report 1989-21H.L.R.79. Decision of 10th November 1988.

Reference was made by the Appellant Landlord Legal Representative to Street & Mountford, in respect to non-exclusive licence.

She said that there was an unsettled period in English Law. In this case of 4 bedrooms, 2 living & bathroom dwelling, the landlord entered into agreements with four occupiers. She said this was the same form as licensees She said that the owner granted licence

without exclusive possession, the flat was fully occupied. She said the company invited occupation and each applicant would pay different amounts for their room.

In this case four defendants moved in a different times. They shared use of kitchen and bathroom. She said they did not argue they were tenants of individual bedrooms. She said the case concluded there was no unity of interest, along the lines of O'Driscoll. She said there was no joint tenancy and they could not be aggregated for exclusive possession. Reference was made to the judgement of Lord Acker who said that when agreements cover different period and amounts there could not have been a joint tenancy. The justice said that the particular facts did not give exclusive possession. She said that the test rested on nature of occupation, that there were different payments, different amounts.

Reference was made to the judgement of Lord Oliver who said the question is not how the occupation was presented but the true nature of the arrangement. If the effect is the occupier has exclusive possession, then a tenancy is created. If the occupant is the only occupier realistically contemplated then such an occupier has such an occupation. She said that the owner retains control over areas (as with the storage areas herein) and had unrestricted access.

She said that the critical element is no unity of interest, title, time or possession. The occupiers have rights independent of others that do not aggregate to create interest.

She said this was the same as finding of A.G. Securities & Vaughan.

Reference was made to an email on the case file from the tenant to the landlord's agent saying he will not cover rent for vacant room as an example of independent rights.

The Appellant Landlord Legal Representative summarised to say that the facts and case law show this is a licence and not a lease. She said that everything hangs on that. She said the adjudicator was not aware of the full facts and came to an incorrect conclusion.

On questioning from the Tribunal, the Appellant Landlord's Representative stated that he had access to the house and cupboards. He said he accessed the private rooms of the tenant without prior notice and never asked for permission to enter.

With regards to the utilities, he said the occupants paid some, the landlord paid some, plus the landlord paid for waste and insurances.

Asked why the utilities are in the respondent tenant's name he said some landlords are not good at paying bills.

The Appellant Landlord's Legal Representative stated that the new information not previously before the adjudicator is that every single licencee had individual agreement and did not have unity of time. The landlord had access to cupboards, which the adjudicator was not aware of, nor was the adjudicator aware the landlord did not seek permission for access. She said the adjudicator was not aware of the fact that the landlord brought in new licencees, that is a point that is at issue. These facts meant there was no exclusive possession and the landlord retained the right to move people. She said the right to do so is in the agreement but they are not saying it happened.

Cross Examination:

In cross examination the Appellant Landlord Representative Mr. Kolomanski said that in the 19 months the tenant was not moved to a new room. Reference was made to P65 of

the case file and, Para 6.4 of the agreement which stated that a Licencee did not have exclusive possession of the room. When asked did he ever enter the room he said yes.

The Respondent Tenant's Legal Representative said that her client will say whenever access was required, they were asked to facilitate same and if it did not suit, it would be rescheduled. The Appellant Landlord Representative Mr. Kolomanski said this was not required and the tenant was conflating courtesy with a right.

The Appellant Landlord's Representative, Mr. Kolomanski, was asked who the respondent shared the room with, and he said nobody but the landlord had the right to put someone else in.

The Appellant Landlord Representative Mr. Kolomanski said all the people in the house were separate licencees. He said it was the exclusive right retained by the owner to introduce prospects to each other. He said it was pointless to bring in unsuitable people. He said this is decency not a law.

When asked about rent collection and rent being paid collectively for the house, reference was made to emails of 19th august 2023 where the Respondent Tenant emailed the agent to say the fee was not paid for one room as it was empty. Reference was made to a prospective third party to occupy same subject to landlord's consent. The Appellant Landlord Representative Mr. Kolomanski said this was confirmation that the Respondent Tenant accepted the landlord's jurisdiction on who may be an occupant of the building.

He said that when the tenant was in the property, he was renting a room, that was not changed and nobody else was put in. He said he did not know when he entered the tenant's room but was aware of why he entered it. He said the landlord was a Limited Company and its registered office was not the property.

In rebuttal the Appellant Landlord's Legal Representative stated that with respect to the emphasis on utilities, no case rests on them. She said the landlord had access to the room, the landlord was telling tenants they could not change room, that was within the landlord's control. She said this control was not a feature of normal shared tenancy. She said that in this instance the landlord withheld consent.

She said that overall, it was a licence and referenced A.G. Securities & Vaughan, O'Driscoll & Mulvaney (RTB Case).

She said no permission was sought for access to the shared storage. She said control was maintained by the landlord via individual agreements with the tenants; these individual payment amounts ranged from €550 per month to €750 per month. She said the right to move rooms was retained by the landlord, in accordance with the A.G Securities case there was no "unity of interest to title, time, or possession"."

She again referenced A.G. Securities mentioning "separate agreements on different terms" that applies here. She said that initial terms being several cannot become joint so this did not give them exclusive possession to get a lease. She said it was crucial that these are individual agreements, not for same periods and the landlord could bring in others.

The Appellant Landlord Legal Representative said a dwelling can be a room. A bedsit can be a dwelling as it is a self-contained unit as referred to in A.G. Securities. However, if a tenant shares essential living, the room is not a separate dwelling by definition she said the tenant's room herein cannot be self-contained and therefore the dwelling cannot be the room.

On questioning the Appellant Landlord's Representative Mr. Kolomanski said the tenant owed half a month when they vacated and the deposit was repaid in full.

The Appellant Landlord's Legal Representative said that the landlord's evidence is uncontested as the Respondent Tenant did not give evidence, did not make themselves available for cross examination and their written submissions do not constitute evidence.

Respondent Tenant's Case:

Respondent Tenants Solicitors Submissions

The Respondent Tenant's Legal Representative stated that one must look at true nature of arrangement to establish that just because it is called a licence does not make it so. She said that many houses in Ireland operate like this and these are lease agreements. Reference was made to page 23 of the case file and para.1.4 of the agreement. She said the room did not change. She said the landlord representative said he did go into the room, but there is no evidence of that.

Reference was made to page 80 of the case file containing emails of 18th August 2022 from the agent to the tenant. In this, the tenant enquired about changing terms and was told the rent cannot be changed. She said the agent said agreements are specific to rooms.

Reference was made to page 147 of the case file and an email from the agent telling the tenant others cannot move room as the agreement attaches to the room.

She said her client had a house share, he had exclusive possession of the bedroom and he shared the communal facilities with others. She said she regards the dwelling as his room and he has shared use of the rest of the dwelling. She said in practice this operated as a house share. and the agreement was termed a licence to avoid the Act.

Reference was made to page 11 of the case file. In August there was a purported increase in rent by 20%. She said this was not in the prescribed format and was outside RPZ rent caps. She said that the tenants Solicitors spoke to the agent to resolve the matter of the rent review. She said the tenant raised an issue and then was told to vacate at end of October (Reference was made to page 30 of the case file).

Reference was made to page 71 of the case file when the landlord reiterated they had to move and locks would be changed. She said the tenant took this as intention so rather than deal with it he left.

She said they furnished a copy of the dispute to the landlord and agents. She said that this is a landlord and tenant situation as it operates as a landlord and tenant setup. She said the landlord has breached the Act by not registering the tenancy, unlawfully evicting the tenant and serving an invalid rent review notice.

She said the tenant will dispute rent being outstanding. She said every tenant had individual agreements. She said that often tenants come in at different times.

6. Matters Agreed Between the Parties:

The following matters were agreed between the Parties:

The address of the dwelling is 31 Brickfields, Skehard Road, Cork.

The tenancy commenced on 1st April 2022.

An amount of €750 was payable per month.

A deposit €616.66 was paid.

The amount is payable monthly in advance on the 16th of the month.

A notice of rent review was served by the Appellant Landlord on the Respondent Tenant on the 19th August 2023 reviewing the rent to €900 per month from 1st October 2023.

A Notice of Termination dated the 2nd October 2023, was served by the Appellant Landlord on the Respondent Tenant.

The Respondent Tenant vacated the rented dwelling on the 31st October 2023.

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.

Finding 1: The Tribunal has jurisdiction in the matter.

Reasons: The first issue to be determined by the Tribunal is whether the occupation of the dwelling is question is pursuant to a lease or a licence. A licence allows a person to stay in a property without being considered a trespasser. Examples include staying in a hotel, hostel, guesthouse, or sharing a house with the owner. A tenancy on the other hand is established when a landlord grants exclusive use of land or part of a building in exchange for rent or other valuable consideration.

Simply calling an agreement a "Licence" does not make it one. The determination of lease versus licence is ascertained by the conduct of the occupation.

Section 3 of the Act states that: "(1) Subject to subsection (2), this Act applies to every dwelling, the subject of a tenancy (including a tenancy created before the passing of this Act)."

Section 4 states that:" "dwelling" means, subject to subsection (2), a property let for rent or valuable consideration as a self-contained residential unit and includes any building or part of a building used as a dwelling and any out office, yard, garden or other land appurtenant to it or usually enjoyed with it and, where the context so admits, includes a property available for letting but excludes a structure that is not permanently attached to the ground and a vessel and a vehicle (whether mobile or not);

Although there is no definition of "tenancy" in the Act, it does say in Section 5 that:

"tenancy" includes a periodic tenancy and a tenancy for a fixed term, whether oral or in writing or implied, and, where the context so admits, includes a sub-tenancy and a tenancy or sub-tenancy that has been terminated;

The Tribunal must therefore determine what the dwelling is, to establish if it can be subject to the Act. The Respondent Tenant's Legal Representative states that the dwelling is the respondent's room, whilst the Appellant Landlord's legal Representative states that the dwelling is the house.

In considering the matter the Tribunal examined the phrase "self-contained residential unit". There are specific requirements for a dwelling for example as under minimum housing standards. A landlord, for example under Section 12 is obliged to

“(b) subject to subsection (2), carry out to—

(i) the structure of the dwelling all such repairs as are, from time to time, necessary and ensure that the structure complies with any standards for houses for the time being prescribed under section 18 of the Housing (Miscellaneous Provisions) Act 1992, and

(ii) the interior of the dwelling all such repairs and replacement of fittings as are, from time to time, necessary so that that interior and those fittings are maintained in, at least, the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed,

(ba) provide receptacles suitable for the storage of refuse outside the dwelling, save where the provision of such receptacles is not within the power or control of the landlord in respect of the dwelling concerned, “

As it is clear from the Act, that the structure of the dwelling must comply with minimum housing standards for bedrooms, bathrooms, kitchen etc. It is clear that a bedroom alone cannot fulfil all the criteria of a dwelling. Whilst a “bedsit” may, this is not the case here. As such the Tribunal finds the dwelling is 31 Brickfields, Skehard Road, Cork.

As such, it is therefore clear that the Respondent in the matter shared the dwelling with other occupants.

Chapter 6 of the Act sets out Rules governing operation of Part in cases of multiple occupants. There is nothing in the Act that states tenants must pay all rent in one sum, nor that their payments be contemporaneous with each other. In fact, the Act specifically allows for same in the assignment of interests and in particular when Part 4 rights attach to a new tenant joining the tenancy.

In essence there is no requirement for joint and several liability of rent between tenants and there is in fact no definition of rent in the Act. Section 48 states that: “48.—(1) In this Chapter “multiple tenants” means, in relation to a dwelling, two or more persons who are tenants of the dwelling (whether as joint tenants, tenants-in- common or under any other form of co-ownership) and “multiple tenant” means any one of them.”

It is clear therefore that the legislation allows for tenants having different shares and interests in the dwelling. The “unity” of tenants-in-common is the unity of possession. In this the Tribunal refers to the Appellant Landlord’s Barrister’s submissions in relation to A.G. Securities & Vaughan. The 2004 Act therefore specifically address unity of interest by establishing that tenants-in-common fall under the Act.

Each tenant-in-common has a distinct and separate interest in the dwelling. They can have their own share of the responsibilities and rights, which may be unequal. The tenancy might specify the share of rent each tenant is responsible for, rather than holding each tenant equally responsible for the total rent. Each tenant-in-common is responsible for their portion of the rent and other lease obligations. If one tenant fails to pay their share, the landlord may pursue that tenant individually rather than holding all tenants jointly responsible. The Act in fact allows for this in Section 51 where one tenant may have their tenancy terminated but the other may not be impacted. Each tenant-in-common may have the right to terminate their part of the lease independently, subject to the terms of the lease. This adds flexibility for tenants who may not all plan to stay for the same duration.

The Tribunal, therefore, concurs with the parties in that it is the nature of the occupation that defines the nature of the relationship. The relationship in this matter is found to be tenants-in-common of a dwelling and therefore subject to the Act.

With respect to the contract clauses pertaining to moving rooms, landlord access and the landlord storing possessions in the dwelling, Section 18 states that:

"18.—(1) Subject to subsections (2) and (3), no provision of any lease, tenancy agreement, contract or other agreement (whether entered into before, on or after the commencement of this Part) may operate to vary, modify or restrict in any way section 12 or 16."

Therefore, the Tribunal finds that nature of the behaviour of the occupation was one of "tenants-in-common" as understood in the Act and regardless of the agreement that may have been signed, regardless of whether the landlord reserved the right to come and go from the dwelling Section 12 states at the outset that a landlord must:

"allow the tenant of the dwelling to enjoy peaceful and exclusive occupation of the dwelling" and therefore such clauses are invalid as they essentially act as an effort for the parties to contract out of obligations.

The Tribunal further examines the Appellant Landlord's submissions on the matter. The landlord in this instance states that the agreement in question pertains to multiple occupancy with the Respondent in the matter occupying one room in a larger dwelling with common areas shared with other. The Tribunal refers to Section 8 of the agreement of the parties which states that: "the licencee must use his best endeavours to share use of the Room and property amicably with the Owner and with such other licencees as the Owner from time to time permits to use the Room and property and must not interfere with or otherwise obstruct such shared accommodation in any way whatsoever."

The Tribunal again refers to Section 12(1)a of the Act which states:

"In addition to the obligations arising by or under any other enactment, a landlord of a dwelling shall—

(a) allow the tenant of the dwelling to enjoy peaceful and exclusive occupation of the dwelling.

The Tribunal therefore examines whether or not the Respondent in the matter was entitled to peaceful and exclusive occupation of the room in question as part of its consideration as to whether the occupation was a lease or a licencee. It is common practice for tenants to share a dwelling with each one having their own room. To this end the Tribunal refers to TR0421-004884. Appellant Landlord Teresa LeGear Keane & Respondent Tenant Sadie Farrell which dealt with the operation of the relationship between the parties in establishing the nature of the occupation.

The fact of the matter is that the Respondent was entitled to peaceful and exclusive occupation of the dwelling along with the other tenants who shared occupation of the rest of the dwelling. Rent was paid individually and in one sum but the fact that the parties were tenants-in-common means that the operation of the occupation was one of a tenancy not a licence agreement. As such the Tribunal finds that the dwelling comprises 31 Brickfields, Skehard Road, Cork which all the tenants held in common as multiple tenants.

It has further been recognised by the courts that there is a public interest in ensuring that persons in a vulnerable position, or one of little or no bargaining strength, are entitled to the protection of the Act. Judge Brennan in the case of RTB v Gleeson said that the:

“Act affords fundamental legal rights to tenants and that Section 3 of the Act is designed to be broad and inclusive and it is designed to include and not to exclude tenancies from the Act.”

The Court also had regard to Section 18 of the Act which prohibits a landlord from contracting out of the legislation.

The decision in Governors of the National Maternity Hospital Dublin v McGouran [1994] 1 ILRM 521 is the most commonly referred to case of licence determination. In that case the commercial agreement stated that a coffee shop in the hospital did not have exclusive possession and the High Court found that the agreement was a licence only and not a tenancy. Judge Brennan held that he could distinguish the McGouran case on the grounds that the case before him was a residential premises which could result in the deprivation of a tenant’s rights.

Therefore, the Tribunal finds that the tenancy is one to which the 2004 Residential Tenancies Act applies.

Finding 2: A notice of rent review served by the Appellant Landlord on the Respondent Tenant on the 19th August 2023, is invalid.

Reasons: Section 22 of the Act outlines the requirements for a valid notice of rent review. The section states:

22.—(1) The setting of a rent (the “new rent”) pursuant to a review of the rent under a tenancy of a dwelling and which is otherwise lawful under this Part shall not have effect unless and until the condition specified in subsection (2) is satisfied.

(2) That condition is that, at least 90 days before the date from which the new rent is to have effect, a notice in the prescribed form is served by the landlord on the tenant stating the amount of the new rent and the date from which it is to have effect and the matters specified in subsection (2A).

(2A) The notice referred to in subsection (2) shall—

(a) without prejudice to subsection (2) and pursuant to the condition referred to in that subsection, state the amount of the new rent and the date from which it is to have effect,

(b) include a statement that a dispute in relation to the setting of a rent pursuant to a review of the rent under a tenancy must be referred to the Board under Part 6 before—

(i) the date stated in the notice as the date from which that rent is to have effect, or

(ii) the expiry of 28 days from the receipt by the tenant of that notice,

whichever is the later,

(c) include a statement by the landlord that in his or her opinion the new rent is not greater than the market rent, having regard to—

(i) the other terms of the tenancy, and (ii) letting values of dwellings—

(I) of a similar size, type and character to the dwelling that is the subject of the tenancy, and

(II) situated in a comparable area to that in which the dwelling the subject of the tenancy concerned is situated,

(d) specify, for the purposes of F67[paragraph (c)], and without prejudice to the generality of that paragraph, the amount of rent sought for 3 dwellings—

(i) of a similar size, type and character to the dwelling that is the subject of the tenancy, and

(ii) situated in a comparable area to that in which the dwelling the subject of the tenancy concerned is situated,

(e) include the date on which the notice issigned,

F70[(f) where the dwelling is in a rent pressure zone (within the meaning given in section 19(7)), state how the rent set under the tenancy was calculated having regard to section 19(4) or, where section 19(4) does not apply, state why it does F71[not apply, and]]

F72[(g) where the dwelling is in a rent pressure zone (within the meaning given by section 19(7)) to which F73[section 19(4)] applies, state how any increase in the rent last set under the tenancy of the dwelling was calculated or, where F73[section 19(4)] does not apply, state why it does not apply.]

(2B) The notice referred to in subsection (2) shall be signed by the landlord or his or her authorised agent.

(2C) In this section "amount of rent sought" means the amount of rent specified for the letting of a dwelling in an advertisement the date of which falls within the period of 4 weeks immediately preceding the date on which the notice referred to in subsection (2) is served.]

The notice as served by the Appellant in the matter is not in compliance with the above. Consequently, it is invalid.

Finding 3: A Notice of Termination dated the 2nd October 2023, served by the Appellant Landlord on the Respondent Tenant, is invalid.

Reasons: A Part 4 tenancy may not be terminated by the landlord save in accordance with section 34 of the Act. The ground in question cited by the landlord in the notice of 2nd October 2023 is that the tenant is in breach of obligations in not paying the increased rent. As established in 2 above, the rent was not validly reviewed in accordance with the Act. As such there was no breach to be remedied, therefore no valid notice could be issued.

Finding 4: The tenant terminated the tenancy on 31st October 2023.

Reason: As established in 3 above the notice of termination served by the landlord was invalid. This notice had also been challenged by the tenant in the matter. Therefore, the landlord did not terminate the tenancy when the tenant moved out on 31st October 2023, the tenant did.

Finding 5: The landlord is in breach of obligation in disturbing the peaceful & exclusive occupation of the dwelling.

Reasons:

It is neither acceptable nor legally permissible for a landlord to establish a licence agreement with a tenant and, for instance, enter the premises occasionally to deny

exclusive possession, in order to create a legally binding licence. Instead, the RTB's decision makers should assume they have jurisdiction unless the landlord can prove otherwise. Failing to do so would enable the use of sham agreements and allow landlords to evade their obligations under the Act. As cited before, Section 12(1) states that a landlord shall "allow the tenant of the dwelling to enjoy peaceful and exclusive occupation of the dwelling," Although there was no direct evidence by the Respondent in the matter, such evidence was not required to reach a determination in the matter. The direct evidence of the Appellant Landlord's Representative was that they stored goods in the dwelling and accessed same at their own discretion. They say this was done as the arrangement was one of a licence, but that has been shown to be a false premise.

The inclusion of a clause in the lease agreement granting the landlord the right to access the dwelling does not mean the landlord was entitled to infringe on tenants' rights to peaceful occupation. Nor does the exercise of such a clause. Such actions infringe upon the tenant's entitlement to peaceful and exclusive occupation of the dwelling. The landlord's obligations to provide peaceful enjoyment cannot be circumvented by such a clause, and tenants cannot waive their rights to these protections through the lease agreement.

In respect to its powers under Section115 of the Act, the Tribunal directs that an amount of damages in the sum of €1,000 be paid by the Appellant Landlord to the Respondent Tenant within 28 days of the date of issue of this order.

8. Determination:

Tribunal Reference TR0424-007462

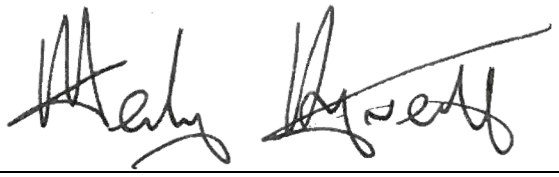
In the matter of Roth Morgan Investment Pty Ltd (Landlord) and Kaedee Jay Trabajo (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination dated the 2nd October 2023, served by the Appellant Landlord on the Respondent Tenant, in respect of the tenancy of the dwelling at 31 Brickfields, Skehard Road, Cork, is invalid.

2. The Notice of Rent Review dated the 19th August 2023, served by the Appellant Landlord on the Respondent Tenant in respect of the tenancy of the dwelling at 31 Brickfields, Skehard Road, Cork, is invalid.

3. The Appellant Landlord shall pay the sum of €1,000 to the Respondent Tenant within 28 days of the date of issue of this order, being damages for breach of landlord obligation in not allowing peaceful and exclusive occupation of the dwelling at 31 Brickfields, Skehard Road, Cork,

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 12/07/2024.

Signed: 

Healy Hynes Chairperson
For and on behalf of the Tribunal.