Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0522-005471 / Case Ref No: 0122-75128

Appellant Landlord:	Charles Crowley
Respondent Tenant:	Richard O'Neill
Address of Rented Dwelling:	1 Castle Mews, Castle Road, Blackrock, Cork, T12WCR4
Tribunal:	Anne Leech (Chairperson) Fintan McNamara, Dervla Quinn
Venue:	Virtual
Date & time of Hearing:	04 August 2022 at 2:30 p.m.
Attendees:	The Appellant Landlord: Charles Crowley on 20th July & 4th August 2022. The Respondent Tenant: Richard O'Neill on 20th July 2022.
In attendance:	RTB appointed stenographer/logger

1. Background:

On 26th January 2022 the Landlord 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 7th April 2022. The Adjudicator determined that:

In the matter of Charles Crowley [Applicant Landlord] and Richard O'Neill [Respondent Tenant], the Adjudicator, in accordance with Section 97 of the Residential Tenancies Act, 2004, as amended:

1.The Notice of Termination of 15th July 2021 served by the Applicant Landlord on the Respondent Tenant in respect of the tenancy of the dwelling at 1 Castle Mews, Castle Road, Blackrock, Cork, is invalid.

2.The Notice of Rent Review, dated in or around the 1st April 2015, served by the Applicant Landlord on the Respondent Tenant, in respect of the aforementioned tenancy, is invalid.

3.The Respondent Tenant shall pay the sum of €1,245.65 to the Applicant Landlord, within 28 days of the date of issue of the Determination Order. This sum of €1,245.65 consisting of damages of €2,200 for breach of tenant obligations pursuant to sections 16(c), 16(h) and 16(f) of the Act having deducted €954.35 for an overpayment of rent in respect of the aforementioned tenancy.

4.The Respondent Tenant shall continue to pay rent from 7th April 2022, being the date of the (virtual) adjudication hearing, to the Applicant Landlord, at the rate of €850 per month, unless lawfully varied, together with any other charges provided for under the terms of the

tenancy agreement, for each month or part thereof, until such time as the above dwelling is vacated by the Respondent Tenant and any other persons residing therein.

Subsequently an appeal was received by the RTB by the Landlord.

The RTB constituted a Tenancy Tribunal and appointed Anne Leech, Fintan McNamara and Dervla Quinn as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Anne Leech to be the Chairperson of the Tribunal ("the Chairperson").

On 23rd June 2022 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 20th July 2022 at 14.30pm and again on 4th August 2022 at 14.30pm the Tribunal convened a virtual hearing on MS Teams.

2. Documents Submitted Prior to the Hearing Included:

RTB Tribunal case files.

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

Procedure on 20th July 2022:

The Chairperson asked the parties at the virtual hearing of the Tribunal to identify themselves and to identify in what capacity they were present at the Virtual Hearing. 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. In particular, she outlined 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 Landlord) would be invited to present his case first, that there would be an opportunity for cross-examination by the Respondent Tenant who would then be invited to present his case and that there would then be an opportunity for him to be cross-examined by the Appellant Landlord. The Chairperson explained that following this, both parties would be given an opportunity to make final submissions. She informed the parties that the hearing was a de novo hearing.

The Chairperson stressed that all evidence would be taken on affirmation and would be recorded by the official stenographer and she informed 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 RTB 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. Prior to commencing evidence, the Chairperson informed the parties that it was open to them to reach an agreement. The Chairperson advised the parties of the benefits of reaching an agreement and advised them that any agreement reached would be capable of retaining the enforceability of an Order of

the RTB. The Chairperson indicated that, if the parties wished to discuss matters among themselves the Tribunal would exit the virtual hearing and allow them to proceed with their discussions.

The parties availed of the opportunity but subsequently they sought time from the Tribunal to meet in person at the dwelling to discuss matters. After clarifying the position with the RTB about the possibility of arranging a new virtual hearing date, the Chairperson informed the parties that the matter would be adjourned to 4th August 2022 at 14.30pm which date and time suited the parties and the members of the Tribunal. The Chairperson informed the parties that the hearing would resume on the adjourned date if settlement had not been reached between them.

Procedure on 4th August 2022:

The Chairperson asked the party present at the virtual hearing of the Tribunal to identify himself and to identify in what capacity he was present at the Virtual Hearing. The Chairperson confirmed with the party present that he had received the relevant papers from the RTB in relation to the case and that he had received the RTB document entitled "Tribunal Procedures".

The Chairperson noted that there was no attendance by or on behalf of the Respondent Tenant. The Chairperson said that there was no reason submitted by him for his non-attendance, nor a request for an adjournment, nor an indication that he wished for the matter to proceed in his absence. The Chairperson explained that as the party present was the Appellant Landlord, his case would proceed. She explained the procedure which would be followed in the absence of the Respondent Tenant. She outlined that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible. She explained that the Appellant Landlord would be invited to present his case and that members of the Tribunal would be permitted to raise questions or examine him on his oral evidence and on his documentary evidence contained in the RTB Tribunal case files of which there were four. The Chairperson explained that following this the Appellant Landlord would be given an opportunity to make final submissions. She informed him that the hearing was a de novo hearing and she explained to him the meaning of this.

The Chairperson reminded the Appellant Landlord 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 Chairperson stressed that all evidence would be taken on affirmation and would be recorded by the official stenographer and she informed the Appellant Landlord 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 Appellant Landlord made an affirmation and commenced his evidence. The Chairperson asked the Appellant Landlord to confirm and/or clarify certain matters regarding the tenancy and the appeal. The list of matters is set out in this report at the conclusion of his evidence.

5. Submissions of the Parties:

Summary of evidence by the Appellant Landlord:

The Appellant Landlord commenced his case by informing the Tribunal that he had tried to contact the Respondent Tenant on two occasions after the Tribunal hearing on 20th July 2022, however, there was no response. He said he had called to the door of the dwelling as his house adjoins it. He said he could not telephone the Respondent Tenant as he does not have the latter's number.

Rent Reviews:

The Appellant Landlord gave evidence that on 1st December 2013 he wrote to the Respondent Tenant to inform him that the rent was being increased to €850 per month from 1st January 2014. He said that the Respondent Tenant did not dispute this and commenced paying the increased rent in early January 2014, as vouched by bank statements of the Appellant Landlord. He submitted this rent review pre-dated the change in the law regarding rent reviews. He said he hand delivered his letter to the dwelling on the date he wrote it.

The Appellant Landlord gave evidence that on 1st December 2015 he wrote to the Respondent Tenant to inform him that the rent was being increased to €1,150 per month for the month of January 2016 and each month thereafter. He said that the Respondent Tenant objected to this and did not pay the increased rent as vouched by bank statements of the Appellant Landlord.

The Appellant Landlord gave evidence that on 1st January 2016 he wrote to the Respondent Tenant to inform him that the rent was being increased to €1,150 per month from 1st April 2016. He said the Respondent Tenant did not dispute this and he commenced paying the increased rent a day earlier than requested on 31st March 2016, as vouched by bank statements of the Appellant Landlord. He submitted this rent review post-dated the change in the law regarding frequency of rent reviews introduced in December 2015 and that it pre-dated the change in the law in 2016 regarding the format/contents of a rent review and rent pressure zones. He said he hand delivered his letter to the dwelling on the date he wrote it.

The Appellant Landlord submitted that there were no subsequent rent reviews and the increased monthly rent of €1,150 continued to be paid until July 2017 when the Respondent Tenant reduced the amount of rent payments.

When questioned by the Tribunal regarding a letter written to the Respondent Tenant which appeared to be dated 1st March 2016 contained in Tribunal case file 3 at page 18, the Appellant Landlord responded that this was a reminder letter to the Respondent Tenant about the new rent commencing on 1st April 2016 of €1,150 per month.

When questioned by the Tribunal regarding the market rent of the dwelling the Appellant Landlord referred to a letter dated 11th May 2022 contained in Tribunal case file 1 at page 295. The letter was from Eric Barry of McLoughlin Barry Estates who confirmed in it that "we let the fully furnished property known as 1 Castle Mews for Charles Crowley on 24 May 2012 to Richard O'Neill and Joanna O'Sullivan". It continued: "Mr. Crowley sought a rent increase to €1,150 in January 2016 and we find this to be a realistic rental valuation at that time".

The Appellant Landlord concluded this part of his evidence by submitting that the monthly rent was €1,150 as of 1st April 2016 which was the market rent for the dwelling and which the Respondent Tenant was happy to and did pay at that time.

Rent arrears:

The Appellant Landlord gave evidence that the rent was in arrears and that the amount due and owing as of 31st July/1st August 2022 was €22,100. He referred to an up to date Schedule of arrears he had prepared which was in Tribunal case file 4 together with bank statements which showed that the Respondent Tenant had paid a total of €4,400 in rent for 2022, the last payment being €850 on 4th July 2022. When questioned by the Tribunal he said that the arrears of rent were based on the monthly rent of €1,150. He confirmed in his evidence that the bank statements in the Tribunal case files vouched the figures in his Schedule.

Notice of Termination dated 15th July 2021: rent arrears

The Appellant Landlord gave evidence that due to the ongoing arrears of rent he sent the Respondent Tenant a 14 day warning letter dated 1st January 2016 in which he sought rent arrears. He gave evidence that he tried unsuccessfully to discuss the matter with the Respondent Tenant. He said that as the rent arrears were substantial, on 19th March 2021 he hand delivered to the dwelling a warning letter he had written that day to the Respondent Tenant seeking the discharge of rent arrears of €12,250. In his letter he requested the Respondent Tenant's proposal over the next fourteen days.

As the arrears remained outstanding, the Appellant Landlord gave evidence that he served a written Notice of Termination for rent arrears dated 15th July 2021 on the Respondent Tenant. He said he served it by putting through the letter box of the dwelling on 15th July 2021. He said he sent to the RTB an RTB Notice of Termination Form.

When questioned by the Tribunal, the Appellant Landlord said he received no response from the RTB regarding the RTB Notice of Termination Form. He said he thought he had sent it to the RTB by email. When questioned by the Tribunal why the copy RTB Notice of Termination Form in the Tribunal case file was dated 12th July 2021 yet his Notice of Termination was dated and served on 15th July 2021, he suggested he may have prepared the RTB Notice of Termination Form in advance but had not filed it with the RTB at that stage. When questioned by the Tribunal regarding the whereabouts of the first letter of arrears dated 1st January 2016, the Appellant Landlord said he had given everything that was necessary to the RTB. He was also questioned by the Tribunal regarding the filing with the RTB of the warning letter to the Respondent Tenant dated 19th March 2021. He said he could not recall if he had sent it to the RTB.

The Appellant Landlord concluded this part of his evidence by submitting that the Notice of Termination dated and served on 15th July 2021 was valid. He submitted that as the Respondent Tenant remained in occupation of the dwelling after the termination date of 20th August 2021 he was overholding and should no longer be residing in the dwelling.

Breach of Tenant obligations:

Failure to provide written notification of identity:

The Appellant Landlord gave evidence that initially the dwelling was rented to the Respondent Tenant and another tenant on 24th May 2012. He said the other tenant moved out at some stage in 2015. He said that as his own house adjoined the dwelling he could see who was coming and going to the dwelling. He said he became aware that there was another tenant residing in the dwelling. He said the Respondent Tenant confirmed this to him when he called to the dwelling. However, he said that the Respondent Tenant refused to give him the name and address of the other tenant whom he believed had been residing in the dwelling for a few years. He said he had a statutory right to know who else was living

in the dwelling and he claimed the Respondent Tenant was in breach of the written letting agreement regarding sharing the dwelling without his written consent. He said he wrote and hand delivered a letter to the Respondent Tenant informing him that as he (the Landlord) had not been informed of the other tenant's full name and contact details the tenancy agreement was now terminated and he (the Tenant) was being given twenty eight days to vacate the dwelling.

When questioned by the Tribunal the Appellant Landlord responded that he still did not have the other tenant's name and contact details. He confirmed the rent covered the dwelling and he was not as such at a financial loss by this other person's presence.

Failure to permit inspections of the dwelling:

The Appellant Landlord gave evidence that he has a number of other rental properties which he inspects a few times a year. In respect of the tenancy of the dwelling in this case, he said from the start of the tenancy in 2012 to 2015 he was able to go into the dwelling and spoke to the Respondent Tenant about rent reviews. On these occasions he said he noticed the dwelling was kept reasonably well. He said that prior to July 2021 he had not been in the dwelling for approximately five years. He said he had repeatedly requested of the Respondent Tenant to inspect the dwelling but he was refused. He said the purpose of seeking an inspection was to see the condition of the dwelling and to see if it was necessary to carry out any repairs. He said the Respondent Tenant never approached him about seeking repairs or maintenance to the dwelling in the last five years. Access was permitted in July 2021 when it became necessary to do work on an adjoining property of the dwelling. He said he wrote and hand delivered a letter dated 15th July 2021 to the Respondent Tenant informing him that as he had repeatedly refused entry to the dwelling this was a breach of the tenancy agreement.

The Appellant Landlord concluded this part of his evidence by saying that currently repair and restoration works cannot be carried out to the dwelling or progressed as the Respondent Tenant will not answer the door.

Failure to maintain the dwelling /damage in excess of wear and tear:

The Appellant Landlord gave evidence that when he managed to inspect the dwelling last July 2021 he was shocked by the condition it was in. He referred to some photos of the Estate Agent in the Tribunal case files used to advertise the dwelling for rent in 2012 and some photographs he (the Landlord) had taken at the inspection in July 2021. He gave evidence that the dwelling inside was dirty, untidy, cluttered, unpainted and the windows were filthy. He claimed the shower was not working and water was leaking in one bathroom. In the second bathroom he claimed water was leaking down into the garage of the adjoining property which he said he owned and which he said was rented to other tenants. He referred to his photo of the adjoining garage which he said showed water damage to the ceiling of the garage from the leak in one of the bathrooms in the dwelling. He said there was water damage to the electric light and electric fuse board in the adjoining garage. He referred to reports of his plumber, Greg McCarthy, contained in RTB Tribunal case file 1 at pages 13 & 132 describing the damage. He said the gas boiler had not been serviced and according to his plumber it will have to be replaced. The Appellant Landlord submitted that the damage was caused by the Respondent Tenant to the dwelling and that it was in excess of normal wear and tear.

Externally, the Appellant Landlord gave evidence that the garden was in terrible condition, was overgrown and had not been maintained in the last three years. He said garden maintenance was an obligation of the written letting agreement.

Failure to inform the Landlord regarding the condition of the dwelling:

The Appellant Landlord gave evidence that the Respondent Tenant never approached him about seeking repairs or maintenance to the dwelling in the last five years and the proof of this was the condition of the dwelling when he inspected it in July 2021. He said he was unable to quantify how much the repair and restoration costs were going to be. He suggested they could be in the region of €20,000.

Anti-social/inappropriate behaviour:

The Appellant Landlord gave evidence that the other unknown tenant frequently parked her car in various unauthorised places resulting in neighbours being unable to exit their driveways. He said the dwelling was let with parking for one car and the Respondent Tenant usually parked in this place. He said he has received many complaints from his neighbours about this which has caused disharmony and embarrassment with them. He claimed the Respondent Tenant also created friction with the neighbours about the parking.

The Appellant Landlord claimed Rentokil had concluded with him that a mouse infestation in the adjoining property of the dwelling originated from a mouse infestation in and outside of the dwelling. When questioned by the Tribunal the Appellant Landlord responded that he believed mouse infestation was anti-social behaviour as the presence of the mice was an embarrassment to and for neighbours.

The Appellant Landlord concluded his evidence by saying that the difficulties and problems caused by the Respondent Tenant in the neighbourhood cannot be underestimated and that he had broken all the terms of the written tenancy agreement.

In conclusion he said he wanted a declaration that the Respondent Tenant was overholding on the basis of the Notice of Termination dated 15th July 2021 issued due to rent arrears which he claimed amounted to €22,100 prior to the date of the hearing of 4th August 2022 and were based on a monthly rent of €1,150 payable since 1st April 2016. He said he was also claiming damages for breach by the Respondent Tenant of the various statutory and letting agreement obligations.

6. Matters Agreed Between the Parties:

Matters confirmed/clarified by the Appellant Landlord regarding the tenancy:

- The address of the dwelling is 1 Castle Mews, Castle Road, Blackrock, Cork, T12WCR4.
- The tenancy of the dwelling commenced on 24th May 2012 and was initially for one year to 24th May 2013. Thereafter it continued to roll over annually.
- The rent at the commencement of the tenancy was €800 per month payable on the 24th day of each month.
- The current rent payable is €1,150 at the start of each month since 1st April 2016.
- A security deposit of €800 was paid by the Respondent Tenant at the commencement of the tenancy which is held by the Appellant Landlord.

- The Respondent Tenant continues to reside in the dwelling.

- The issues before this Tribunal are a rent review, rent arrears, validity of the Notice of Termination dated 15th July 2021/overholding, breach of Tenant obligations to: inform the Landlord of the identity of another resident in the dwelling, to permit inspections, to maintain the dwelling / damage in excess of normal wear and tear, to inform the Landlord of the damage and anti-social/inappropriate behaviour.

7. Findings and Reasons:

Having considered the documentation of the parties contained in the RTB case files and having considered the evidence presented to it by them, the Tribunal's findings and reasons therefor are set out hereunder:

Finding No.1: The Tribunal finds the rent review dated 1st January 2016 is invalid.

Reasons:

The law applicable when the review took place on 1st January 2016 was contained in Section 19-24 of the Residential Tenancies Act 2004 relating to rent and rent reviews. S.19 prohibited an initial rent or reviewed rent from being set at an amount greater than the market rent. Section 24 defined market rent as the rent that a willing tenant would give and a willing landlord would take for vacant possession, having regard to the other tenancy terms and the lettings of a similar size, type and character and located in a similar area.

Section 20 provided for no earlier than annual rent reviews (unless there was a substantial change in the nature of the accommodation in the interim). However, the Residential Tenancies (Amendment) Act 2015 came into effect on 4th December 2015 and amended S. 20 of the 2004 Act. It prohibited rent reviews more frequently than once in every two year period since the previous review. S. 22 of the 2004 Act was also amended by the Residential Tenancies (Amendment) Act 2015 and provided that the notification period before a new rent could take effect was 90 days instead of 28 days being the previous notification period.

The Tribunal has no issue with service of the notification on 1st January 2016 and accepts the evidence of hand delivery to the dwelling due to its proximity to the Appellant Landlord's dwelling. It notes from the review that 90 days notice of the increase was given to the Respondent Tenant as provided for by S.22 and it notes the rent review prior to this one took place more than two years beforehand, as provided for by S.20.

However, the Tribunal is not satisfied that the new rent was in fact the market rent when the review took place on 1st January 2016 contrary to S. 19. The Appellant Landlord provided a letter dated 11th May 2022 from Eric Barry of McLoughlin Barry Estates who confirmed in it that the dwelling had been let on 24th May 2012 to the Respondent Tenant and that the Appellant Landlord had sought a rent increase to €1,150 in January 2016 which the estate agent found to be a realistic rental valuation at that time. (The Tribunal notes that the estate agent did not even refer to the pre-existing rent of €850 in his letter of 11th May 2022 which suggests he may not have known that the rent had been increased after the initial letting in 2012).

In any event, this letter was provided by the Appellant Landlord after the Adjudication on 7th April 2022. If the Appellant Landlord wanted to validly review the rent, he should have ascertained from the estate agent what the market rent was when he decided to review the

rent back on 1st January 2016. This letter is a form of retrospective rent review and is insufficient to prove or vouch that over six years ago the market rent was €1,150 which was a “realistic rental valuation at that time”.

The fact that the letter was only provided after the Adjudication and was dated 11th May 2022 confirms the retrospective nature of the assessment of the market rent. Moreover, there was no evidence by the Appellant Landlord that he consulted an estate agent prior to or at the time of the rent review. In the circumstances, how and on what basis was he able to come up with the increase from €850 to €1,150 which is in effect an increase of just under 30% from the previous rent in a period of over 2.5 years since the previous review. He submitted that the Respondent was happy to pay the increase at the time. It is therefore arguable that this was a willing tenant prepared to pay the increase and a willing landlord prepared to accept the higher rent, as provided for in S. 24. However, when setting the rent and agreeing to pay it, there was no evidence provided by him or the estate agent of regard to the other tenancy terms and lettings of a similar size, type and character and located in a similar area, which is also a requirement of S. 24.

In all the circumstances, the review of the rent on 1st January 2016 was invalid and the Tribunal finds that the monthly rent of €850 was the applicable rent from 1st January 2014 when it first became payable. The monthly rent continues to be €850 as the evidence of the Appellant Landlord was that no further rent review took place after the date of 1st January 2016.

In view of the foregoing finding, the Tribunal now makes the following finding regarding rent of the dwelling.

Finding no. 2 The Tribunal finds that as the rent review of 1st January 2016 was invalid the claim by the Appellant Landlord for rent arrears fails. The Respondent Tenant is entitled to a refund in the total sum of €5,150 in over paid rent.

Reasons:

The Tribunal made a finding for the reasons stated at no.1 that the rent review of 1st January 2016 was invalid and that the monthly rent of €850 was the applicable rent from 1st January 2014 when it first became payable. It continued to be €850 as no further rent review took place after the date of 1st January 2016.

The Tribunal has reviewed the vouching documents of the Appellant Landlord to include his Schedule of payments in the RTB Tribunal case files. It has also examined his bank statements showing the various rental payments. The Tribunal has made the following calculation of the rent paid and rent due from the purported rent review of 1st January 2016 to date:

- In 2016 a total of €11,750 was paid covering 11 months based on a combination of the old rent of €850 and the new rent of €1,150. The total rent paid should have been 12 months @ €850 per month making a total of €10,200. There was an over payment of €1,550.

- In 2017 a total of €12,350 was paid covering 11 months based on a combination of the new rent of €1,150 and a reduced rent payment by the Respondent Tenant of €1,110. The total rent paid should have been 12 months @ €850 per month making a total of €10,200. There was an over payment of €2,150.

- In 2018 a total of €13,200 was paid covering 12 months of a reduced rent payment by the Respondent Tenant of €1,110. The total rent paid should have been 12 months @ €850 per month making a total of €10,200. There was an over payment of €3,000.

- In 2019 a total of €11,000 was paid covering 10 months of a reduced rent payment by the Respondent Tenant of €1,110. The total rent paid should have been 12 months @ €850 per month making a total of €10,200. There was an over payment of €800.

- In 2020 a total of €8,600 was paid covering 8 months of a reduced rent payment by the Respondent Tenant of €1,110. The total rent paid should have been 12 months @ €850 per month making a total of €10,200. There was an under payment of €1,600.

- In 2021 a total of €11,000 was paid covering 11 months of a further reduced rent payment by the Respondent Tenant of €1,000. The total rent paid should have been 12 months @ €850 per month making a total of €10,200. There was an over payment of €800.

- In 2022 to the date of the virtual Tribunal hearing of 4th August, a total of €4,400 was paid: €1,000 on 31st January and on 15th April, €700 on 13th May and €850 on 10th June and on 4th July. The total rent should be 7 months @ €850 per month making a total of €5,950. There has been an under payment of €1,550.

- Accordingly, for the period 1st January 2016 to 4th August 2022, €8,300 was over paid by the Respondent Tenant and €3,150 was under-paid, resulting in a balance over-payment of €5,150.

While the Respondent Tenant made no claim or counterclaim regarding over-payment, in circumstances where it is a consequence of the invalid rent review of 1st January 2016, the Tribunal is obliged to deal with the matter and it finds that the Respondent Tenant has overpaid rent in the total sum of €5,150.

Finding no.3: The Notice of Termination of 15th July 2021 served by the Appellant Landlord on the Respondent Tenant in respect of the tenancy of the dwelling at 1 Castle Mews, Castle Road, Blackrock, Cork, is invalid.

Reasons:

The Appellant Landlord sought to terminate the tenancy due to rent arrears. New rent arrears procedures enacted by the Government during the global pandemic continue notwithstanding the ending on 12th July 2021 of the last of the Government designated emergency periods.

The new procedures contained in S. 67 (2) (aa) & (3) (a) & (b) provide that where a Tenant is in rent arrears, a Landlord must issue a written warning notice calling on the Tenant to pay back the rent arrears within 28 days. The warning notice must set out the full amount of arrears owed by the Tenant and it must explain that failure to pay 100% of the rent owed within the time provided will result in a Notice of Termination being served. At the same time, the Landlord must send a copy of the 28 day warning notice to the RTB. The 28 day warning notice period only begins to count when both the Tenant and the RTB have received the warning notice. Failure by a Landlord to submit a copy of the warning notice to the RTB will invalidate any related Notice of Termination.

The purpose of sending a copy of the warning notice to the RTB is to enable the RTB to write to the Landlord acknowledging receipt of the written arrears warning notice and to provide information on new Landlord rights. In respect of a Tenant, the RTB will also write to the Tenant and provide information on income supports, availability of advice from MABS, a link to a self-declaration form and information on new Tenant protections.

If the rent is not paid within the 28 day period set out in the written warning letter, the Landlord can proceed to issue and serve a Notice of Termination to terminate the tenancy

as provided for by No.1A of the Table to S.34. At the same time, the Landlord must send a copy of the Notice of Termination to the RTB as required by S. 39A and failure by a Landlord to do so will invalidate the Notice of Termination as provided for by S.67 (3C).

The Tribunal has reviewed the warning letter dated 19th March 2021 from the Landlord to the Tenant and the contents of the letter do not comply with the statutory requirement to give notice of 28 days to pay the full arrears. The Respondent Tenant was given 14 days. It also does not explain that failure to pay 100% of the rent owed within the time provided will result in a Notice of Termination being served.

Further, there was no evidence that the Landlord had submitted a copy of the warning letter to the RTB. As the statutory requirements of the legislation have not been complied with, the Notice of Termination of 15th July 2021 is automatically invalid and there is no requirement on the Tribunal to make a finding regarding the reason for and contents of the Notice of Termination. Moreover, the finding regarding the overpayment of rent makes no difference to the finding herein as the Tribunal notes from the evidence that the Appellant Landlord issued the warning letter and subsequent Notice of Termination in the belief that arrears were due and owing at the material times.

Finding no.4: The Tribunal finds that the Respondent Tenant was in breach of a number of obligations on him pursuant to Section 16 of the 2004 Act and awards the Appellant Landlord a total of €4,400 for the breaches.

Reasons:

The Tribunal is satisfied from the oral and documentary evidence that the Appellant Landlord's claims against the Respondent Tenant as set out below have been proven. In this regard, the Tribunal notes that the Appellant Landlord's claims were not challenged by the Respondent Tenant who had the opportunity to do so by attending the Tribunal on 4th August 2022 which date he said was suitable for him at the Tribunal hearing on 20th July 2022. The Tribunal also accepts the evidence of the Appellant Landlord that he unsuccessfully tried to contact the Respondent Tenant on two occasions after the Tribunal hearing on 20th July 2022 by calling to the door of the dwelling. He said he could not telephone the Respondent Tenant as he does not have the latter's number. The Respondent Tenant could have responded in writing to the RTB to deny the Landlord's claims but he did not. The Tribunal has taken these factors into account together with the oral and documentary evidence in making its findings.

The following claims are proven to the satisfaction of the Tribunal:

1. S.16 (n) obliges a Tenant to notify the Landlord in writing of the identity of each person residing in the dwelling. The Appellant Landlord's oral evidence was that he wrote and hand delivered a letter to the Respondent Tenant informing him that he had not been informed of the full name and contact details of the other person in occupation of the dwelling. The letter was undated and the contents and format were insufficient to terminate the tenancy. The Appellant Landlord submitted he was not at a financial loss by this other person's presence yet he still has not received from the Respondent Tenant the other person's name and contact details. The Tribunal is satisfied that the statutory obligation has been breached, or more honoured in the breach than in the observance, for which the Tribunal awards the Appellant Landlord €500.

2. S.16 (c) obliges a Tenant to allow, at reasonable intervals, the Landlord access to the dwelling (on a date and time agreed in advance with the Tenant) for the purposes of

inspecting the dwelling. The Appellant Landlord's oral evidence was that he wrote and hand delivered a letter dated 15th July 2021 to the Respondent Tenant informing him that as he had repeatedly refused entry to the dwelling this was a breach of the tenancy agreement. The Tribunal accepts the Appellant Landlord's evidence that prior to this letter he had asked the Respondent Tenant many times to inspect the dwelling and that in the early years of the tenancy he was permitted to enter the dwelling albeit on the matter of rent reviews. It accepts his evidence that prior to the inspection in July 2021 he had not been in the dwelling for approximately five years. The Appellant Landlord by his own evidence is an experienced Landlord and he clearly understands the purpose of an inspection. He has a statutory duty of maintenance and repair of a rented dwelling which he owns. He cannot comply with this obligation unless he is permitted access to the dwelling. While there was no evidence that complaints were made by the Respondent Tenant to him regarding maintenance and repair, nevertheless the Appellant Landlord was clearly frustrated, exasperated and upset by his position which the Tribunal observed when giving his evidence. The Tribunal is satisfied that the statutory obligation has been breached, or more honoured in the breach than in the observance, for which the Tribunal awards the Appellant Landlord €600.

3. S.16 (f) obliges a Tenant not to do any act that would cause a deterioration in the condition the rented dwelling was in at the commencement of the tenancy beyond normal wear and tear, the latter which is assessed by having regard to the duration of the tenancy, the extent of occupation the Landlord must have reasonably foreseen would occur since the commencement of the tenancy and any other relevant matters. The Appellant Landlord's oral evidence was that when he inspected the dwelling in July 2021 he was shocked by the condition of it and he referred to some pre letting photos of 2012 and photos he took at the inspection. He gave evidence of the state of the interior and exterior.

In respect of the exterior, the Tribunal accepts his evidence. While there was no vouched evidence of the cost of restoration of the garden the Tribunal finds the appropriate level of damages is €800 which should cover labour and time costs for the initial restoration work.

In respect of the interior, there is no obligation on a Tenant to keep the dwelling clean and tidy during the tenancy. However, if dirt is so egregious as to constitute a deterioration in/to the dwelling and, if proven, it may be a breach of S.16 (f). While the Tribunal notes the Appellant Landlord's concern and has reviewed the photos, the evidence was insufficient to make a finding of deterioration in/to the dwelling.

The Appellant Landlord also gave evidence regarding the internal workings or otherwise of the bathrooms and of damage to the adjoining building. The Tribunal accepts the oral and photographic evidence together with the brief reports of the plumber regarding the leak of water from one of the bathrooms in the dwelling to the adjoining property. The Tribunal finds that this would and has caused deterioration to the dwelling beyond normal wear and tear, which was permitted to occur due to the inaction of the Respondent Tenant. Even if he did not realise or comprehend that it was a problem prior to the case being filed in the RTB by the Appellant Landlord on 6th January 2022, he must have been aware of it when he attended the virtual hearing on 20th July 2022. The Tribunal finds that the situation is compounded by the evidence of the Appellant Landlord that currently repair and restoration works cannot be carried out to the dwelling or progressed as the Respondent Tenant will not answer the door.

The Appellant Landlord was clearly frustrated, exasperated and upset by his position which the Tribunal observed when giving his evidence. The Tribunal is satisfied that the statutory

obligation has been breached and awards the Appellant Landlord €700. This is a matter which should be fully investigated and sorted at the earliest opportunity.

In respect of the gas boiler of the dwelling the Tribunal finds that the evidence provided is hearsay and not admissible. There was no evidence that the gas boiler would have to be replaced.

4. S.16 (d) obliges a Tenant to notify the Landlord or his/her authorised agent of any defect in the dwelling that arises and requires to be repaired to enable the Landlord comply with his/her obligation (to carry out repairs). The Tribunal is satisfied from the evidence that this statutory obligation has been breached and refers to the reasoning set out in no.3 above. The Tribunal awards the Appellant Landlord €1,000 for this breach.

5. S. 16 (h) obliges a Tenant not to 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. S. 17 defines anti-social behaviour as behaviour that constitutes the commission of an offence, causes fear, danger, injury, damage or loss, or includes violence, intimidation, coercion, harassment, obstruction or threats. It also includes persistent behaviour that prevents or interferes with the peaceful occupation of their dwellings by others on the building or it vicinity.

The Tribunal accepts the evidence of the Appellant Landlord regarding persistent, unauthorised parking in the vicinity of the dwelling resulting in inconvenience for neighbours and disharmony and embarrassment for the Appellant Landlord who again was clearly frustrated, exasperated and upset by his position, which the Tribunal observed when giving his evidence. The Tribunal notes that the letting included only one car parking space. The Tribunal is satisfied that the statutory obligation has been breached and awards the Appellant Landlord €800.

The Tribunal is not satisfied from the oral and documentary evidence that mouse infestation, which was not sufficiently proven, was a breach by the Respondent Tenant of his statutory obligation concerning anti-social behaviour.

In summary the total damages payable by the Respondent Tenant to the Appellant Landlord is €4,400. This is in respect of breaches of statutory obligations up to the date of the Tribunal hearing on 4th August 2022. The Landlord is free to make further applications for dispute resolution to the RTB in respect of any subsequent alleged breaches on the part of the Tenant.

8. Determination:

In the matter of Charles Crowley (Appellant Landlord) and Richard O'Neill (Respondent Tenant), the Tribunal, in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination of 15th July 2021 served by the Appellant Landlord on the Respondent Tenant in respect of the tenancy of the dwelling at 1 Castle Mews, Castle Road, Blackrock, Cork, is invalid.

2. The rent review dated and served on 1st January 2016 by the Appellant Landlord on the Respondent Tenant in respect of the tenancy of the dwelling at 1 Castle Mews, Castle Road, Blackrock, Cork, is invalid.

3. The Appellant Landlord shall pay the sum of €750 to the Respondent Tenant, within 56 days of the date of issue of the Determination Order, comprising the balance between the damages of €4,400 for breach of tenant obligations and the over-payment of rent by the Respondent Tenant of €5,150 in respect of the aforementioned tenancy.

4. The Respondent Tenant shall continue to pay rent from 4th August 2022, being the date of the (virtual) Tribunal hearing, to the Appellant Landlord, at the rate of €850 per month, unless lawfully varied, together with any other charges provided for under the terms of the tenancy agreement, for each month or part thereof, until such time as the above dwelling is vacated by the Respondent Tenant and any other persons residing therein.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 21/08/2022.

Signed:

Anne Leech, Chairperson
For and on behalf of the Tribunal.