

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0524-007545 / Case Ref No: 0324-94319

Appellant Tenant:	Rehan Ali
Respondent Landlord:	Jersia Ltd
Address of Rented Dwelling:	208 The New Maltings, Block D, Watling Street , Dublin 8, D08K5A2
Tribunal:	Helen-Claire O'Hanlon (Chairperson) Dervla Quinn, Michael Vallely
Venue:	Virtual
Date & time of Hearing:	15 July 2024 at 10:30
Attendees:	RTB Appointed Recording Technician
In Attendance:	Michelle Savage, Home Club, Agent/Representative for the Applicant/Respondent Landlord Rehan Ali, Respondent/Applicant Tenant

1. Background:

On the 23rd of March 2024 the Landlord made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 76 of the Act. The matter was referred to Mediation which took place on the 17th of May 2024. The matter was not resolved at mediation.

Subsequently the RTB received an application for a Tribunal Hearing from both the Landlord on the 21st of May 2024 and the Tenant on the 22nd of May 2024. The grounds of the application were stated to be Overholding. The applications were approved by the Board on the 22nd of May 2024.

The RTB constituted a Tenancy Tribunal and appointed Dervla Quinn, Helen-Claire O'Hanlon and Michael Vallely as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Helen-Claire O'Hanlon to be the chairperson of the Tribunal ("the Chairperson").

On the 19th of June 2024 the Parties were notified of the constitution of the Tribunal and provided with details of the date, time and login details set for the hearing.

On the 15th of July 2024 the Tribunal convened a Virtual Hearing via MS Teams.

2. Documents Submitted Prior to the Hearing Included:

RTB File

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

At the outset of the hearing, the Chairperson asked the participants in the virtual hearing to identify themselves and to say in what capacity they were taking part in the Tribunal. The Chairperson informed the participants that Tribunal hearings were public hearings. The Chairperson confirmed that the parties had received the relevant papers from the RTB and in particular that they had received, read and understood the "Tribunal Procedures" document.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the recording technician present. The Chairperson reminded participants 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 explained the procedure which would be followed; that the hearing was a de novo hearing; that the Tribunal was a formal procedure, but that it would be held in as informal a manner as was possible; that as both parties had applied to the Tribunal but the original application was the Landlord's, the Landlord's representative would be invited to present their case first; that there would be an opportunity for cross-examination by the Tenant; that the Tenant would then be invited to present their case, and that there would be an opportunity for cross-examination on behalf of the Landlord. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

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, per s.123 of the Act. As such, the Chairperson explained that the Tribunal would make the final determination on issues of fact.

The parties were offered the facility to have without prejudice discussions between themselves with a view to trying to resolve the matter on an agreed basis. The participants giving evidence were thereafter affirmed and the Tribunal proceeded to hear the dispute.

5. Submissions of the Parties:

Submissions of the Applicant Landlord:

Evidence of Michelle Savage:

Ms. Savage is the Agent on behalf of the Landlord. She said that the tenancy commenced in 2013, and was subject to a Part 4 tenancy and then a further Part 4 tenancy. The Landlord had purchased the dwelling from a receiver and it was already occupied by the Tenant. The Landlord did not wish for a further Part 4 tenancy to commence at the end of the current further Part 4 tenancy. The Landlord is aware that

the Tenant resides in the dwelling and his former partner also used to live there but has now moved out, and another person also rents a room in the dwelling.

The Landlord issued a Notice of Termination in January 2023 before the expiry of the last Part 4 tenancy, which had been of six years duration from February / March 2017. The Notice of Termination gave over 224 days notice, which was the maximum amount of notice required under the Act, and the Termination Date was 7th of September 2023.

Ms Savage referred to the Notice of Termination which had been submitted to the RTB. She said it had been sent to the Tenant by tracked post. It had been emailed to the RTB the same day. She referred to the digital stamp showing proof of postage and the confirmation of delivery included in the case files.

Ms Savage said that she has sympathy for the Tenant because she knows the housing market is difficult, but she said it has now been a year and a half since the Notice was issued and the termination date has long since expired. She said her agency would also be willing to help in sourcing alternative property if anything suitable came up that is within the Tenant's price range. She said that the other Tenant, the partner of the Tenant in attendance, has now moved out and has alternative accommodation.

Ms Savage said that the Tenant had queried whether the dwelling would be going on the market, because he thought perhaps he would be able to raise the funds to make an offer. However, the Agent said that the tenancy was not terminated for the purpose of sale. She said the Landlord has not decided yet what it will do with the dwelling. It may be renovated and upgraded and rented out again, or it may be sold. The dwelling will be reviewed once it is vacant before the Landlord decides on which course. But essentially, the Landlord does not want to continue with this tenancy and is entitled to terminate this tenancy before a new Part 4 commences.

The Agent was cross examined by the Tenant. She was asked why she has not let him know if the dwelling is to be sold or put back on the rental market. She said she had previously explained to him that the Landlord has not decided yet. For now, the Landlord is just not renewing the tenancy. The Landlord wants to assess the condition and prospects of the property when it is vacant and will decide then if it is to be sold or renovated and re-let.

It was put to the Agent that the Landlord needs to give options to the Tenant and she replied that the Landlord is not legally obliged to give those options to the Tenant.

It was put to the Agent that the Tenant would be willing to pay higher rent. The Landlord's Agent said that she has previously explained that the Landlord cannot increase the rent beyond the RPZ limits. It is intended to do some works upgrading the dwelling, which would be too substantial and extensive to be carried out with anyone in occupation. The Landlord will then decide if the dwelling is to be sold or re-let.

Closing submission: In conclusion, the Agent said that the Landlord wishes the tenancy to end and has served a valid Notice of Termination and is now seeking a Determination from the Tribunal.

Submissions of the Respondent Tenant:

Evidence of Rehan Ali:

Mr Ali said that the Landlord gave him a Notice of Termination in January 2023. He said he had asked the Landlord's agent a lot of times to let him know if they had a suitable

property to move to. He said it is very difficult to find somewhere else to move to and the situation has been a big challenge for him. He said there is another person living with them also, who is renting a room, and he also needs to find another place to live.

He said they have been living there for eleven years and it is their home. The Tenant said that he always pays the rent and always complies with his obligations, paying rent increases when they fell due and taking care of the dwelling. He said he had put money from his own pocket into repairs in the dwelling. He said he had done all the painting and maintenance in the dwelling himself and he also installed new carpet. He did not ask the Landlord to pay for this.

The Tenant said that if the Landlord wishes to terminate the tenancy, it is his intention to move, but he needs time to find another place to move to and he is still looking. He said he would prefer to continue living in the dwelling and he would be willing to pay a rent increase. He said it is very difficult to find another suitable dwelling in the current market. He said because of the difficulties in his relationship they had to find another property for his partner as well so there is now a need for two homes within the family and that is very difficult and the rents are high.

Closing submission: In conclusion, the Tenant said that it is not just him who needs to find somewhere to live. There is the other person also, who has been renting a room. He said his child is also living there and going back and forth. The Tenant said he has been working hard to find another place to move to and does not want to be overholding. He said he just does not have any other option at the moment.

6. Matters Agreed Between the Parties:

- ☐ The address of the dwelling as set out above
- ☐ The tenancy commenced on the February / March 2013
- ☐ The rent per month is €1,278
- ☐ A security deposit of €900 was paid at the start of the tenancy which is retained by the Landlord.
- ☐ A Notice of Termination was served on the Tenant on the 23rd of January 2023 giving a termination date of 7th of September 2023.

7. Findings and Reasons:

Finding No 1: The Notice of Termination, with a date of service of 23rd of January 2023 giving a termination date of 7th of September 2023, is valid.

Reasons: The tenancy commenced in or around February/March 2013. After six months in occupation, the Tenant acquired a Part 4 tenancy. At that time, the duration of a Part 4 tenancy was four years. In 2017, the Tenant acquired a Further Part 4 tenancy. At that time, the legislation had been amended and the term for a further Part 4 tenancy was six years.

A Part 4 tenancy may only be terminated on the basis of the grounds set out in Section 34 of the Act. However, at the time that the Tenant's further Part 4 tenancy commenced, it was also permitted to terminate a Part 4 or further Part 4 tenancy by serving a Notice of Termination within the last six months of the tenancy, without having to rely on one of the

Grounds in section 34. The relevant legislation was amended in November 2022, repealing the sections of the Act which allowed for a termination without grounds at the end of any Part 4 cycle. However, the Residential Tenancies (Amendment) Act 2021 provides that the removal of the relevant sections is subject to transitional provisions in that Act. The transition provisions mean that, if the Part 4 or Further Part 4 tenancy was created prior to the amendment of the legislation in November 2022, a landlord retains the right to terminate without s.34 Grounds by serving a Notice of Termination in the last six months prior to the end of the Part 4 cycle. The tenancy then continues until the expiry of that period of notice.

This was the situation in the instant case. The Further Part 4 tenancy came into being in 2017, which was before the legislation was amended in 2022. The Landlord was entitled to terminate without grounds in January of 2023, which was during the last six months of the cycle. The Notice was correctly served, and was copied to the RTB on the same day. The Notice gave 227 days of notice, which is in excess of the statutory requirement of 224 days. It also complies in its form and content with the requirements of s.62 of the Act. The Tenant did not dispute that it had been received.

While the Tribunal has sympathy for the Tenant in his efforts to find alternative accommodation, it is noted that the Notice was served in January 2023 and the termination date was in September 2023. The Tenant has now had a year and a half to find alternative accommodation, and, due to the fact that he has been overholding, the Tenant's termination date has essentially been extended by ten months. The Landlord complied with the legislation and is entitled to a prompt remedy. The Tenant must therefore vacate and give up possession of the dwelling within 35 days of issue of the Determination Order.

Finding No 2: The Respondent Landlord shall refund the Tenants' security deposit of €900 upon gaining vacant possession of the dwelling, less any amounts lawfully withheld in accordance with the provisions of the Act.

Reason: Pursuant to Section 12(1)(d) of the Act a Landlord is required to return a deposit to a Tenant promptly, unless the Landlord is lawfully entitled to retain any or all of it. Section 12(4) of the Act sets out the circumstances in which a deposit (or part of a deposit) may be retained: (i) where there are rent arrears; (ii) where there has been damage in excess of normal wear and tear, and; (iii) where charges payable under the lease or tenancy agreement are outstanding. The onus is on a Landlord to establish by way of evidence that one of the exceptions to the requirement to promptly repay the deposit applies. No claim for rent arrears was properly before the Tribunal.

The parties agreed in their evidence that the Landlord retains the Tenants' security deposit of €900. As the tenancy has not yet been terminated, the Landlord is not in a position to determine whether there are any grounds to retain the deposit or a portion of it on any of the grounds set out above. This remains to be established once the tenancy is at an end.

8. Determination:

Tribunal Reference TR0524-007545

In the matter of Rehan Ali (Tenant) and Jersia Ltd (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination with a date of service of 23rd of January 2023, served by the Applicant/Respondent Landlord on the Respondent/Applicant Tenant in respect of the tenancy of the dwelling at 208 The New Maltings, Block D, Watling Street, Dublin 8, D08K5A2, is valid.
2. The Respondent/Applicant Tenant and any other persons residing in the dwelling shall vacate and give up possession of the above dwelling within 35 days of the date of issue of the Determination Order.
3. The Respondent/Applicant Tenant shall continue to pay the rent in respect of the tenancy, at the rate of €1,278 per month and/or €42.01 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month/day or part thereof, until such time as he vacates the above dwelling.
4. The Applicant/Respondent Landlord shall refund the entire of the security deposit of €900.00 to the Respondent/Applicant Tenant, on gaining vacant possession of the above dwelling, less any amount properly withheld in accordance with the provisions of the Act.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 16/07/2024.

Signed:



Helen-Claire O'Hanlon Chairperson

For and on behalf of the Tribunal.