

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0724-007785 / Case Ref No: 1023-89668

Appellant Tenant: Donal Hennessy, Marie Dunne

Respondent Landlord: Stephen Tennant & Nicholas O'Dwyer, Applicant
(Acting in capacity as Joint Receivers over the certain assets of Richard Burke, Landlord)

Address of Rented Dwelling: 10 Rathmiles Avenue, Killenard, Portarlinton ,
Laois, R32NX25

Tribunal: Michelle O'Gorman (Chairperson)
Dervla Quinn

Venue: Virtual

Date & time of Hearing: 25 November 2024 at 10:30

Attendees: For the Appellant Tenants:
Donal Hennessy (Appellant Tenant)
Marie Dunne (Appellant Tenant).
Issa Olwengo, Threshold, Appellant Tenant's
Representative.

For the Respondent Landlord:
Cyril Hession, Madison Property Management,
Agent for the Respondent Landlord.
Gabriela Matinho Braga, Madison Property
Management (Witness).

Also in Attendance:
RTB appointed stenographer.

In Attendance: Michelle O'Gorman (Chairperson)
Dervla Quinn
Anne Leech

1. Background:

On 02/10/2023 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 01/05/2024.

The Adjudicator determined that

1. The Notice of Termination with a date of service of 26 January 2023, served by the Applicant Receivers on the Respondent Tenants, in respect of the tenancy of the dwelling at 10 Rathmiles Avenue, Killenard, Portarlington, Co Laois, is valid.

2. The Respondent Tenants and any other persons residing in the above dwelling shall vacate and give up possession of the above dwelling on or before 13 December 2024, or within 14 days of the date of issue of the Determination Order, whichever is the later.

Subsequently the following appeals were received:

Tenant : received on 24/07/2024. The grounds of the appeal: Overholding ; APPROVED by the Board ON 26/07/2024

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

On 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 25/11/2024 the Tribunal convened a virtual hearing.

2. Documents Submitted Prior to the Hearing Included:

RTB File

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

The Chairperson asked the persons present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the persons present that they had received the relevant papers from the RTB in relation to the case and that they had received the RTB document entitled "Tribunal Procedures".

The Chairperson then explained the procedure which would be followed: that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; the Appellant Tenants would be invited to present their case first; there would be an opportunity for cross-examination by the Respondent Landlord, that the Respondent Landlord would then present their case and that there would be an opportunity for cross-examination by the Appellant Tenants. The Chairperson explained that the Tribunal may ask questions of both parties. The Chairperson explained that following the evidence, both parties would be given an opportunity to make final submissions.

The Chairperson explained that all evidence would be taken on affirmation and she reminded the parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000.00 or up to 6 months' imprisonment or both. The Chairperson noted that the proceedings were being recorded by the appointed digital logger and that any other unauthorised recording

of the proceedings could result in a prosecution for an offence under the Act under the contempt provisions of the Act.

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

All persons intending to give evidence made their affirmations.

5. Submissions of the Parties:

Appellant Tenant's Evidence.

The Appellant Tenant (Mr. Hennessy) commenced by referring the Tribunal to their statements of evidence contained in the casefile (page 35 CF1, page 3 CF2, page 5 CF3). Mr. Hennessy stated that he first heard about the service of the Notice of Termination, by e-mail, on the 4 September, 2023. He noted that as this e-mail had gone into his spam folder and he understood it to be a mistake. He said that he then contacted Madison Property Management (hereinafter MPM) and he was told that a Notice of Termination had issued on the 26 January, 2023 and he responded that he had not received this Notice of Termination. Mr. Hennessy outlined that MPM had not contacted them, after the service of the Notice of Termination, to confirm that the Notice had been served despite MPM having contact details. Ms. Dunne described how on the 10 March, 2023, on return from the school run, a contractor for MPM had wanted to access the dwelling to take photos and she stated that both she and her daughter had felt intimidated by this. Mr. Hennessy claimed that the Notice of Termination was invalid as they did not receive it and he outlined that an examination of the postage certificate indicated that Notice of Termination was not served on the same day as it was served on the RTB (i.e. the 26 January 2023). He further indicated that as they did not get the Notice of Termination on the date it was served on the RTB, it was therefore unclear from what date the notice period ran from. He also stated that the postage certificate, which is dated the 31 January, 2023, did not specifically refer to a Notice of Termination, and therefore is no proof that what was sent was a Notice of Termination. He further stated that the slip rule should not apply to this situation. Mr. Hennessy's evidence was that they ordinarily received their post to the dwelling but that there have been times when their post would have been delivered to neighbours - who had similar names.

Respondent Landlords Evidence.

Evidence of Mr. Hession, the Landlords Agent.

Mr. Hession evidence was that there was no obligation on the Landlord to contact the Tenants after the service of the Notice of Termination. He accepted that one of their contractors had attempted access the dwelling to inspect the dwelling and take photographs on 10 March 2023, and he stated that they were "unable to engage in that regard". He indicated that they had never been made aware that there was an issue with the Tenants post, and he stated that if there was such an issue that they should have been made aware of it. He pointed out that they had served the Notice of Termination in good faith, that they were not aware that the Tenants had not received it and he reiterated that once the Notice was served, no other correspondence with the Tenants would have been necessary. In relation to the Notice of Termination, his evidence was that they had provided a notice period in excess of what was required. When asked when was the

Notice of Termination served, Mr. Hession stated that the postage certificate for the Notice of Termination had been stamped on the 31 January, 2023 and he could not say what happened. He agreed that the Notice of Termination was posted on the date the Post Office had stamped the postage certificate. Mr. Hession contended that the slip rule was applicable to this situation and he reaffirmed that extra notice, beyond what had been required by statute, had been provided to the tenants.

Mr. Hennessy put it to Mr. Hession that had the Notice of Termination been served on the 31 January, 2023, the period of notice they received would have been 225 days.

Closing submissions.

Mr. Hennessy stated that the validity or otherwise of the Notice of Termination had serious implications for them, as they had no where else to go. He reiterated that the slip rule should not apply to this scenario and that if the law had not been complied with the Notice of Termination was invalid. Mr. Olwengo submitted that the onus was on the Landlord to prove service of the Notice of Termination and that there should at least have been a tracking number associated with the certificate of postage- to prove posting.

Mr. Hession submitted that the Respondent Landlords had been transparent in the process and he urged the Tenants to keep communications open between them.

6. Matters Agreed Between the Parties:

The following matters were agreed to between the parties:

- 1.The Tenancy commenced on the 13 December, 2007.
- 2.The current rent for the dwelling is €1,022.00 per month.
- 3.The Appellant Tenants remain in occupation and there are no arrears of rent.

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:

The Notice of Termination served by the Respondent Landlord on the Appellant Tenants, and dated the 26 January 2023, in respect of a dwelling at 10 Rathmiles Avenue, Killenard, Portarlinton, Co Laois, R32NX25 is invalid.

Reasons:

1. At the time of service of the Notice of Termination the Tenants had been in occupation of the dwelling in excess of six months and therefore had the protection of a Part 4 tenancy.
2. A Part 4 tenancy can only be terminated on one of the grounds set out in the Table referred to in s.34 of the Act.
3. The Respondent Landlords purported to terminate the tenancy on the ground set out in paragraph 3 of the Table, being an intention to enter into a binding agreement for the sale

of the whole of their interest in the dwelling within nine months of the end of the tenancy. As required by paragraph 3, the Notice of Termination was accompanied by the statutory declaration from the Respondent Landlord referred to in S.35 of the Act.

4. The Tribunal finds that the form of the Notice of Termination complies in all respects with the requirements set out in s.62 of the Act and that the notice period given by the Appellant Tenants for the Respondent Landlord to vacate was in excess of the minimum period of notice stipulated by s.66 of the Act.

5. The Tribunal accepts that the S34 ground relied on by the Respondent Landlord is genuine. The Tribunal notes the evidence that Respondent Landlord attempted to access the dwelling for valuation purposes. The Appellant Tenants did not dispute the genuineness of the Respondent Landlords stated intention.

6. Section 6 of the Act provides for a number of ways that notices can be served, and includes, inter alia, personal service and sending it in the post by a pre-paid letter. Where a party alleges that they did not receive a notice that was stated to be served on them, the onus is on them, the recipient, to establish that the notice was not received to enable compliance with the relevant time limit specified in the notice. Once a notice is served in a manner outlined in Section 6 of the Act, there is no obligation on the person serving the notice to contact the recipient, after the service of the said notice. Having viewed the certificate of postage it does appear that the Notice of Termination was served on the 31 January, 2023.

7. Section 39A(1) of the Act provides that where a Landlord serves a notice of termination in relation to the tenancy of a dwelling he or she shall, on the day on which he or she so serves that notice of termination serve a copy thereof on the Board.

8. Section 35 (11) (b) of the Act provides that where a Notice of Termination is served in contravention of Section 39A (1) it shall be invalid. Further the RTB websites outlines that:

“For all Notices of Termination to be deemed valid, they must be copied to the RTB at the same time as it is served on the tenant. Failure to do so means that the Notice of Termination is invalid”.

9. The Notice of Termination is dated the 26 January, 2023 and a certificate of postage has been submitted to confirm the date of service of the said Notice of Termination. However, the certificate of postage is hand dated the 25 January, 2023 and stamp dated, by the Post Office, on the 31 January, 2023. The Respondent Landlord’s evidence was that the Notice of Termination was posted on the date the Post Office stamped the certificate of postage (i.e. 31 January, 2023).

The Respondent Landlords served the RTB with the Notice of Termination, by e-mail, on the 26 January, 2023 and the Respondent Landlords received confirmation of this service, by e-mail, from the RTB on the 26 January 2023 (pages 27 and 28, Casefile).

It is therefore evident that the Notice of Termination was not served on the RTB on the day on which the Notice of Termination was served on the Appellant Tenants and therefore the Notice of Termination is invalid.

10. In circumstances where the Appellant Tenants are materially prejudiced by the issues surrounding the service of the Notice of Termination, the Tribunal finds that slip rule as provided for in S64(A) of the Act or the service of a Remedial notice as provided for in S66 (2) (A) of the Act should not be applied in this instance.

8. Determination:

Tribunal Reference TR0724-007785

In the matter of Donal Hennessy, Marie Dunne (Appellant Tenants) and Stephen Tennant & Nicholas O'Dwyer, Applicant (Acting in capacity as Joint Receivers over the certain assets of Richard Burke, Landlord) (Respondent 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 26 January, 2023 served by the Respondent Landlord on the Appellant Tenants, in respect of the tenancy of the dwelling at 10 Rathmiles Avenue, Killenard, Portarlington, Co Laois, R32NX25 is invalid.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 29/11/2024.

Signed:



Michelle O'Gorman Chairperson

For and on behalf of the Tribunal.