

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0916-001960 / Case Ref No: 0616-27278

Appellant Tenant:	Keith Sheldreck, Rhonda Sheldreck
Respondent Landlord:	Aidan Sharkey
Address of Rented Dwelling:	50 Oakwood Grove, Clondalkin , Dublin 22,
Tribunal:	Healy Hynes (Chairperson) Suzy Quirke, James Egan
Venue:	Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2,
Date & time of Hearing:	20 October 2016 at 10:30
Attendees:	Keith Sheldreck (Appellant Tenant) Rhonda Sheldreck (Appellant Tenant) Brian Harris (Appellant Tenant's Witness) Damien Farrell (Appellant Tenant's Witness) Margret McCarthy (Respondent Landlord's Solicitor) Aidan Sharkey (Respondent Landlord) Gerry Burke (Respondent Landlord's Solicitor)
In Attendance:	DTI Stenographer

1. Background:

On 22 June 2016 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 30 August 2016. The Adjudicator determined that:

1. The Applicant Tenants application regarding breach of Landlord obligations for unlawfully terminating the applicant tenants' tenancy of the dwelling at 50 Oakwood Grove, Clondalkin, Dublin 22 is not upheld.

2. The Applicant Tenants application regarding an invalid notice of termination is not upheld:-
 - a. The tenancy was validly terminated on the 20th June 2016 on foot of a Determination Order dated the 3rd June 2016.
 - b. The Notice of Termination dated 5th May 2016 was withdrawn.

3. The Applicant Tenants application regarding the Respondent Landlord's breach of his obligations under the Act in failing to carry out repairs in respect of the tenancy of the above dwelling is not upheld.

4. The Notice of Rent Increase served on the 10th day of November 2015 by the

Respondent Landlord on the Applicant Tenant in respect of the tenancy of the above dwelling is valid.

5. The Applicant Tenants shall pay the total sum of €3,346.70 to the Respondent Landlord within 28 days of the date of issue of the Order being the rent arrears of €3,346.70 in respect of the tenancy of the above dwelling.

6. The Applicant Tenants shall also pay the sum of €1,275.00 to the Respondent Landlord from the 1st day of September 2016 at the rate of €1,275.00 per month or proportionate part thereof unless lawfully varied and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as they vacate the above dwelling.

7. The Landlord shall refund the entire of the security deposit of €1000.00 to the Applicant Tenants, upon the Applicant Tenants vacating and giving up vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received from the Tenant on 15 September 2016. The grounds of the appeal are Standard and maintenance of dwelling, Rent arrears, Unlawful termination of tenancy (Illegal eviction), Invalid Notice of termination, Rent more than market rate (Not Applicable to Approved Housing Body Tenancies), Breach of fixed term lease and Breach of landlord obligations. The appeal was approved by the Board on 22 September 2016

The RTB constituted a Tenancy Tribunal and appointed Healy Hynes, Suzy Quirke, James Egan 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 23 September 2016 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 20 October 2016 the Tribunal convened a hearing at Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

1. RTB File

3. Documents Submitted at the Hearing Included:

Landlord - Rent Statement updated to date of hearing
Tenant - Email of 20th October 16
Tenant - Letter of 19th October 16

4. Procedure:

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Tenants in the case of a dispute between the Tenants and the Respondent Landlord in respect of a tenancy at 50 Oakwood Grove, Clondalkin, Dublin 22. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. He requested confirmation that the parties had received the relevant papers from the RTB in relation to the case in particular the RTB document entitled "Tribunal Procedures". The Appellant Tenants stated they did not. Copies were then provided and recess was taken to allow them to be read. The Chairperson reopened the Tribunal and asked had all parties received and understood the RTB document entitled "Tribunal Procedures". Both Parties confirmed that they had done so. The Chairperson said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson then explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the stenographer present, and that based on that recording a transcript could be made available to the Tribunal if necessary, to assist it in preparing its report on the dispute. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the RTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Tenants would be invited first to present their case, including the evidence of any Witness; this would be followed by an opportunity for cross-examination by the Respondent Landlords; that the Respondent Landlords would then be invited to present their case, followed by an opportunity for cross-examination by the Appellant Tenants. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

He also said that at the end of the hearing, both the Appellant Tenants and the Respondent Landlords would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the RTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

All persons giving evidence to the Tribunal were then sworn in.

The Appellant Tenant requested an adjournment on foot of the letter dated 19th October 2016 from HSE with respect to the accommodation needs of the Appellants' son. The Respondent Landlord objected to same on the basis that the nature of the submission was not relevant to the dispute at hand.

Upon consideration of the submission, Tribunal empathised with the Appellant Tenants and decided to proceed with the Tribunal as the issues relating to the request for

adjournment were not material to the matters in dispute. There was no objection from the parties.

5. Submissions of the Parties:

Appellant Tenants Case:

The tenants gave evidence that their dispute related to 3 matters

Unlawful Termination of Tenancy

Breach of Landlord Obligations

Invalid Notice of Termination

1. Unlawful Termination of Tenancy

The Appellant Tenants gave evidence that on 20th April 2016 the Respondent Landlord served a 14 day rent arrears notice in relation to late rent in respect to March & April of 2016 in the amount of €2,671.90. Reference was made therein to telephone conversation of 20th April 2016 where the landlord claimed the tenants were withholding rent.

On 20th June 2016 the Respondent Landlord in the matter called to the property without notice. The Appellant Tenants stated that subsequent to the eviction, they contacted someone who had the notice of termination examined and said it was invalid on basis of way it was written. The Appellant Tenants stated that they were told the accompanying documentation was not included that is required to sell the house.

Evidence continued that the Appellant Tenants were away from the property on the morning of the 21st June 2016 bringing their son to school and received a text saying the Respondent Landlord had changed locks. The Appellant Tenants advised the Respondent Landlord by text that they were over holding on the tenancy. A further series of texts were exchanging resulting in the Appellant Tenants attending the property on the evening of 21st 2016 to take some bedding material. The Appellant Tenants gave evidence that June they slept in a car that evening, made arrangements for a 5 days stay in a hotel the following day but only stayed one night as they intended to return to the house with assistance on the 23rd June 2016. The Appellant Tenants acknowledge they remain in occupation in the property.

Evidence continued that the Appellant Tenants denied there being any arrears of rent. The Appellant Tenants evidence was that the ongoing rent was €1,150 per month as agreed in November 2014. Although no payments of any amount had been made to the Respondent Landlord in a number of months they gave evidence that this did not constitute arrears as the Respondent Landlord's email to HSE in April had resulted in the suspension of rent allowances. The Appellant Tenants confirmed there was a shortfall between the Rent Allowance and the rent payable and that these payments had also stopped. They confirmed that they had saved this shortfall in the interim and were in a position to pay same to the Respondent Landlord - in conjunction with the Rent Allowance portion, once the Rent Allowance was reinstated by HSE.

2. Breach of Landlord Obligations

The Appellant Tenants gave evidence that

The locks on the windows were broken in the kitchen and bathroom

There was damage to a worktop from a leak.

The porch door had not been repaired.

The rent review of November 2015 was invalid as no notice was received. The Appellant Tenants therefore denied there being any arrears maintaining that it was the Respondent

Landlord's own fault that their rent allowance had been stopped and therefore he was not receiving rent.

The Respondent Landlord failed to repair a washing machine when notified resulting in the Appellant Tenants having to remedy same themselves.

3. Invalid Notice of Termination.

The Appellant Tenant gave evidence that the notice as served on 20th January 2016 was invalid and therefore the subsequent determination order was invalid. As they had the whole of the 24 hours to vacate on 20th June 2016, the changing of locks on 21st June 2016 was an illegal eviction.

Respondent Landlords Case

1. Unlawful Termination of Tenancy

The Respondent Landlord gave evidence that initial rent was €930 per month. This increased to €1,275 from February 2016 on foot of a notice of rent increase dated November 2015. The Respondent Landlord gave evidence that this notice was provided by email and post. In questioning by the Tribunal, the Respondent Landlord stated that the rent set was in line with market rents as he had checked online portals for similar properties.

Evidence continued that the parties had previously been before the RTB and agreement was reached at mediation, resulting in determination order issued on 3rd June 2016 specifying that:

The tenancy would terminate on 20th June 2016.

Landlord would refund deposit of €1,000 less sums properly withheld.

The tenant would pay rent as per terms of the tenancy.

Landlord would contact social welfare to assist with restoration of rent supplement.

Landlord would provide tenants with a reference.

The Respondent Landlord gave evidence that on foot of this agreement, he attended at the property on 20th June 2016 whereupon the Appellant Tenants advised him that they had the whole of 24 hours to vacate the property and that they would be leaving later that day. The Respondent Landlord continued in evidence to say that he re-attended the property on the morning of 21st June 2016 with a locksmith to find gates closed and blinds pulled. Believing the Appellant Tenants to have vacated, he rang & knocked to no answer; he then instructed the locksmith to change locks.

He subsequently texted the Appellant Tenants who replied to say they intended to over-hold on the property. The Respondent Landlord requested clarification as to what this meant but received no reply. The parties met the evening of 21st June 2016 where some possessions were removed. Another meeting took place at the property on 23rd June 2016 at which meeting the Appellant Tenants re occupied the property.

The Respondent Landlord gave evidence that despite the fact that the Appellant Tenants had stated by text that they intended to over-hold on the property, their subsequent actions in attending to the property to remove certain belongings indicated that they had in fact vacated in accordance with the Determination Order dated 3rd June 2016 and arrived at by the parties through mediation.

2. Breach of Landlord Obligations

The Respondent Landlord gave evidence that that during the tenancy he supplied a new cooker and a new worktop. He gave evidence that the track on the porch door had been fixed as the tenants used this to lock the property 23rd June 2016 to prevent re-entry. He

gave evidence that any issues that were raised by the tenants had been addressed and no specifics had been raised to him in relation to the subject matters.

In respect to the bathroom window locks, the Landlord confirmed that he had been made aware that they did not lock and did not resolve same as he did not feel it was a material matter.

3. Invalid Notice of Termination.

The Respondent Landlord gave evidence that the notice in question was valid as the matter had been agreed at mediation and was subject to a prior Determination Order.

The Chair thanked both parties and advised them that following the hearing the Tribunal would prepare a report and make its Determination in relation the dispute and would notify the RTB of that Determination.

6. Matters Agreed Between the Parties

Before inviting the parties to make their submissions the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

The Appellant Tenants paid a deposit of €1,000.

An initial monthly rent of €1,000 per month was agreed.

Both parties accepted that they were in agreement in relation to the foregoing matters.

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 therefore are set out hereunder.

Finding 1: The notice of termination as issued on 20th January 2016 is valid.

Reason: This matter was subject to a separate mediation. The 10 day cooling off period for same ended on 25th May 2016 and the Determination Order issued on 3rd June 2016. No appeal to same was received by RTB. Therefore this matter is res judicata on foot of a prior Determination and cannot be reopened

Finding 2: The Applicant Tenants application regarding breach of Landlord obligations for unlawfully terminating the tenancy is not upheld.

Reason: The tenants confirm that they remain in occupation in the property. Therefore the tenancy has not been terminated. The tenants acknowledge that they are in occupation on foot of over holding. As the parties were not subject to a fixed term letting agreement the Tribunal finds that S1.95 of the Act does not apply and that therefore the tenants acknowledge they are in occupation on foot of overholding on Determination Order of 3rd June 2016. The Landlord changing the locks on 21st June 2016 was followed by the Appellant Tenants re-entering the property on 23rd June 2016 and changing the locks again. Therefore although the Appellant Tenants did not access the property in this period, the tenancy, up to, and including at the time of tribunal, has not terminated.

Finding 4: Breach of Landlord Obligations in respect of the locks on the bathroom

windows.

Reason. Sufficient evidence was presented to show the matter was brought to the Respondent Landlord' attention and he failed to attend to same on foot of this notice. The windows were designed to be lockable and were not functional in that respect. The Tribunal finds that damages the amount of €100 are appropriate.

Finding 5: No breach of Landlord Obligations in respect of the porch door not being repaired.

Reason. Insufficient evidence was presented to show the matter was brought to the Respondent Landlord's attention & he failed to attend to same on foot of this notice.

Finding 6. No breach of Landlord Obligations in respect of damage to a worktop from a leak.

Reason. The matter of the worktop was only brought to the landlords attention during the course of the dispute and the Respondent Landlord has not had sufficient time to remedy same.

Finding 7. Breach of Landlord Obligations in respect to washing machine.

Reason. The Appellant Tenants acknowledge that they were in arrears at the time of notifying the Respondent Landlord that the machine was broken. The Respondent Landlord acknowledges that he did not fix same because of the arrears. The failure of one party to comply with their obligations under the act does not obviate the other party from having to comply with their obligations. i.e. a failure by one party does not allow a failure by another. The Tribunal finds that damages the amount of €100 are appropriate.

Finding 8. The rent review notice of 10th November 2015 is valid.

Reason 1. The tribunal is satisfied that the landlord issued notice by both email and post. There is no requirement under the act for the tenant to receive same - simply for the landlord to issue - for a notice to be valid.

Reason 2. There was no appeal of said rent review within the time limit set out under s.22(3) of the act. The Appellant Tenants stated that it was not until April of the following year that they were advised by a third party that the rent review was invalid that they disputed the matter. The evidence provided by the Appellant Tenants is that third party advice was that comparable properties should have been provided.

Reason 3. The amendment to the act cited by the Appellant Tenant in the matter came into effect on 4th December 2015. S26(2) of the Residential Tenancies (Amendment) Act 2015 specifically states that notices issued prior to this date are not bound by same.

Reason 4. The comparable properties support the market rent of €1,275.

Finding 9. Rent arrears are in the amount of €5,444.30.

Reason. The Tribunal finds that the Appellant Tenants did not comply with their obligations under section 16(a) of the act to discharge rents. There is no mechanism under the act for the tenants to circumvent this obligation as a result of social welfare no longer contributing. The tenants acknowledge that regardless of these funds no longer being available, they were still in a position to discharge the "top up" and chose not to do so.

8. Determination:

Tribunal Reference TR0916-001960

In the matter of Keith Sheldreck, Rhonda Sheldreck (Tenant) and Aidan Sharkey (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Appellant Tenants application regarding breach of Landlord obligations for unlawfully terminating the tenancy at the dwelling at 50 Oakwood Grove, Clondalkin, Dublin 22 is not upheld.
2. The Appellant Tenants application regarding invalid notice of termination is not upheld.
3. The Appellant Tenants application regarding the Respondent Landlord's breach of his obligations in failing to carry out repairs in respect of the tenancy at 50 Oakwood Grove, Clondalkin, Dublin 22 is not upheld.
4. The Notice of Rent Increase served on the 10th day of November 2015 by the Respondent Landlord on the Appellant Tenant in respect of the tenancy at 50 Oakwood Grove, Clondalkin, Dublin 22 is valid.
5. The Respondent Landlord is in breach of obligations in respect to repair of washing machine and window locks at 50 Oakwood Grove, Clondalkin, Dublin 22.
6. The Appellant Tenants shall pay the total sum of €5,244.30 to the Respondent Landlord, at the rate of 6 payments of €750.00 per month, on the 28th day of each month, followed by one final payment €744.30 commencing on the date that is within 28 days of the date of issue of this Order, being arrears of rent of €5,444.30, less damages of €200 for Respondent Landlord breach of obligations under the act in respect of the tenancy of the dwelling at 50 Oakwood Grove, Clondalkin, Dublin 22.
7. The enforcement of the Order for such payment will be deferred and the sum owing reduced by the number of monthly instalments of €750.00 made to the Respondent Landlord on each due date until such time as the sum of €5,244.30 has been paid in full.
8. For the avoidance of doubt any default in the payment of the monthly instalments of €750.00 shall act to cancel any further deferral and the balance due at the date of default of the monthly payments shall immediately become due and owing to the Respondent Landlord.
9. The Appellant Tenants shall continue to pay rent at the amount of €1,275.00 per month to the Respondent Landlord or proportionate part thereof unless lawfully varied and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as they vacate the above dwelling.
10. The Respondent Landlord shall refund the entire of the security deposit of €1,000.00 to the Appellant Tenants, upon the Appellant Tenants vacating and giving up vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 10 November 2016.

A handwritten signature in black ink, appearing to read "Healy Hynes". The signature is written in a cursive style with a long horizontal stroke extending from the end of the name.

Signed:

Healy Hynes Chairperson

For and on behalf of the Tribunal.