

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR1015-001406 / Case Ref No: 0715-19619**

<b>Appellant Tenant:</b>	Mustak Mardan
<b>Respondent Landlord:</b>	Grant Thornton
<b>Address of Rented Dwelling:</b>	Apartment 23, Blackrock Place, Eden, Blackrock , Cork, T12NH93
<b>Tribunal:</b>	Mervyn Hickey (Chairperson) Kevin Baneham, Orla Coyne
<b>Venue:</b>	Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork
<b>Date &amp; time of Hearing:</b>	27 November 2015 at 2:30
<b>Attendees:</b>	Mustak Mardan (Appellant Tenant)
<b>In Attendance:</b>	Gwen Malone Stenographers.

**1. Background:**

On 16 July 2015 the Tenant made an application to the Private Residential Tenancies Board ("the PRTB") pursuant to Section 78 of the Act. The matter was referred to an Mediation which took place on 02 September 2015.

No agreement was reached by the parties and a Statement of Mediation was issued by the Mediator on 29 September 2015.

Subsequently the following appeal was received from the Tenant on 15 October 2015. The grounds of the appeal was Rent more than market rate. This appeal was approved by the Board on 27 October 2015.

The PRTB constituted a Tenancy Tribunal and appointed Mervyn Hickey, Kevin Baneham, Orla Coyne as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Mervyn Hickey to be the chairperson of the Tribunal ("the Chairperson").

On 05 November 2015 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 27 November 2015 the Tribunal convened a hearing at Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork.

**2. Documents Submitted Prior to the Hearing Included:**

1. PRTB File

### **3. Documents Submitted at the Hearing Included:**

None.

### **4. Procedure:**

The Chairperson asked the sole attendee to identify himself and to identify in what capacity he was attending the Tribunal. The sole attendee was the Appellant Tenant. The Chairperson confirmed that the Appellant Tenant had received the relevant papers from the PRTB in relation to the case and that he had received the PRTB document entitled "Tribunal Procedures". The Respondent Landlord had submitted documents for the purpose of the Tribunal Hearing which were only received by the Appellant Tenant on 26 November 2015. The Chairperson inquired of the Appellant Tenant as to whether or not he had received these documents and if so, if he had any objection to the Tribunal considering them. The Appellant Tenant confirmed both that he had received the documents and that he was raising no such objection.

The Chairperson explained the procedure which would be followed, taking account of the fact that there was no appearance either by or on behalf of the Respondent Landlord; that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; that the Appellant Tenant would be invited to present his case and that the Tribunal might ask him questions regarding his case. It was further explained to the Appellant Tenant that the Respondent Landlord had indicated through correspondence sent to the PRTB on 27 November 2015 that there would be no appearance on behalf of the Respondent Landlord and that the Respondent Landlord was seeking to rely upon its written submissions.

The Chairperson explained that following the Appellant Tenant's evidence he would be invited to make a closing submission to the Tribunal.

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present and he reminded the Appellant Tenant 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 Appellant Tenant that as a result of the Hearing that day, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

### **5. Submissions of the Parties:**

Appellant Tenant's Case:

The Appellant Tenant stated that the tenancy had commenced on 6 May 2012; that the monthly rent was €850; that a security deposit of €850 had been paid by him; and that he continued to reside in the dwelling with his wife and young daughter who attended school close to the rented dwelling.

His evidence was that he had received a notice from the Respondent Landlord in early July 2015 which purported to increase the rent from €850 to €1,000 per month as and from 30 July 2015. His complaint was that this increase was in the order of 18% and that the monthly rent of €1,000 did not reflect the market rent. He stated that he had looked at

the DAFT website in or around July 2015 and that he had formed the view that market rent was in fact €850 - €900 at that time. He stated that notwithstanding attempts to negotiate with the Respondent Landlord's representative he had been unsuccessful in obtaining any reduction on the €1,000 per month sought by the Respondent Landlord.

The Appellant Tenant gave evidence that a third party's penthouse apartment in the same development which was more spacious than the rented dwelling was being rented at a monthly rent less than €1,000. He submitted no supporting evidence however in support of this assertion. The rented dwelling itself was said by the Appellant Tenant to be a two bedroom, two bathroom apartment with one of the bathrooms being an en-suite bathroom. It was located on the fourth floor of the block of apartments. There were three blocks in the particular development. He stated that the apartments in his block were uniform in nature and that there were no significant differentiating factors as between them. On being questioned by the Tribunal regarding other blocks in the development (on which the Respondent Landlord, sought to rely) the Appellant Tenant stated that he had not been in any apartments in other blocks. He confirmed on being questioned by the Tribunal that no improvement works had been carried out on the rented dwelling since the commencement of his tenancy. He did not place emphasis on any particular terms of his tenancy in making his case to the Tribunal.

He relied on three comparator properties to substantiate his claim regarding the market rent. The first of these was in Churchgate, Blackrock, County Cork. It was advertised on the DAFT website at a rent of €825 per month. It had only one bathroom however.

The advertisement dated from 8 July 2015.

The second comparator property was in The Heron, Mahon, County Cork. The Appellant Tenant relied again upon a DAFT advertisement this time dated 20 July 2015. The monthly rent on the advertisement was €900. This apartment was a three bedroom apartment and it had one bathroom. The Appellant Tenant stated his belief that Mahon was 200-300 meters from Blackrock.

The final comparator relied upon by the Appellant Tenant was in Blackrock Grove. He said that Blackrock Grove was in the same "campus" as Blackrock Place and was only 300 meters away from it. He relied again upon an advertisement on the DAFT website dated 20 July 2015. The comparator property was a three bedroom, one bathroom property. It was advertised on the basis of a monthly rent of €900.

He stated that he had found it difficult to deal with the proposed significant rent increase as he was in salaried employment and his daughter, who attended a local school, had been due to start a new school year not long after the proposed rent increase. He claimed that as the Respondent Landlord owned very many apartments in the Eden area they were themselves in a position to "regulate" the market.

The Appellant Tenant relied upon the PRTB rental index which indicated that at the end of the first quarter in 2015, the average monthly rent in Blackrock for a two bedroom apartment was €897.59. He also relied upon a Cork-based media report from 22 June 2015 which identified the average rent for a two bedroom apartment in Cork at that time as being €867.20 and the average rent for a three bedroom apartment as being "more than €1,000 per month." The same media article identified Blackrock as one of only seven areas in Cork to have experienced a decline in average rents in the 12 month period to

June 2015 however Blackrock was also identified in the article as being “among the most expensive parts of Cork to rent”, with an average rent (taking all dwelling types into consideration) of €910.58.

On being questioned by the Tribunal as to what he believed the current market rent to be the Appellant Tenant stated that he thought it was €1000 per month. He clarified this statement by stating that his case was that at the time of the proposed increase the market rent would have been less than this but that it had probably increased to €1000 per month as of the date of the appeal hearing. During the hearing the Appellant Tenant identified the market rent in July 2015 as being various amounts ranging from €850 to €925 but towards the end of the hearing the Appellant Tenant put greater emphasis on the higher figure.

#### Respondent Landlord's Case:

The Respondent Landlord's representative contacted the PRTB by email on the date of the hearing to indicate that there would be no appearance on behalf of the Respondent Landlord at the appeal hearing and that the Respondent Landlord was relying upon its written submissions.

In its written submission the Respondent Landlord claimed to manage 127 units in the relevant development, 126 of which were said to be occupied. The rents applicable to these units had not been increased since 2010 when a Receiver had been appointed to manage them. The “strategy” in 2015 had been to increase rents so as to bring them “in line with market value for the area”. The Respondent Landlord had engaged professional valuers to value each property. The Respondent Landlord stated in its submission that “in general, the two beds were valued between €1,000 - €1,200, the difference being for various reasons e.g. larger penthouses and duplexes are worth more than a standard two bed.” It was the submission of the Respondent Landlord that rent of €850 was the rent currently achieved in respect of a one bedroom apartment in the Eden development. The Respondent Landlord relied upon what were claimed to be the “most recent lets of two bedroom apartments in Eden, Blackrock”. There were nine of these. The rentals ranged in date from May 2015 to October 2015. Four of the rents obtained were in the amount of €1,000 per month with the remaining five being €1,050 per month. The most recent rent obtained in this list was €1,000 per month. The relevant lease agreements were submitted in evidence with certain personal details relating to the tenants redacted.

The Respondent Landlord also sought to rely upon comparator properties which were said to have been used in another case before the PRTB concerning the Eden development. The relevant property in Eden was not identified and only one of the five comparators submitted by the Respondent Landlord were actually in Blackrock itself. The relevant comparators are set out below:

1. Ashton Lodge, Boreenmanna Road, Blackrock, County Cork. This property was a two bedroom, one bathroom apartment. It was advertised on the DAFT website on 2 September 2015 at a rent of €1,100 per month.
2. The Chestnut, Park Avenue, South Douglas Road, Douglas County Cork. This was a two bedroom, two bathroom apartment advertised for rent at €1,300 per month on the DAFT website on 2 September 2015.

3. 26 Manor Avenue, Maryborough Ridge, Douglas, County Cork. This was a two bedroom, two bathroom apartment also in Douglas. It was advertised on the DAFT website for rent at €975 per month on 2 September 2015.

4. Ronays Court, Rochestown Road, Rochestown, County Cork. This was a two bedroom, two bathroom property advertised for rental on the DAFT website on 2 September 2015 at €1,000 per month.

5. Woodville, Rochestown, County Cork. This was a two bedroom, two bathroom apartment to rent in Rochestown, advertised on the DAFT website at a rent of €1,000 per month on 2 September 2015.

## **6. Matters Agreed Between the Parties**

None.

## **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 appropriate market rent on 2 July 2015 in respect of the dwelling was €930 per month.

Reasons:

1. The appropriate date for assessing the market rent in the case is 2 July 2015, the date of service of the notice of rent review by the Respondent Landlord. The Tribunal finds that the date of the review (rather than when it took effect) must be considered the appropriate one as tenants have a 28-day window from the date of review (not the date of its effect) to challenge the rent set. The Appellant Tenant acknowledged receipt of this Notice in or around this time and the Tribunal is satisfied on the evidence that it was served on 2 July 2015.

2. The Tribunal finds that the most useful comparators for market rent are the leases for similar sized apartments in the same complex entered into in or around July 2015. The Tribunal notes in particular in this regard, the evidence submitted by the Respondent Landlord that on 12 June 2015, 17 Blackrock Park was leased at a monthly rent of €1,000 and that on 2 July 2015, 6 Blackrock Park was leased at a monthly rent of €1,000. Both of these apartments were two bedroom apartments in the 'Eden' complex, the same as the rented dwelling.

3. However, the leases adduced are not determinative of the matter. The Tribunal accepts the evidence of the Appellant Tenant that the rented dwelling had not benefitted from any additional work and/or redecoration that a fresh re-let of an apartment in the same complex may have had. The dwelling must be considered 'as-is' rather than with improvements made to it to make it appeal to the wider rental market. In this respect the Tribunal notes that this tenancy agreement commenced on 6 May 2012 and wear and tear from that date could be expected.

4. In its written submission, the Respondent Landlord identified certain comparator properties as being 'similar' to the rented dwelling however the detail of these properties was not specified such as, the floor they were on; whether they were re-lettings or new-lettings; the number of bathrooms; the fixtures and fittings provided; and the availability of a car-parking space. While each lease agreement submitted in evidence by the Respondent Landlord referred to an attached inventory, the inventories themselves were not submitted in evidence. The lack of detail in this regard is a factor to which the Tribunal must have regard.

5. The Tribunal has also considered the advertisements submitted by both parties. The Tribunal attributes less significance to the advertisements relied upon by the Respondent Landlord given that they are all dated from September 2015. The Tribunal notes that the advertisements relied upon by the Appellant Tenant are all dated from July 2015 and while not in the same apartment complex as the rented dwelling, they are more proximate than those relied upon by the Respondent Landlord. The monthly rent for these comparator properties was €825, €900 and €900. Each property had only one bathroom (the rented dwelling having two). The two properties advertised for €900 per month were three bedroom apartments (the rented dwelling being a two bedroom apartment).

6. While the Respondent Landlord asserted in its submission that a one bedroom apartment in the Eden complex was obtaining a monthly rent of €850, no supporting evidence was submitted to substantiate this assertion.

7. While the Respondent Landlord asserted in its submission that the apartments had each been individually valued by a professional valuer, no valuations whatsoever were submitted in evidence.

8. The Tribunal considers it appropriate to have regard to the PRTB/ESRI rent index, noting that it is an average rental price and thus may mask outlier apartments of particularly high specification. No evidence was led however that the rented dwelling was of a particularly high specification. The Tribunal notes from the index that the average rental price for a two bedroom apartment in Blackrock, County Cork at the end of quarter two of 2015 was €899.36. The Tribunal notes that at the end of quarter two 2012 (just after the tenancy commenced) the average rent for a two bedroom apartment in Blackrock, County Cork was €821.29. The percentage increase therefore specific to two bedroom apartments in this area between Q2 2012 and Q2 2015 is approximately 9.51% ( $€899.36 - €821.29 = €78.07$ ;  $€78.07 / €821.29 \times 100 = 9.505$ ). An equivalent rental lift in respect of the rented dwelling would have taken it from €850 to €930.84. The Tribunal notes that the purported rent increase by the Respondent Landlord in July 2015 was in the order of 17.65% and that this was significantly higher than the average increase in respect of similar properties in this area over the period since the tenancy commenced. While the Respondent Landlord contended that the rent had not been increased since 2010, at the time the tenancy commenced (May 2012) the Tribunal notes from the index that the agreed rent was higher than the average rent for similar properties in the area.

9. For the foregoing reasons, the Tribunal is not satisfied that the Respondent Landlord has clearly demonstrated that the rental sum sought in the amount of €1,000 per month in respect of the tenancy of the dwelling as of 2 July 2015 reflected the market rent having regard to the other terms of the tenancy and to the letting values of dwellings of a similar size, type and character to the dwelling and situated in a comparable area to that in which it is situated. On the basis of the evidence before it the Tribunal is satisfied that the

market rent in respect of the tenancy of the dwelling as aforesaid was €930 on 2 July 2015.

**8. Determination:**

**Tribunal Reference TR1015-001406**

**In the matter of Mustak Mardan (Tenant) and Grant Thornton (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The monthly rent of €1,000 set by the Rent Review Notice with a date of service of 2 July 2015, to take effect on 30 July 2015 in respect of the tenancy of the Dwelling at Apartment 23, Blackrock Place, Eden, Blackrock, Cork, T12NH93 was above market rent and is in breach of section 19 of the Act.
2. The monthly market rent in respect of the tenancy of the dwelling as aforesaid was €930 on 2 July 2015.
3. The Appellant Tenant shall pay rent in the sum of €930 per month to the Appellant Landlords with effect from 30 July 2015 unless and until this amount is lawfully varied in respect of the tenancy of the dwelling as aforesaid.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 14 December 2015.



**Signed:**

**Mervyn Hickey Chairperson**

For and on behalf of the Tribunal.