

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1020-004502 / Case Ref No: 0520-62202

Appellant Landlord: Andrew Browne Construction Limited

Respondent Tenant: Sinead Ennis

Address of Rented Dwelling: 48 College Green, Maynooth , Kildare, W23R2P4

Tribunal: Suzy Quirke (Chairperson)
Fintan McNamara, Roderick Maguire

Venue: Ormond Rooms
Telephone conference tribunal

Date & time of Hearing: 02 March 2021 at 2:30

Attendees: For the Appellant Landlord:
Colman Grimes (Appellant
Landlord's managing agent and
Representative)

For the Respondent Tenant
Sinead Ennis (Respondent
Tenant) Fiona Young
(Respondent Tenant's Witness)

In Attendance: Recording Technician, Epiq
Global

1. Background:

On 15/05/2020 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 13/08/2020. The Adjudicator determined that:

1. The Respondent Landlord shall pay the sum of €570 to the Applicant tenant, within 28 days of the date of issue of this Order, being €570 in damages for breach of landlord obligations under s. 12(1)(b) of the Residential Tenancies Act 2004 for failure to carry out necessary repairs in respect of the tenancy of the dwelling at 48 College Green, Maynooth, Kildare, W23R2P4.

Subsequently the following appeal was received.

The RTB constituted a Tenancy Tribunal and appointed Fintan McNamara, Suzy Quirke and Roderick Maguire as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Suzy Quirke to be the Chairperson of the Tribunal ("the Chairperson").

On 09/02/2021 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 02/03/2021 the Tribunal convened a telephone conference hearing at Ormond Rooms, Dublin.

2. Documents Submitted Prior to the Hearing Included:

RTB File.

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were giving evidence by telephone to the Tribunal. The Chairperson confirmed with the Parties that they had received the relevant papers from the RTB and that they had received and understood the RTB document entitled "Tribunal Procedures".

The Chairperson explained the procedure which would be followed and that the Tribunal was a formal procedure but that it would be conducted in a manner that would be as informal as possible. The Chairperson explained the procedure which would be followed; that the person who appealed (the Appellant) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present his case, and that there would be an opportunity for cross-examination by the Appellant. Both parties would be afforded an opportunity to present a final summation.

The Chairperson stressed that all evidence would be taken on civil affirmation and reminded the parties that knowingly providing false or misleading 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 noted that the proceedings were being recorded by the appointed digital logger. 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.

The Chairperson asked were there any queries on the procedures; there were no queries.

The Chairperson indicated that the Tribunal would be willing to consider a short adjournment for the purpose of allowing the parties to try and negotiate a settlement or agreement of the dispute should the parties so wish.

The parties intending to give evidence made a civil affirmation and the hearing proceeded.

5. Submissions of the Parties:

The Appellant Landlord's Case: Jurisdiction

The Tribunal opened the case by questioning the Appellant Landlord's Representative on the layout and nature of the accommodation and indicated that they might enquire into the jurisdiction of the RTB. The Appellant Landlord's Representative, Mr. Grimes, explained

that the house was a two-storey, semi-detached house with a substantial, recently added extension, and that there were eight bedrooms in total of which four were in the extension. He explained that of the eight, six had an ensuite bathroom but two bedrooms shared a bathroom. He further stated that four of the bedrooms had a kitchenette included but that the tenants shared the fully equipped kitchen, a living room, dining area and utility area. He described the kitchenettes as having a small sink and fridge but no facilities for cooking food.

He explained that each tenant had their own room rental agreement and that all bills for electricity, WiFi, cleaning of the common areas etc were included in the rent. He said that none of the tenants knew each other on coming to live in the house and were independent of each other. Mr. Grimes stated that he had always operated the house as the arrangements being that the occupants were tenants and he had enquired from the RTB as to whether they were tenants or licensees. He said that the RTB had told him that it was one house, a self-contained dwelling and that he had registered it with the RTB as one tenancy. He stated that the house complied with planning regulations and that he wasn't trying to say that the individual rooms were self-contained dwellings. On being questioned by the Tribunal as to whether she thought the house represented tenancies or licensees, the Respondent Tenant said she could not comment other than that it was a house share.

Breach of landlord's obligations re standard and maintenance of dwelling

Mr. Grimes referred to the Adjudicator's findings in addressing the different areas claimed by the Respondent Tenant in her initial application for dispute resolution. He referred to page 3 onward in Case File 3 in which he answered each of the Respondent Tenant's claims in turn. He said that the cleaner had been unable to carry out her duties during the Covid-19 lockdown periods and that none of the other tenants had asked for a refund because of the lack of cleaning services. He stated that the Respondent Tenant had had an opinion of the cleaner from the beginning of her tenancy. In his written submission in Case File 3 he stated that the cleaner was a person that he used on all their cleaning jobs and denied that she did not attend the property of the first six weeks of the Respondent Tenant's tenancy as claimed by her.

He refuted the allegation that the dishwasher was not working from the beginning of the Respondent Tenant's tenancy and said that it was only from an email on 17 February 2020 that he was made aware of it. He further stated that there were periods during Covid-19 lockdowns when he could not get anyone out to look at it but then on 9 June 2020 the plumber said there was nothing wrong with it but claimed that the tenants were not using the appliance correctly.

Mr. Grimes said in relation to the WiFi and internet connection, that the rooms in the recently added extension suffered from weak connection but that there was never no internet. He said that he installed a booster and then some time later got Virgin Media out to inspect. He said that due to the lockdown he thought more people than usual were working from home and this put an undue strain on the system. He said that they had offered 'internet' included in the services provided and not 'internet for work' and further that there were now no complaints from any of the current tenants about the internet.

In cross examination Mr. Grimes said that there was no evidence that the Respondent Tenant had brought the malfunctioning dishwasher to their attention before February 2020 and not 'from the beginning' as claimed by the Respondent Tenant. He also stated that there was no concrete evidence of the internet access being insufficient and said that some

tenants were affected and others were not. He said they had installed the booster and that beyond that if someone needed a hi speed connection they could have put in their own. He concluded by saying that the house comprised brand new accommodation and the problems reported were small things which he had dealt with as well as he could under the circumstances.

In summing up he submitted that the Respondent Tenant did not only have problems with him and his colleague, Michael, from his office but that she had caused problems for other people in the house and made their time there unpleasant. He said that the amount of money awarded by the Adjudicator was not the issue it was the principle. He said that he was willing to refund her her portion of the lack cleaning services for the period of lockdown.

The Respondent Tenant's Case:

In relation to jurisdiction, when the Respondent Tenant was asked about whether this was a tenancy or not, and therefore whether the Tribunal had jurisdiction to hear the case, and asked about the definition of self-contained residential unit in the Residential Tenancies Act, she stated that she didn't know. The Respondent Tenant opened her evidence by saying that the Appellant Landlord was blaming Covid-19 for the absence of the cleaner and the fact that a plumber could not access the house during lockdown but that in fact these problems existed prior to the onset of Covid-19. She referred to an email dated 30 October 2019 (p 47 of Case File 1) in which she asks the Appellant Landlord's Representative and managing agent when the cleaner was due as there had been no cleaner in a month. The email also refers to a weak WiFi connection. She stated in her oral evidence that although the email was dated 30 October 2019, her friend and Witness to the hearing and another tenant in the house, had been asking about the cleaner since September. The Respondent Tenant stated that the Appellant Landlord's Representative, Mr. Grimes, was again blaming the lockdown on the poor internet connection which he had said was not designed for everyone to be on various devices working from home. She stated that in fact only two of the tenants were working full time from home during the lockdown. She said that while another tenant said the WiFi was OK he was not a person who complained and that all the other tenants had asked her to be spokesperson regarding the unsatisfactory WiFi connection.

She stated that the dishwasher had always been 'glitchy' since the start of her tenancy and in spite of various attempts to have it fixed, a tenant who was a plumber had moved into the house and fixed it in five minutes but they had had to wait until July 2020 for the dishwasher to work properly. The Respondent Tenant's Witness, Ms. Young, also a tenant in the house, stated that she was at home on sick leave for six weeks and that she had not seen the cleaner once. This was outside the period of lockdown due to Covid-19. She also stated that the dishwasher had not worked properly from when she moved into the house in September 2019. She said that she had had to put in her own broadband as the WiFi in the house was very weak and that her boyfriend had sent a diagnostic report to the Appellant Landlord's Representative on 3 October 2019. In summing up the Respondent Tenant said that she simply wanted the Adjudicator's decision to stand.

6. Matters Agreed Between the Parties

The following points were agreed by the parties at the hearing.

- The tenancy commenced on 1 October 2019 and terminated on 31 August 2020.

- The rent was €800 per month and a deposit of €800 was paid which is still held by the Respondent Landlord.
- The address of the dwelling is 48 College Green, Maynooth, Co Kildare.

7. Findings and Reasons:

Having considered the evidence provided and based on the balance of probabilities the Tribunal has made the following findings:

Finding 7.1

The Tribunal finds that the Respondent Tenant occupies the dwelling under a license and accordingly finds that it has no jurisdiction in the matter of the dispute between the Appellant Landlord and the Respondent Tenant.

Reason:

Section 4(1) of the Residential Tenancies Act, 2004-2020 (hereinafter known as 'the Act') sets out the definition of 'dwelling' as 'a property let for rent or valuable consideration as a self-contained residential unit...'. The Tribunal has assessed the circumstances of the occupancy of 48 College Green, Maynooth, Co Kildare as falling outside the definition within the Act of 'self-contained'. Section 4(1) of the Act goes on to define 'self-contained residential unit' as including 'the form of accommodation commonly known as 'bedsit' accommodation'. Bedsit accommodation would necessarily include a sitting room element (hence the origin of the word) and typically includes a small kitchenette unit with a cooker all provided within the same room. In this case by contrast, the subject house is let as a house-share with occupants enjoying their own private bedroom and thereafter sharing other facilities for cooking, eating, living-room accommodation and in some cases bathrooms. While the room rental agreement was unfortunately not made available to the Tribunal, the parties advised that each occupant signed their own agreement and the monthly rent was an 'all-in' amount including utility bills incurred by all.

The accommodation is not self-contained in this case and therefore it cannot come under the definition of a 'dwelling' to which the Act applies. A letting to the eight occupants on a single tenancy agreement with joint and several liability for the rent would constitute a dwelling being a self-contained dwelling with eight tenants within the meaning of the Act. The Appellant Landlord's registration of the house as a single tenancy does not render the arrangement a tenancy either. The Residential Tenancies (Amendment) Act 2019 brought shared accommodation in the form of Student Specific Accommodation under the remit of the RTB. A student is defined under the legislation as a 'student with a relevant provider (within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012)'. The house share arrangement in this case clearly does not fall under this definition. The fact that the legislature explicitly chose to vary the definition of dwellings by the insertion of Section 3(1A) in relation to providing residential accommodation to students during academic term times through the Residential Tenancies (Amendment) Act 2019, and removed the requirement for that accommodation to be 'self-contained' under Section 3(1A)(c), indicates that this provision was considered and it was decided that the requirement of 'self-contained' should remain where the accommodation was not provided to students during academic term times.

8. Determination:

In the matter of Andrew Browne Construction Limited (Appellant Landlord) and Sinead Ennis (Respondent Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The RTB has no jurisdiction in respect of the Appellant Landlord's application, in respect of the tenancy of the dwelling at 48 College Green, Maynooth, Co Kildare.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 10/03/2021.

Signed:



Suzy Quirke Chairperson

For and on behalf of the Tribunal