Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0225-008497 / Case Ref No: 0824-98261

Appellant Tenant:	Megan Kellett, Jake Webster
Respondent Landlord:	Janna Yore, Eric Yore
Address of Rented Dwelling:	Carrigasimon, Lisduff, Virginia, Cavan, A82P9H2
Tribunal:	John Keaney (Chairperson) Mary Doyle, Ciara Doyle
Venue:	Virtual
Date & time of Hearing:	24 March 2025 at 2:30 p.m.
Attendees:	Megan Kellett, Tribunal Appellant Tenant Jake Webster, Tribunal Appellant Tenant Alex O'Connor, Tribunal Representative Janna Yore, Tribunal Respondent Landlord Eric Yore, Tribunal Respondent, Landlord
In attendance:	Epiq digital Logger.

1. Background:

On 13/08/2024 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 14/01/2025. The Adjudicator determined that:

1. The Notice of termination with a date of service of the 13th day of August 2024, served by the Respondent Landlords on the Applicant Tenants, in respect of the tenancy of the dwelling at Carrigasimon, Lisduff, Virginia, Co Cavan, A82P9H2 is invalid.

2. The Respondent Landlord shall pay the total sum of €600 to the Applicant Tenants, within 28 days of the date of issue of the Determination Order, being overpayment of rent in respect of the tenancy of the above dwelling.

3. The Respondent Landlord shall pay the total sum of €560.99 to the Applicant Tenants, within 28 days of the date of issue of the Determination Order, being the balance of the unjustifiably retained security deposit of €900, having deducted €316 for electricity and €23.01 for unpaid rent, in respect of the tenancy of the above dwelling.

Subsequently the following appeals were received:

Tenant : received on 08/02/2025. The grounds of the appeal: Breach of landlord obligations, Rent more than market rate (Not Applicable to Approved Housing Body Tenancies), Anti-social behaviour, Validity of notice of termination (if you are disputing the validity of a termination notice issued) ; Approved by the Board on 10/02/2025.

The RTB constituted a Tenancy Tribunal and appointed Mary Doyle, Ciara Doyle, John Keaney as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Keaney to be the chairperson of the Tribunal ("the Chairperson").

On 03/03/2025 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 24/03/2025 the Tribunal convened a hearing.

2. Documents Submitted Prior to the Hearing Included:

RTB case files.

3. Documents Submitted at the Hearing Included:

None

4. Procedure:

The Chairperson asked the participating parties to identify themselves and to identify in what capacity they were taking part in the Tribunal.

The Chairperson asked the parties to confirm that they had received the relevant papers from the RTB in relation to the case Tribunal. The parties were also asked to confirm that they had received the RTB document entitled "Tribunal Procedures".

The Chairperson 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; that the Appellant Tenants would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent Landlords; that the Respondent Landlords would then be invited to present their case and that there would be an opportunity for cross-examination by the Appellant Tenants. The Chairperson said that members of the Tribunal might ask questions of both Parties from time to time. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

He stressed that all evidence would be recorded by a recording technician, and he 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 or up to 6 months imprisonment or both.

He said that following the hearing, the Board would make a Determination Order which would be issued to the parties and that it was the practice of the RTB to publish reports of hearings and determination orders on its website. He explained that the hearing before the Tribunal was a de novo hearing and a final hearing as to matters of fact and that a Determination Order made by the RTB could be appealed to the High Court on a point of law only.

The Respondent Landlords said that they should be listed as Appellants as they too had submitted an appeal. It was explained that as it was a completely new hearing of the facts no party was advantaged/disadvantaged by being named Appellant or Respondent.

All parties giving evidence made their affirmation.

5. Submissions of the Parties:

Submissions of the Appellant Tenants:

The Appellant Tenant's representative made some opening submissions and then the first-named Appellant Tenant gave her evidence. She referred the Tribunal to copies of three bank statements at pages 114, 121 & 124 of Tribunal Case File 2, which she said showed three payments to the Respondent Landlord in respect of monies due for electricity. She said the bills were paid as they were received but they had not paid anything for August 2024 as they had not received a bill.

She referred the Tribunal to photographs taken on 01 September 2024 which she said showed the condition of the dwelling on the day they moved out. She said she took the photographs because the Respondent Landlords had refused to carry out an inspection. In relation to the bed and a wardrobe she said they had cleaned them as best they could.

She said that the Respondent Landlords had served them with a seven-day notice of termination on 05 August 2024 on the grounds of anti-social behaviour just because she had asked the first-named Respondent Landlord to move her horses away from the window of the dwelling. She said she asked this because her dog was recovering from an operation and she did not want him to be disturbed. She alleged that the first-named Respondent Landlord was abusive and told her that her stepdaughter would be moving into the dwelling.

She said a further 7-day notice of termination on the grounds of anti-social behaviour was served on 13 August 2024 which was to expire on 20 August 2024.

She said that up to that point they had lived at the dwelling for 3 years and 10 months without any problems. She said that after the notice of termination was served the Respondent Landlords harassed and intimidated them. She said they parked their car immediately outside their front door and had damaged their rotary washing line. The witness then went on to give a detailed account of the behaviour of the Respondent Landlords from 13 August 2024 until 01 September 2024, which she said (and this is not an exhaustive list of the incidents alleged) included the first-named Respondent Landlord standing at their front door at 8.00 a.m. banging a bowl with a spoon and shouting "Woo, the Tenants are going today"; the second-named Respondent Landlord riding his ride-on mower around the house, sellotaping notices to the window alleging breach of obligations and asserting that their dog had to be removed, sending text messages, calling An Garda Siochana to attend at the dwelling, blocking the drive with bins. She said that their behaviour had caused both of them a lot of stress, that the second-named Appellant Tenant was off work because of stress. She said that even though they knew the notice of termination was invalid, because they did not feel safe in the house, they felt they had no choice but to leave. She said they were now paying an additional €1,200.00 in rent.

She said that when they were leaving the dwelling on the 1st of September 2024, they sent a text to the second named Respondent Landlord telling him that they were leaving at 2:00 PM and requesting him to inspect. She said that he refused and told them to leave the keys and to just take photographs. She said that her father came to help them move that day. She said that the Landlords called An Garda Siochana to attend the dwelling again, accusing them of stealing the Landlord's property. She said a member of An Garda Siochana attended and when they entered the house, the second named Respondent Landlord entered immediately after them. She said that the Guards asked him to leave and he did so. No action was taken by the Guards. She said that they took photographs of the

condition of the dwelling and put the keys in the post box and then left. She said that they then started to receive messages regarding the retention of their deposit.

When cross-examined by the first-named Respondent Landlord, the Appellant Tenant denied that the confrontation between them had taken place at the back of the house. She said that the second named Respondent Landlord had thrown her clothesline and damaged it. She said that she had heard him hammering on the clothesline and could partially see him through a window. She did not accept the first named Respondent Landlord's assertion that the bins had been placed in the drive to prevent her from driving on the Landlord's side of the driveway. She said that when she went to the door to speak to the first name Respondent Landlord, she was holding the dog because of the proximity of the horses. She maintained that the clothesline line had been damaged because it would not open anymore. She said that she had felt trapped in her home because of the way in which the Respondent Landlord's car was parked immediately outside the door. She said that this was not where the car was normally parked.

She said that on the day they left the dwelling there were two gas cylinders. She agreed that the Landlord had offered credit for gas and kerosene.

The second named Appellant Tenant then gave evidence. He said that his mother lived locally, and he was her carer. He said that they now lived much further away and that he was no longer there for his mother and that others needed to attend to her. He said the move had caused financial strain. He said that as a result of the move, they had quit a multiple of Sports Club memberships. He said that the first named Appellant Tenant had given up a golf membership and that the two of them had had to start their lives over. He said that the Landlords had only ever called the Guards after the 1st of August 2024, which is not consistent with the Respondent Landlords version that they had been Tenants from hell. He said that they had missed out on approximately €1533 worth of tax credits because the Respondent Landlords had not registered the tenancy with the RTB. When cross-examined he said that he had caught the Respondent Landlord's daughter peeking in through their windows on one occasion and had asked the Respondent Landlords to keep her away. He denied that the first named Appellant Tenant had been behaving in an anti-social manner.

In his closing submissions, the Appellant Tenants' representative started by saying that there had been a clear breakdown in the relationship between the parties and that there had been interpersonal issues from the date of service of the notice of termination. He said that it appeared that the Landlord intended to recover the dwelling so that it could be used by a member of the family but then came across the possibility of terminating the tenancy more quickly on the grounds of anti-social behaviour. He summarized the behaviour of the Landlords after the service of the first notice of termination. He said that the Landlords had taken the view that the Tenants were over holding and so had no rights. He said the Landlord's behaviour had an impact on the Tenants. He submitted that the rent review carried out by the Landlord was not lawful

Respondent Landlords' Case

The first-named Respondent Landlord gave evidence first. She said that the dispute had had an impact on the mental health of their whole family. She said that prior to the confrontation between her and the first named Appellant Tenant, they had been upset because the first named Appellant Tenant had been intimidating their daughter by asking her not to ride her bike near the house. She said that the first named Appellant Tenant had

been shooting “scortty” looks at her daughter and staring at her. She said that her daughter had felt very uncomfortable. She said that before the 1st of August 2024 they had discussed giving notice for these reasons. She said they had thought that her stepdaughter could move in there at some time. She said that on the 1st of August 2024 did get into an argument with the first named Appellant Tenant. She said she was returning her horses to the stable and asked the Respondent Tenant to move so that she could get by and the Appellant Tenant refused. She said the Appellant Tenant provoked her and assaulted her. She said she told the first named Appellant Tenant that she would be getting a notice of termination because she could no longer tolerate this terrible situation. She said the following day the first named Appellant Tenant came out of her dwelling and told her to leave the gate open as she was expecting visitors. She said that she was shouting but that she ignored her. She said she felt scared and uncomfortable because her husband was not present. She said the Appellant Tenant slammed the gate open. And that she had to close it again. She said the first-named Appellant Tenant, then started filming her with her camera. She said that it was at that stage she decided that the notice of termination for anti-social behaviour would be served.

She denied saying that she would put photos of the first named Appellant Tenant on social media. She denied standing outside the front door of the dwelling banging a bowl with a spoon. She denied damaging the Appellant Tenants’ clothesline. She said it had been removed because it was spooking the horses and it gave one less reason for her to run into the Appellant Tenants. She said the car had been parked in front of the door to the dwelling house because there was an “onslaught” of family and guests and the car had been placed there to reduce the noise from these visitors. She said the horses’ position depends on grazing and access to the field. She said that they had previously checked in with the Appellant Tenants who said that there was no problem because they would be rarely at their house. She said that the horses might gallop 3 times a year in total. She said that there had been no previous complaint regarding the horses and this had been blown out of proportion. She said that she had performed a dance routine when she caught the First named Appellant Tenant videoing her. She said she had no choice but to make them leave.

When cross examined, she agreed that she had a called An Garda Siochana a number of times. She agreed that she had called them on the 21st of August 2024 when the Appellant Tenants had made such a big deal of the clothesline being removed. She said she called the An Garda Siochana because the second named Appellant Tenant had stared at her in an intimidating manner after following her around her property. She said that when they removed the clothesline, they then moved an electric fence so that the Appellant Tenants would not have room to put up another clothesline. She said that it did not matter because the Appellant Tenants were over holding. She agreed that she had called An Garda Siochana on the 1st of September 22024 when the first named Appellant Tenant's father made threats and that she had not felt safe. She said this was also why her husband had not carried out any inspection.

The second named Respondent Landlord then gave evidence. He said that they had had an informal arrangement with the Appellant Tenants and this was why the rent was low and the tenancy not registered with the RTB. He said the Appellant Tenants knew that if the tenancy was registered that the rent would have to be increased to the market rate. He said that he had used a sub meter to measure the Appellant Tenants’ use of electricity. He said he thought that they were good Landlords in trying to keep the rent as low as possible, and

for this reason, no formal rent review had been undertaken. He said he believed his calculation of the deductions from the deposit to be correct. He said that he parked his car where he did to try and lessen the noise from the comings and goings of the Tenants and their visitors. He said that he thought that a contribution of €50 was a fair amount for the unused kerosene and gas and that he also offered €20 for credit for gas in the cylinder. He said that the cylinders had never been locked in a shed and the Tenants could have taken them. He said that they felt they had no alternative but to give the Tenants notice because the effect of their behaviour. He said he had tried to arrange an inspection of the dwelling prior to the Tenants vacating, but the second named Appellant Tenant had said that he was sick. He said he recalled receiving a call from Threshold, who alleged that he'd been into the property, which he said was not true. In relation to a complaint by the Appellant Tenants regarding a filthy water supply, he pointed out that this was not done deliberately because they used the same water supply. He denied unnecessarily riding around the dwelling on his mower and said that he was simply cutting the grass. He said that everything was blown out of proportion and that they were just doing normal stuff. When cross examined, he agreed that he had followed the Guards into the dwelling on the 1st of September 2024.

In his closing statement, the second named Respondent Landlord said that he did not have any issue in leaving when requested by the Guards. He said it was an unfortunate the way things had turned out. He felt that because the Tenants were unable to apply for a tax credit they had always been unhappy. He thought this influenced their behaviour towards them and their daughter. He said that after the incident with the gate, they could not put up with the behaviour any longer.

6. Matters Agreed Between the Parties:

1. The address of the dwelling is Carrigasimon, Lisduff, Virginia Co. Cavan
2. The tenancy commenced on the 01 November 2020.
3. The monthly rent at the commencement of the tenancy was €700.00 per month.
4. The deposit paid by the Tenant at the commencement of the tenancy was €900, which included €200 deposit for the pet.
5. The Appellant Tenants vacated the dwelling on 01 September 2024.

7. Findings and Reasons:

Finding 1:

The Notices of Termination served on the 5th of August 2024 and 13th August 2024 by the Respondent Landlords on the Appellant Tenants in respect of the tenancy of the dwelling at Carrigasimon, Lisduff, Virginia, Co. Cavan are invalid.

Reasons:

1. Part 4 of the Act sets out a scheme by which certain Tenants of residential premises enjoy the benefit of a degree of statutory security of tenure. In accordance with Chapter 2 of that Part, a Tenant who has been in occupation of a residential dwelling for a continuous period of 6 months enjoys, primarily, the right to continue in possession as a Tenant for the period of six years from the commencement of the tenancy, or until the expiration of a

period of notice, whichever is the later. This is known as a 'Part 4 tenancy'. In respect of the case before it, the Tribunal finds the Respondent Tenant enjoyed a 'Part 4 tenancy'.

2. A 'Part 4 Tenancy' may be terminated by a Landlord in accordance with the provisions of Section

34 of the Act and on one or more of the grounds specified in the Table to the said Section. One of these grounds is that the Tenant has failed to comply with any of his or her obligations in relation to the tenancy and, unless the failure provides an excepted basis for termination-

A. The Tenant has been notified in writing of the failure by the Landlord, and the notification states that the Landlord is entitled to terminate the tenancy if the failure is not remedied within a reasonable time specified in that notification and

B. the Tenant does not remedy the failure within that specified time.

3. One such obligation of a Tenant is contained at s.16 (h) of the Act. It obliges a Tenant not to behave (and not to allow others to behave) in a manner that is anti-social.

4. S.17 (1) of the Act gives three definitions of anti-social behaviour. These are

(a) engage in behaviour that constitutes the commission of an offence, being an offence the commission of which is reasonably likely to affect directly the well-being or welfare of others,

(b) engage in behaviour that causes or could cause fear, danger, injury, damage or loss to any person living, working or otherwise lawfully in the dwelling concerned or its vicinity and, without prejudice to the generality of the foregoing, includes violence, intimidation, coercion, harassment or obstruction of, or threats to, any such person, or

(c) engage, persistently, in behaviour that prevents or interferes with the peaceful occupation—

(i) by any other person residing in the dwelling concerned, of that dwelling,

(ii) by any person residing in any other dwelling contained in the property containing the dwelling concerned, of that other dwelling, or

(iii) by any person residing in a dwelling ("neighbourhood dwelling") in the vicinity of the dwelling or the property containing the dwelling concerned, of that neighbourhood dwelling.

5. S.35 (3) of the Act defines the term "excepted basis". It provides:

In paragraph 1 of the Table the reference to a failure that provides an excepted basis for termination is a reference to a failure to comply with section 16(h) where the behaviour in question falls within paragraph (a) or (b) of the definition of "behave in a way that is anti-social" in section 17(1).

6. The effect of s.35 (3) is that a landlord does not have to serve a warning notice on a Tenant advising of a breach of obligation and giving a Tenant an opportunity to remedy the breach where the breach concerned is anti-social behaviour falling within the (a) or (b) definition.

7. If a tenancy is being terminated on the grounds of anti-social behaviour falling within either definition (a) or (b), then s.67 (2) provides that the appropriate period of notice to be given is a minimum of 7 days.

8. The Respondent Landlords served both notices of termination on the grounds of anti-social behaviour giving the Appellant Tenants 7 days' notice. For such notices to be valid the behaviour complained of must come within the definitions set out in paragraph (a) or (b).

9. According to the Respondent Landlord's evidence, prior to the service of the first notice of termination the Appellant Tenants had

(a) Asked the Respondent Landlord's daughter not to ride her bike so close to their house

(b) Given the Respondent Landlords' daughter some dirty looks

(c) Had, what would appear to have been, a heated argument with the first-named Respondent Landlord about horses

(d) Slammed open a gate.

10. Even if the Tribunal accepts the evidence of the Respondent Landlords about the behaviour of the Appellant Tenants prior to the service of the notice of termination, the Tribunal finds that such behaviour does not come within either of the definitions set out in paragraphs (a) and (b) of s.17.

11. It therefore follows that the Respondent Landlords did not have grounds to terminate the tenancy on 7 days' notice and the notice of termination was invalid.

12. Under Section 58 of the Act "a tenancy of a dwelling may not be terminated by the landlord or the tenant by means of a notice of forfeiture, a re-entry or any other process or procedure not provided by this Part"

13. Had the Appellant Tenants been given notice on the grounds that the Respondent Landlord required the dwelling for use by a family member then the Appellant Tenants would have been entitled to 180 days' notice based on the length of time they had been in occupation. The Appellant Tenants were of the opinion that the notice was invalid but assert that they did not remain in the dwelling because of the behaviour of the Respondent Landlords. The Tribunal finds that the Respondent Landlords behaved in a manner that was designed to intimidate and harass the Appellant Tenants to such an extent that they felt they had no choice but to acquiesce to the Respondent Landlords' demands and to vacate the dwelling. In doing so they incurred additional rent 6 months earlier than they would have done had they received 180 days' notice. The Tribunal accepts the Appellant Tenants' evidence that the rent for their new dwelling was €1,200.00 per month more than the rent for the Respondent Landlords' property. The Appellant Tenants therefore incurred €7,200.00 additional expense as a result of being forced out of the dwelling. The Tribunal therefore awards the Appellant Tenants damages of €7,200.00 for what was an unlawful termination of their tenancy.

Finding 2:

The Respondent Landlords' review of the rent for the tenancy was unlawful.

Reasons:

1. S.22 of the Act sets out the procedure by which a landlord can set a new rent for a dwelling.

2. It was agreed that the Respondent Landlords had increased the rent by €100.00 per month with effect from March 2024 without using the procedure set out in s.22.

3. The Tribunal notes what the Respondent Landlord asserts about the arrangement with the Appellant Tenants being informal, but the Tribunal cannot disregard the statutory obligations of a landlord.

4. Unless the correct procedure is followed any purported increase in rent is void and the original rent is the only amount to which a landlord is entitled.

5. In the circumstances the Appellant Tenants paid too much rent for 6 months and are entitled to be reimbursed €600.00.

Finding 3:

The Appellant Tenants' claim for the return of their deposit is upheld.

Reasons:

1. It was agreed that the Appellant Tenants had paid a deposit of €900.00 at the commencement of the tenancy.

2. Pursuant to s.12 (d) of the Act a landlord is obliged at the end of a tenancy to return promptly to the Tenant any deposit paid.

3. This obligation is subject to the right for the Landlord to deduct any rent arrears, unpaid bills, and the costs incurred or likely to be incurred in remedying any breach by the Tenant of his obligation pursuant to s.16 (f) of the Act not to allow the condition of the dwelling to deteriorate by an extent that is in excess of normal wear and tear. The onus is on the Landlord to prove his entitlement to the deductions on the balance of probabilities.

4. The Respondent Landlords sought to retain all of the deposit for unpaid rent, electricity charges, cleaning costs and repairs.

5. At page 65 of Case File 3 the Respondent Landlord furnished a hand-written calculation of the deductions from the deposit.

6. Pursuant to s.16 (a) of the Act a Tenant is obliged to pay rent on the date it falls due for payment.

7. The rent for the dwelling was due on the first day of each month. The Appellant Tenants had paid rent up to the end of August 2024. By their own evidence the Appellant Tenants did not vacate and give up possession until 01 September 2024, meaning they were liable for an additional day's rent.

8. One day's rent is calculated as €800.00 X 12/365, which equals €26.30.

9. The deductions included a sum of €388 for cleaning. This sum is not allowed. A Tenant Is not obliged to return a dwelling in exactly the same condition in which it was received. The Act envisages that normal wear and tear is to be expected and that a Tenant is not liable for such wear and tear. The Appellant Tenants submitted photographs of the dwelling taken on the day that they vacated. These photographs show the dwelling to be in a proper state of repair. If the Respondent Landlords decided that it needed to be professionally cleaned that is their prerogative but it does not mean that the Appellant Tenants are responsible for the cost.

10. The Respondent Landlords also deducted a sum of €316.00 for electricity charges, being €274.00 for the period 01 March 2024 to 01 September 2024, together with a sum of €42.00 for arrears. The first-named Appellant Tenant's evidence was that additional payments were made to the second-named Respondent Landlord in respect of electricity charges. She referred the Tribunal to copies of her bank statements which showed these

additional payments. She said there was no other reason for making these payments. They amounted to €389.00. The Respondent Landlords did not challenge this evidence nor did they present any contradictory evidence. The Tribunal finds that, based on the first-named Appellant Tenant's evidence, the Respondent Landlords have failed to prove their entitlement to make this deduction.

11. The Appellant Tenants have failed to prove to the satisfaction off the Tribunal that they were prevented from recovering gas bottles and kerosene from the dwelling. Their evidence was that they never returned to the dwelling after 01 September 2024. The Respondent Landlords deny having placed a lock on the shed. The Tribunal notes that the Respondent Landlords were prepared to credit the Appellant Tenants the sum of €70.00 for fuel and in the absence of any persuasive evidence from the Appellant Tenants will accept this sum as being due to the Appellant Tenants.

12. The only deduction allowed is one day's rent in the sum of €26.30. The amount due to the Appellant Tenants therefore is €943.70 (€873.70 deposit and €70.00 fuel credit).

8. Determination:

Tribunal Reference TR0225-008497

In the matter of Megan Kellett and Jake Webster [Appellant Tenants] and Janna Yore and Eric Yore [Respondent Landlords], the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act 2004, as amended, determines that:

1. The Notices of Termination with a date of service of the 05 August 2024 and 13 August 2024 served by the Respondent Landlords on the Appellant Tenants in respect of the tenancy of the dwelling at Carrigasimon. Lisduff, Virginia, Co. Cavan are invalid

2. The Respondent Landlords shall pay to the Appellant Tenants within 28 days of the issue of the determination Order the total sum of eight thousand seven hundred and forty-three euro and seventy cents (€8,743.70) for breaches of Landlord's obligations pursuant to s.12 (d), s.22 and s.58 of the Act.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 08/04/2025.

Signed: Keaney.

John Keaney, Chairperson
For and on behalf of the Tribunal.