Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0525-008744 / Case Ref No: 0125-101902

Appellant Landlord:	Elizabeth Keohane
Respondent Tenant:	Thanongsak Chanthima, Photchamal Chanthima
Address of Rented Dwelling:	16 The Green, Gleann Na Ri, Tower, Blarney, Cork, T23PP92
Tribunal:	James Egan (Chairperson) Dairine Mac Fadden, Maureen Cronin
Venue:	Virtual
Date & time of Hearing:	01 August 2025 at 2:30 p.m.
Attendees:	Elizabeth Keohane, Tribunal Appellant Landlord Paul O'Sullivan, Kevin O'Donovan & Partners, solicitors for the Landlord Photchamal Chanthima, Tribunal Respondent Thanongsak Chanthima, Tribunal Respondent Aoife Collins of Threshold
In attendance:	Digital Audio Recorder appointed by the RTB

1. Background:

On 13/01/2025 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 13/03/2025. The Adjudicator determined that:

"In the matter of Thanongsak Chanthima and Photchamal [Applicant Tenants] and Elizabeth Keohane [Respondent Landlord] the Residential Tenancies Board, in accordance with section 97 of the Residential Tenancies Act 2004, determines that:

1. The Applicant Tenants' claim disputing the validity of the notice of termination served on 28 November 2024 in respect of the tenancy at the dwelling at 16 The Green, Gleann na Rí, Tower, Blarney, Co Cork is upheld.

2. The monthly rent for the above tenancy is €875.00 unless lawfully varied.

3. The Respondent Landlord shall pay the sum of €744.00 in damages pursuant to s.115 of the Residential Tenancies Act 2004 to the Applicant Tenants as overpayment of rent within 14 days of the date of this Determination Order."

Subsequently the following appeals were received:

Landlord : received on 09/05/2025. The grounds of the appeal: Validity of notice of termination (if you are disputing the validity of a termination notice issued) ; Approved by the Board on 22/05/2025.

The RTB constituted a Tenancy Tribunal and appointed Dairine Mac Fadden, Maureen Cronin, James Egan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed James Egan to be the chairperson of the Tribunal ("the Chairperson").

On 09/07/2025 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 01/08/2025 the Tribunal convened a hearing, using MS Teams.

2. Documents Submitted Prior to the Hearing Included:

RTB case file.

3. Documents Submitted at the Hearing Included:

n/a

4. Procedure:

The Chairperson asked the participating parties present 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. 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 Landlord would be invited to present her case and that the Tenants would have an opportunity to cross examine or challenge the Landlord's evidence following which, the roles reversed and the Tenants would give their evidence with the Landlord having a similar right of reply or cross examination. The Chairperson said that members of the Tribunal might ask questions of the parties present from time to time. The Chairperson explained that following this, the parties would be given an opportunity to make a final submission.

The Chairperson 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 parties took the sworn affirmation in advance of giving their evidence to the Tribunal.

5. Submissions of the Parties:

The Appellant Landlord's evidence:

The Landlord stated that rent began to go into arrears in June 2024. The Landlord noted that rent was unpaid until the end of July. In respect of the rent due for July and August 2024, the Landlord explained that €2,000 was paid on 16 September, 2024. The Landlord stated that €200 of this payment was used to credit September's rent that was due on 17 September, 2024. The Landlord stated that no further rent was received for September 2024. The Landlord stated that October's rent remained unpaid on 17 October, 2024 and that €400 was paid on 4 November, 2024. The Landlord stated that no rent was paid for December 2024. The Landlord stated that €350 was paid for January 2025, €360.00 for February 2025, in respect of March 2025, no sum of money was received, and this was the same for April and May 2025. The Landlord stated that €150 was received for June 2025, along with the sum of €100 for July 2025. The Landlord stated that current arrears stood in the sum of €8,340.

The Landlord stated that she was paying the mortgage every month and that the non-payment of rent was impacting her ability to make the monthly mortgage repayments. The Landlord stated that she would need to have to sell the house in order to pay the balance of the mortgage.

The Landlord stated that the Tenants know in their hearts that she has always been fair with them throughout the tenancy since 2015. The Landlord stated that she was not asked to sign the rent supplement form until after the expiry of the Notice of Termination that had been served.

The Landlord's solicitor, Mr O'Sullivan, stated that the provision relating to the referral to the Residential Tenancies Board was missing from the 2021 rent review. The Landlord's solicitor stated that this rent review increased rent from the sum of €875 to €899, in accordance with the Rent Protection Zone requirements. The Landlord's solicitor stated that this rent review gave 90 days' notice of the increase, along with 3 comparable properties. The Landlord's solicitor submitted that this was substantially less than the market rent that was pertaining at the time. The Landlord's solicitor stated that, even if you were to discount the rent review of 2021, there continued to be arrears accruing at this time. The Landlord's solicitor stated that the warning letter was served on the Tenant and the RTB on 25 October, 2024, and it contained a warning that €1,600 was owed to the Landlord.

The Landlord's solicitor stated that, when this amount was not cleared, the Notice of Termination was served on the Tenant and on the Residential Tenancies Board on 28 November, 2024. The Landlord's solicitor stated that it was unfair to penalise the Landlord for a technicality in circumstances where the Tenants had not raised an issue with the rent amounts over the course of the tenancy. The Landlord's solicitor submitted that, even if the rent review of 2021 was invalid, that the arrears to date stood in the sum of sum of €7,308. The Landlord's solicitor submitted that it is manifestly unfair that a Tribunal could decide that the Notice of Termination is invalid in circumstances where the Tenants are in default of their monthly rental payments.

The Landlord stated that she continues to repay the mortgage repayments. However, she would now like to sell. The Landlord stated that she has been sick in the last year and that she continues to have treatment. The Landlord stated that everything has gone out of control in respect of the tenancy and that she has been fair in how she has treated the Tenants, however, she has received no help whatsoever.

Cross-Examination of the Landlord:

There was no cross-examination of the Appellant Landlord.

The Respondent Tenants' Submissions:

Aoife Collins, on behalf of the Respondent Tenants, submitted that she was relying on her submission that the rent reviews were invalid. Ms Collins submitted that she believed her clients were entitled to have their tenancy terminated in accordance with the legislation. Ms Collins submitted that the rent arrears that had accumulated since the adjudication were not followed up with a warning letter or a subsequent Notice of Termination, which was the Landlord's right to do. Ms Collins submitted that the rent reviews were not in the prescribed form and, in particular, she referenced the fact that the 2017 rent review did not have 3 comparable properties. Ms Collins submitted that only 1 comparable property was provided, which had rendered the rent review invalid. Ms Collins stated that the comparable properties did not have to be in the same area, but could be in a comparable area in accordance with the legislation. Ms Collins set out that the Notice of Termination issued on the basis of incorrect calculations, therefore, it could be determined to be invalid by the Tribunal.

Ms Collins submitted that the 2021 notice of rent review did not contain the provision that allowed a referral to the RTB if there was an issue around the rent increase. Ms Colins submitted that, where an invalid rent review gave rise to an incorrect calculation of rent arrears, then the Notice of Termination must be considered invalid.

The Appellant Landlord's Response:

The Landlord submitted that the rent that was asked from the Tenants remained well under market value and this was a fair treatment of the Tenants over the course of the tenancy. The Landlord's solicitor set out that the Tenants had paid for 2.5 years without complaint. The Landlord submitted that the Adjudicator's decision was not fair or reasonable. The Landlord's solicitor submitted that they were seeking vacant possession and he asked the Tribunal to put itself in the Landlord's shoes. He set out that she feels she is being unfairly treated. Mr O'Sullivan was also seeking an Order for unpaid rent. The Landlord's solicitor set out that the Landlord remains in limbo as regards the mortgage and that she now wishes to sell the Dwelling.

The Landlord's solicitor asked the Tribunal to look at the entirety of the tenancy. He set out that the Landlord should not be penalised by what he regarded as a technicality in respect of the rent review.

The Respondent Tenants' Response:

Ms Collins stated that, while she understands what the Landlord needs, she believed that it must be in line with the legislative requirements in order to obtain vacant possession of the Dwelling. Ms Collins submitted that the Tenants will not get the relevant supports if the Notice of Termination is invalid.

6. Matters Agreed Between the Parties:

The address of the dwelling is 16 The Green, Gleann na Rí, Tower, Blarney, Cork, T23 PP92.

The Tenants are in occupation since the 17th August 2015.

The Tenants remain in occupation.

A deposit of €750.00 was paid at the start of the tenancy and the Landlord retains the deposit pending the end of the tenancy.

A warning letter for rent arrears was served on the Tenants on the 25th October 2024.

A notice of termination was served on the Tenants on the 28th November 2024 on the grounds of arrears of rent.

7. Findings and Reasons:

Tribunal's Findings:

Finding 1: The Tribunal finds that the notice of termination served on the 28th November 2025 is invalid.

Reasons:

The dispute between the parties concerns the consequence of the failure to serve an invalid rent review in 2021 on the notice of termination that was served on the Tenants. The Tribunal notes that having been served with a notice of termination on the grounds of arrears of rent that the Tenants approached Threshold for assistance. Threshold have raised the issue of two rent rents that were conducted over the course of the tenancy, in 2017 and in 2021.

The Tribunal notes that the first rent review was conducted in 2017 and raised the original rent from €750.00 to €875.00. The Tribunal does not intend to make a finding on this rent review in circumstances where over 6 years have passed between that rent review and the service of the notice of termination on the grounds of rent arrears. The Tribunal finds that it does not have jurisdiction to deal with a rent review that was conducted in excess of 6 years prior to the issue of rent arrears being raised by the Landlord.

The Tribunal notes that the Tenants experienced difficulties in or around April 2024 in circumstances where one of them lost their job. Up until this point, it is evident that there was a good relationship between the parties and it was acknowledged by the Tenants that the Landlord was always fair with them. The Tribunal acknowledges that subsequent to the adjudication that the Landlord has had to live with a very serious occurrence in her own personal life. This was highlighted as part of the Landlord's submission to the RTB and the Tribunal panel has sympathy for the Landlord's circumstances. In addition, the Landlord has submitted that she now wishes to sell the dwelling because she has a mortgage that she is unable to service without the rental income from the Tenants.

The Tribunal has listened to the submission from both parties around the rent review that is dated the 4th October 2021. Ms. Collins set out that the 2021 review purported to increase the rent from €875.00 to €899.00 per month however it was not in the prescribed form. Mr. O'Sullivan stated that the review kept rent below market value and kept the rent level to the limits imposed by the RPZ. Mr. O'Sullivan submitted that to find that the rent review from 2021 was invalid would be manifestly unfair to his client. Mr. O'Sullivan acknowledged that there was an oversight on the rent review form however he regarded this as a "technicality". Ms. Collins identified the error on the from as a failure to include a provision that if there was an issue over the rent review document that it could be referred to the RTB. As part of a written submission, Ms. Collins set out:

'Section 22(3) of the Act provides that when a notice is served in the prescribed form, a dispute must be referred to the RTB before the date upon which the new rent takes effect,

or the expiry of 28 days from receipt of the notice. No time limit is prescribed by law for referral of a dispute in respect of a rent review where notice is not served in the prescribed form'.

The Tribunal recognises the frustrations of the Landlord that were set out by Mr. O'Sullivan however it finds that on balance, the rent set as part of the rent review of 4th October 2021 did not "have effect" due to the failure to serve the notice in the 'prescribed form'. The Tribunal does not have jurisdiction to apply a slip rule or to overlook a technical defect in respect of a rent review form in the same manner as it may with a notice of termination. In those circumstances, the Tribunal find that the rent has remained at €875.00.

Further the Tribunal notes that the warning letter of the 25th October 2024 refers to the rent being in the sum of €900.00 per month which, even if the 2021 review was valid, the warning letter cited the incorrect rent level. The calculations of the arrears were on the basis of the arrears of rent being €1600.00 which allowed for arrears of €700.00 from September 2024 and €900.00 from October 2024. If the rent reviewed in October 2021 was valid, these figures remain incorrect in any event and should have been €699.00 for September and €899.00 for October 2024. On it's own, this oversight would be sufficient grounds for a tenant to argue that the notice of termination was invalid.

The consequence of the rent remaining at €875.00 is that the Landlord's calculated rent arrears are incorrect. Under section 67 of the Act, it states:

"67.—(1) This section applies where the tenancy is being terminated by the landlord by reason of the failure of the tenant to comply with any of the obligations of the tenancy."

Section 67 (2) (aa) states:

"(aa) in the case of the termination of a Part 4 tenancy, 28 days (regardless of the duration of the tenancy) provided that, where the reason for such termination is the failure by the tenant to pay an amount of rent due, the condition specified in subsection (3) is satisfied,"

Section 67 (3) states:

"(3) The condition that applies in respect of paragraph (aa) and subparagraph (ii) of paragraph (b) of subsection (2) is that—

(a) the tenant and the Board have been given a notification (in such form as may be specified by the Board) in writing by the landlord that such amount of rent due as is specified in the notification has not been paid to the landlord, and

(b) that amount is not paid to the landlord within the period of 28 days following—

(i) receipt of the notification by the tenant, or

(ii) receipt of the notification by the Board,

whichever occurs later."

The Tribunal has looked at the wording of section 67 (3) which applies where a tenant under a part 4 tenancy is in rent arrears. The Tenants in this instance should have been notified in "writing by the landlord that such amount of rent due as is specified in the notification has not been paid to the landlord".

The Tribunal notes that warning notice at page 19 of DR Case File 1 (25 pages) sets out that the rent is €900.00. The warning notice sets out that the Tenants are in rent arrears of €1,600.00. In actual fact, the arrears ought to have been €675.00 from September 2024 and €875.00 from October 2024 giving rise to a figure of €1,550.00. The Tribunal finds that

on the basis of the invalid rent review of the 4th October 2021 that this overstated the rent due to the Landlord on the 25th October 2024. In those circumstances, the warning letter contained the incorrect “amount of rent due” therefore the Tenants were not afforded the opportunity to address the breach of obligation.

In those circumstances, the Tribunal finds that the notice of termination served on the 28th November 2024 is invalid. The Tribunal accepts that rent arrears remain an issue at the dwelling however where the procedure was not followed to allow her to terminate the tenancy, the Tribunal finds that this invalidates the notice of termination.

Finding 2:

The Respondent Tenants owe rent arrears in the sum of €7,321.00 to the Appellant Landlord.

Reasons:

The Landlord stated that she wished to have an Order for rent arrears given the scale of the arrears that are ongoing. The Tribunal accepts the Landlord’s undisputed evidence that the Tenants arrears became a serious issue from 17th September 2024 when rent has either not been paid at all, or only in part.

The Landlord’s submission at the Tribunal differed slightly from the appeal form that was lodged with the RTB. The appeal form failed to allow credits for October 2024 of €400.00 (paid on 4th November 2024) and it applied a larger credit of €300.00 for September 2024. Notwithstanding this, the Tribunal has looked at the figures and finds that, based on the operative rent from January 2022 of €875.00 that for the default period, the Tenants are in arrears in the sum of €8,065.00. The Tribunal has calculated this as follows:

Arrears for September (based on €875.00 per month) €675.00 (payment of €200.00 credited from 16th September.

October 2024 €475.00 (payment of €400.00 on 4th November)

November 2024 €875.00

December 2024 €875.00

January 2025 €525.00 (payment of €350.00 made)

February 2025 €515.00 (payment of €360.00 made)

March 2025 €875.00

April 2025 €875.00

May 2025 €875.00

June 2025 €725.00 (payment of €150.00 made)

July 2025 €775.00 (payment of €100.00 made)

Arrears of €8,065.00.

The Tribunal accepts that for a 31 month period from January 2022, the Tenants overpaid by a sum of €24.00 per month giving rise to an overpayment to 16th September 2024 of €744.00. Applying the overpayment leaves a total arrears figure of €7,321.00. The Tribunal accepts that the non-payment of this amount has left the Landlord in difficulty in respect of her mortgage repayments and it accepts her evidence that she finds it unfair that the Tenants left arrears outstanding when she has been fair in her treatment of them over the

course of the tenancy. The Tribunal finds that the rent arrears of €7,321.00 should be paid to the Landlord over a 13 month period commencing on the 28th day of the month at €600.00 per month with a final payment of €121.00 to be made in the following month. For clarity, this is payable in addition to the monthly rent while the Tenants remain in occupation and remains payable when no longer in occupation if the arrears remain outstanding.

8. Determination:

Tribunal Reference TR0525-008744

In the matter of Elizabeth Keohane, Appellant Landlord, and Thanongsak Chanthima and Photchamal Chanthima, Respondent Tenants, the Residential Tenancies Board, in accordance with Section 121 of the Residential Tenancies Act, 2004, determines that:

1. The Notice of Termination served on the 28th November 2024 is invalid.

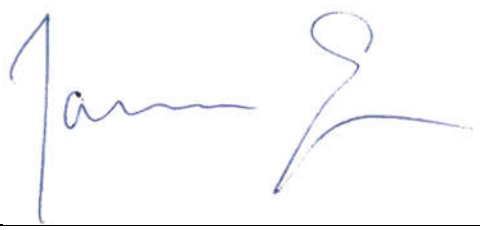
2. The Respondent Tenants shall pay the total sum of €7,321.00 to the Appellant Landlord, in 12 equal consecutive instalments at the rate of €600.00 per calendar month on the 28th day of each month, followed by one further instalment of €121.00 in the immediately succeeding month, commencing the next month after the issue of the Determination Order. This sum represents rent arrears of €7321.00, in respect of the tenancy of the dwelling at 16 The Green, Gleann na Rí, Tower, Blarney, Cork, T23 PP92;

3. The enforcement of the Order for such payment of €7321.00 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments made by the Respondent Tenants to the Appellant Landlord on each due date until such time as the total sum of €7,321.00 has been paid in full.

4. For the avoidance of doubt, any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Appellant Landlord.

5. The Respondent Tenants shall also pay any further rent outstanding from 1st August 2025, being the date of the Tribunal hearing, at the rate of €875.00 per month (payable on the 17th of the month), unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof while they remain in occupation.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 19/08/2025.

Signed: 

James Egan, Chairperson
For and on behalf of the Tribunal.