

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1124-008283 / Case Ref No: 0524-95454

Appellant Tenant: Usama Akram, Hali Johnson

Respondent Landlord: James Ferguson, Mary Ferguson

Address of Rented Dwelling: 3A Longford Place, Monkstown, Blackrock, Dublin, A94AY61

Tribunal: Andrew Nugent (Chairperson)
Helen-Claire O'Hanlon, Michelle O'Gorman

Venue: All Day - Tribunal Room, RTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2

Date & time of Hearing: 11 April 2025 at 10:30 a.m.

Attendees:

6 February 2025:

For the Appellants:

Usama Akram (Appellant Tenant)
Hali Johnson (Appellant Tenant)
Sam Mutter (Appellant Tenants' Representative)

For the Respondents:

Adam Tew (Respondent Landlords' representative)
Sean O'Donoghue (Respondent Landlords' representative)

Subpoenaed Witness:

Shane Barbour (JR Support Services)

11 April 2025:

For the Appellants:

Usama Akram (Appellant Tenant)
Hali Johnson (Appellant Tenant)
Sam Mutter (Appellant Tenants' Representative)

For the Respondents:

Adam Tew (Respondent Landlords' representative)
Sean O'Donoghue (Respondent Landlords' representative)
Gerard Kervick (Respondent Landlords' representative)

Subpoenaed Witnesses:

Paul Pettigrew (JR Support Services)
Graham Quinn (JR Support Services)

In attendance: RTB Appointed Stenographers

1. Background:

On 3 May 2024 the Applicant Tenants made an application to the Residential Tenancies Board (“the RTB”) pursuant to Section 76 of the Residential Tenancies Act, 2004 (as amended)(“the Act”). The matter was referred to an Adjudication which took place on 7 October 2024. The Adjudicator determined that:

“1. The Respondent Landlords shall pay the total sum of €2,250 to the Applicant Tenants, within 10 days of the date of issue of the Determination Order, being damages for breach of landlord obligations pursuant to Section 12(1)(b) of the Act for failure to carry out necessary repairs, in respect of the tenancy of the dwelling at 3A Longford Place, Monkstown, Blackrock, Co Dublin, A94AY61.”

Subsequently appeals were received from the Appellant Tenants and from the Respondent Landlords.

The RTB constituted a Tenancy Tribunal and appointed Andrew Nugent, Helen-Claire O'Hanlon and Michelle O'Gorman as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Andrew Nugent to be the chairperson of the Tribunal (“the Chairperson”).

On 14 January 2025 and 12 February 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 6 February 2025 and on 11 April 2025 the Tribunal convened a hybrid hearing at Tribunal Room, Floor 2, O'Connell Bridge House, Dublin 2, and also via Microsoft Teams.

2. Documents Submitted Prior to the Hearing Included:

RTB case files.

3. Documents Submitted at the Hearing Included:

Not applicable.

4. Procedure:

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the Parties that they had received the relevant papers from the RTB in relation to the case and 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, as both Parties had lodged appeals, the Tenants would be referred to as the Appellants as their appeal had been lodged first in time. Accordingly, the Appellants would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondents' representatives; that the Respondents' representatives would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellants. 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 taken on affirmation and would be recorded by the official stenographer present 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 imprisonment for up to six months or both.

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 Parties were afforded an opportunity to attempt to reach a compromise in respect of the issues in dispute. However, no compromise was forthcoming and accordingly the Parties giving evidence took the affirmation and the hearing commenced.

5. Submissions of the Parties:

The below submissions are not a complete transcript of the evidence given by the Parties but rather a summary of the relevant evidence proffered. Specifically, in this regard, the Parties referred in detail to statements, submissions and photographs submitted in advance of the hearing and the Tribunal has not recited the said evidence verbatim instead, where relevant, referring to the relevant document in the Tribunal and Dispute casefiles. Furthermore, the summary of the evidence set-out hereinbelow is not set-out in the chronological order it was given but rather on the basis of the evidence given in the respective Parties' cases.

Subpoenaed Witnesses:

Evidence of Mr. Shane Barbour

Mr. Barbour of JR Support Services gave evidence that he had received an email dated 5 November 2024 informing him that there was leak in the ceiling in the back bedroom of the dwelling. He said that, as a result, he had initially thought that the leak was coming from the property above the dwelling but that this had turned out not to be the case. He further said that he had forwarded the notification to his office manager and had sought to schedule an inspection of the dwelling.

Mr. Barbour gave evidence that other JR Support Services employees had inspected the dwelling and that a survey had been carried out following which a quote for the remedial works had been provided. He said that efforts had been made to schedule a further call-out to the dwelling which had proven difficult and when eventually agreed, had had to be cancelled due to a red level weather warning being in place on the day of the arranged call-out.

In response to questioning, Mr. Barbour confirmed that he had been engaged to investigate the issue complained of on 5 November 2024. He also speculated that, based on the information provided, the leak in question was probably occurring for a period of one year. Mr. Barbour stated that the inspection of the dwelling was only in respect of attempting to identify the source of the leak in question. He also said that he didn't know if the issue of the leak was connected with an issue of a sewage smell being present in the dwelling and that further testing in the form of a thermal imagine survey would have to be carried out.

Evidence of Mr. Paul Pettigrew

Mr. Pettigrew of JR Support Services gave evidence that the leak in question was active and the source hadn't yet been identified. He stated that the dwelling had been inspected on two occasions and that investigations had been carried out in an attempt to locate the leak and to find its source. In this regard, he said that CCTV and a thermal imaging gun had been used in the investigations carried out but that nothing untoward had been detected.

Mr. Pettigrew gave evidence that further investigations would be required and that the next steps would involve the investigation of neighbouring apartments which he said hadn't yet taken place as he had been unable to schedule inspections of the necessary properties. He also said that he was unable to speculate as to how long the leak had been occurring.

In response to questioning from the Tribunal, Mr. Pettigrew stated that on 7 March 2025 when the second inspection of the dwelling had been carried out, he had opened a hole in the ceiling of the bedroom and had noticed a slow constant leak occurring on the exposed RSJ beam.

In response to questioning, Mr. Pettigrew stated that the thermal imaging camera had been used to try and rule out any issue with condensation. He also stated that he hadn't noticed a smell in the dwelling when he had been present.

Evidence of Mr. Graham Quinn

Mr. Quinn of JR Support Services gave evidence that he had attended at the dwelling in November 2024. He stated that he had cut a small hole in the ceiling plaster in an attempt to identify the source of the leak. He also said that a small section of the ceiling paint had eroded slightly but that the rest of the ceiling was fine. Mr. Quinn gave evidence that he couldn't say how long the leak had been occurring but that, if emulsion paint was used to cover up any stain caused by the leak, it would not cover it up for long.

In response to questioning from the Tribunal, Mr. Quinn gave evidence that when the dwelling had been inspected on the second occasion the leak in question had been stronger.

Appellant Tenants' Case:

Evidence of Mr. Usama Akram:

Mr. Akram, the First Named Appellant Tenant, referred the Tribunal to a statement submitted in advance of the hearing (contained at page 141 of Tribunal Casefile 2) which he relied upon in substantiating the claims before the Tribunal. Specifically, he submitted that the Respondent Landlords had knowingly submitted materially false and misleading material to the RTB and that emails relied upon (specifically an email dated 23 September 2024) were staged and manufactured. Mr. Akram also gave evidence that in August 2024 (almost nine months after the start of the tenancy) the Respondent Landlords' representatives had started to investigate the references provided by the Appellant Tenants at the stage of the tenancy.

Mr. Akram submitted that the actions carried out by or on behalf of the Respondent Landlords had amounted to a breach of the Appellant Tenants' GDPR rights and constituted acts of penalisation on the Appellant Tenants. He also submitted that the said actions had had the effect of adversely affecting the Appellant Tenants' right to enjoy peaceful and exclusive occupation of the dwelling. He stated that a complaint had been made to the Data Protection Commission and that a complaint had been made to the RTB arising from the fact that on-going access to hearing diaries was available on the RTB's website.

Mr. Akram gave evidence that an inspection of the dwelling had been carried out by Dun Laoghaire Rathdown County Council on 14 May 2024. He referred the Tribunal to the report furnished following the inspection and submitted in advance of the hearing (contained at page 101 of Tribunal Casefile 2). He said that numerous issues with the dwelling had been identified following the said inspection and that whilst certain issues had been resolved other issues remained outstanding. Specifically, he said that, whilst the walls in the hall had been cleaned, the source of the leak had not been identified. He also said that the smoke alarms in situ were old and needed to be replaced and that a smell of sewage was present in the dwelling but was being denied by the Respondent Landlords' representatives.

Mr. Akram gave evidence that a further inspection of the dwelling had been undertaken by Dun Laoghaire Rathdown County Council on 11 December 2024. He referred the Tribunal to the report furnished following the inspection and submitted in advance of the hearing (contained at page 121 of Tribunal Casefile 2). He said issues with the dwelling still persisted and that in particular the hall and stairs were damp and mouldy and that a leak coming into the dwelling was creating issues in the bedroom and bathroom.

Mr. Akram referred the Tribunal to a list of issues with the dwelling compiled by the Appellant Tenants on 26 September 2024 and submitted in advance of the hearing (contained at page 212 of Dispute Casefile 2). He stated that, as set-out therein, an inspection of the electrical system was required and that, despite being told that this would happen, nothing had taken place. He also said that the old smoke alarm system needed to be disconnected.

In respect of the hot press, Mr. Akram gave evidence that the locks to the hot press failed and that the hot press is also prone to mould. He further said that there was a loose board in the hot press and that the floor and door were in poor condition.

In respect of the front bedroom, Mr. Akram gave evidence that the issue identified with the window had been fixed but only after the original adjudication hearing.

In respect of the hall, Mr. Akram gave evidence that the thermostat didn't work and that there was no means of controlling the heat. He also said that there was an on-going smell of sewage in the hall which had been present since the start of the tenancy and occurred during light rain. He further said that the back door was difficult to lock and that the old security alarm needed to be disconnected; that a wire was poking out of the wall and that there was a small gap between the skirting.

In respect of the main en-suite bedroom, Mr. Akram gave evidence that there were leaks in the ceiling of the bedroom and en-suite bathroom and that bathroom needed painting with mould resistance paint. He further stated that there was no lock for the bathroom door, that the light in the bathroom didn't work and that there was an issue with the pump.

In respect of the main bathroom, Mr. Akram gave evidence that there was a problem with the shower door and that the bathroom needed to be painted with mould resistant paint.

In respect of the kitchen, Mr. Akram gave evidence that there was water damage on the panel under the washing machine; that skirting boards present in the kitchen were loose and that there was a board missing over the fridge. He also stated that the light fixtures had been replaced but were noisy and that there cracked tiles present as well as certain areas of the kitchen which were untitled.

In respect of the living room, Mr. Akram gave evidence that the chimney needed cleaning.

Mr. Akram referred the Tribunal to a list of issues with the dwelling compiled by the Appellant Tenants on 16 October 2024 and submitted in advance of the hearing (contained at page 95 of Tribunal Casefile 2) which he said again detailed the issues with the dwelling. He further referred the Tribunal to photographs of the dwelling submitted in advance of the hearing (contained at pages 49 to 94 inclusive of Tribunal Casefile 2) which he stated showed the issues with the dwelling as identified.

Mr. Akram gave evidence that there was an on-going issue with mould in the dwelling. Specifically, he said that there was mould present by the hot press and shower and on the front door. He further stated that it was a continuous issue and that, whilst it had been treated originally, it had returned and was not being attended to by the Respondent Landlords' representatives. In this regard, he referred the Tribunal to photographs of the mould submitted in advance of the hearing (contained at pages 60 to 71 inclusive of Tribunal Casefile 2).

Mr. Akram referred the Tribunal to videos submitted in advance of the hearing (contained in the Tribunal Video Casefiles) which he stated showed that the leak in the dwelling was on-going and was serious. He also said that he believed that the leaks had been on-going for a number of years and that he suspected that the Respondent Landlords or their representatives knew about the leaks and had simply painted over the stains that had occurred as a result.

In response to the photographs submitted on behalf of the Respondent Landlords in advance of the hearing (contained generally in Tribunal Casefile 3), Mr. Akram stated that they did not show the issues complained of. He stated that, in response to the allegation that contractors weren't being provided with access to the dwelling, he wouldn't let contractors into the dwelling without agreement in respect of the scope of works to be carried out. In this regard he confirmed that, as contractors had refused to provide scope of work to be carried out on certain occasions, access to the dwelling had been refused. However, he denied that the Appellant Tenants were in any way confrontational to the contractors engaged by the Respondent Landlords.

Mr. Akram stated that the Appellant Tenants were seeking damages in the sum of €25,000 which he said equated to the rent paid during the course of the tenancy.

In response to questioning, Mr. Akram confirmed that the Appellant Tenants frequently cleaned the bathroom approximately once a week by mopping it and using bleach. He also confirmed that the Appellant Tenants regularly ventilated the dwelling although they had only been instructed on how to open certain windows of late and that the tool used in this regard had broken. Mr. Akram confirmed that in late September 2024 the Appellant Tenants had become aware of the fact that the Respondent Landlords had shared information with their previous landlord.

Evidence of Ms. Hali Johnson:

Ms. Johnson, the Second Named Appellant Tenant, stated that on moving into the dwelling she had provided the Respondent Landlords' representative with a list of issues with the dwelling. She stated that, despite being notified, nothing had been done to resolve the issues and that as a result she had sought a solution from the Respondent Landlords' representatives. Having been ultimately unsuccessful in this regard, the Appellant Tenants had referred the matter to the RTB and she said that the Respondent Landlords' actions thereafter arose from the fact that they were unhappy that the matter had been referred to the RTB.

Specifically, Ms. Johnson stated that the Appellant Tenants had found out in September 2024 that the Respondent Landlords had sent a letter concerning the Appellant Tenants to a partial address which they had provided. She stated that this action had represented a breach of trust in the landlord and tenant relationship. She also stated that it was clear that, in August 2024, the Respondent Landlords' representatives had started investigating the references that the Appellant Tenants had been provided at the start of the tenancy and that this was a clear breach of GDPR

Ms. Johnson submitted that the extent of these actions had had a penalising effect on the Appellant Tenants in that the Appellant Tenants knew that hostile parties held information concerning the Appellant Tenants. She also submitted that the actions of the Respondent Landlords and their representatives amounted to a breach of the Appellant Tenants' right to peaceful and exclusive occupation of the dwelling. She stated that, arising from these issues, the Appellant Tenants had been worried that they would have to move out of the dwelling which was a significant concern in light of the on-going housing crisis.

Ms. Johnson gave evidence that, prior to moving into the dwelling, the Appellant Tenants had viewed it. She said that, at the time, it was sparsely furnished and that the Appellant Tenants had been told that beds and a couch would be provided. She also said that the Appellant Tenants had been told that the previous tenants in the dwelling had badly damaged it. Ms. Johnson gave evidence that, when the Appellant Tenants had moved into the dwelling, they were aware that there were outstanding issues with the dwelling but that they were told a contractor would be coming to resolve the outstanding issues.

Ms. Johnson gave evidence that the Appellant Tenants had moved into the dwelling and that she had sent a list of issues to the Respondent Landlords' representative. In this regard, Ms. Johnson referred the Tribunal to an email dated 20 November 2023 submitted in advance of the hearing (contained at page 128 of Dispute Casefile 2) which she stated identified the issues with the dwelling shortly after the Appellant Tenants had moved in. Specifically, she said that an emergency plumber had attended at the dwelling and had changed the handle on the toilet but that persistent plumbing problems had remained. She stated that, whilst the dishwasher had been inspected, it continued to leak and that it had taken a number of months before the back gate had been repaired. Ms. Johnson gave evidence that nothing had been done with the hot water knob in the main bathroom and that the extractor fan had been removed from the en-suite bathroom in December 2023 and hadn't been replaced till March 2024 which had resulted in wires being left exposed in the bathroom during this time.

Ms. Johnson referred the Tribunal to an email dated 22 December 2023 submitted in advance of the hearing (contained at page 136 of Dispute Casefile 2) which she stated alerted the Respondent Landlords' representative to the fact that a sewage smell was noticeable in the dwelling. She also said that this email mentioned the issue of the stain in the bedroom ceiling and had proposed a potential solution which ultimately had only been carried out in November 2024. Ms. Johnson gave evidence that a contractor had attended at the dwelling in December 2023 and had carried out some small jobs and that it wasn't until March 2024 that the issue with the ventilation fan in the en-suite bathroom had been resolved. She also confirmed that certain works had taken place over the Summer of 2024 and that further works to the dwelling had been carried out in October 2024. However, she stated that she had been required to continuously contact the Respondent Landlords' representatives before any of these works had been carried out.

Ms. Johnson gave evidence that the Appellant Tenants had ventilated the dwelling regularly. She stated that they had difficulty opening the window fully in the bathroom and the kitchen and that when they had reported this issue to the Respondent Landlords' representative, they had been blamed for the fact that there was mould present in the dwelling. As a result of the delay in carrying out the repair works, Ms. Johnson said that the mould in the second bathroom had rendered it unusable.

Ms. Johnson submitted that despite being told repeatedly that repair works would be carried out to the dwelling, nothing was done. She stated that total rent of €25,000 had been paid by the Appellant Tenants up to 7 October 2024 and that the Appellant Tenants were seeking compensation from the Tribunal as the problems with the dwelling were persisting.

Closing Submissions

The Appellant Tenants submitted that, in respect of the issues of standard and maintenance identified with the dwelling, they had encountered delays, had been met with half measures and been confronted with denials of certain issues (e.g. the smell of sewage). They additionally submitted that they had had to fight hard to get certain issues with the dwelling dealt with and that they had been obliged to chase up with the Respondent Landlords' representative and the contractors engaged in order that works were completed. Furthermore, they submitted that access to the dwelling had been provided on most occasions and that approximately three dozen issues with the dwelling remained open.

The Appellant Tenants submitted that having complained about the issues with the dwelling they had been subjected to penalisation by or on behalf of the Respondent Landlords. They additionally submitted that emails submitted had been staged and that false and misleading evidence had been furnished.

In conclusion, the Appellant Tenants submitted that the Respondent Landlords' representatives had delayed, denied and obstructed repair works to the dwelling being carried out. They submitted that no rent arrears were outstanding and that they were entitled to a refund of the rent paid as they never got the service that they had paid for.

Respondent Landlords' case:

Evidence of Mr. Sean O'Donoghue

Mr. O'Donoghue, the Respondent Landlords' representative, referred the Tribunal to a statement submitted in advance of the hearing (contained at page 264 of Tribunal Casefile 3) which he said he was relying upon in response to the claim being made by the Appellant Tenants. Specifically, Mr. O'Donoghue gave evidence that Bespoke Estate Agents, whom he worked for, had been appointed by the Respondent Landlords as managing agents for the dwelling. He stated that the dwelling was contained within the basement level of a period building which was 200 years old.

Mr. O'Donoghue gave evidence that, when required, the managing agents had arranged for maintenance works to be carried out at the dwelling. However, he stated that access to the dwelling had been delayed by the Appellant Tenants and that this had created scheduling challenges. He also said that the issues raised by the Appellant Tenants in respect of problems with the dwelling were constantly changing.

Mr. O'Donoghue referred the Tribunal to photographs submitted in advance of the hearing (contained at pages 3 to 39 inclusive of Tribunal Casefile 3). He stated that these photographs were taken in advance of the Appellant Tenants moving into the dwelling and showed the dwelling to be presented in good condition and being clean and clear.

Mr. O'Donoghue gave evidence that an inspection of the dwelling had taken place in August 2024. He stated that there was no mould evident in the dwelling on the date of the said inspection as alleged. He also said that instruction manuals and a fire blanket, which had been reported missing by the Appellant Tenants, had been in situ in the dwelling on the day of the said inspection. Mr. O'Donoghue further gave evidence that the tiles at the entrance to the dwelling were fine and didn't need to be replaced.

Mr. O'Donoghue also referred the Tribunal to photographs submitted in advance of the hearing (contained at pages 45 to 86 inclusive of Tribunal Casefile 3). He stated that these photographs had been taken during the said inspection. Specifically, he said that, as evidenced by the said photographs, the alarms in the hot press had been replaced; draft issues at the door had been fixed; the fuse-board was accessible and the step between the kitchen and the hallway had been improved. Mr. O'Donoghue also gave evidence that the locks in the three external doors into the dwelling had been checked and the Appellant Tenants had been shown how to open the Velux windows although the pole used to do this had been subsequently broken by the Appellant Tenants. Mr. O'Donoghue confirmed that there was evidence of the leak in the bedroom at the said inspection but that it had been difficult to resolve having initially thought that it had occurred as a result of condensation. He said that it needed attention and that a solution would be found.

Mr. O'Donoghue stated that there had a large volume of correspondence between the Parties, in excess of what normally would be expected and that the intention from the start of the tenancy was to resolve any outstanding issues with the dwelling. He stated that numerous contractors had been retained to deal with the issues with the dwelling as identified by the Appellant Tenants. He further said that the contractors retained were professional but that some had refused to re-attend at the dwelling on account of the fact that the Appellant Tenants had recorded them whilst they carried out repairs and because the Appellant Tenants had threatened to subpoena them. Mr. O'Donoghue gave evidence that the original person who had carried out repair works to the dwelling was known to the Respondent Landlords but that he had become very ill and had been unable to re-attend at the dwelling to complete the repair works he had commenced. He referred the Tribunal to a summary of works carried out at the dwelling submitted in advance of the hearing (contained at page 266 of Tribunal Casefile 3). He also stated that in email correspondence with the Appellant Tenants dated 3 November 2023 it had been confirmed that the Appellant Tenant were moving into the dwelling "as is".

Mr. O'Donoghue gave evidence that the reference provided by the Appellant Tenants at the start of the tenancy had not been genuine. He also stated that the level of damages which the Appellant Tenants were seeking was unreasonable and that their actions had caused or contributed to the matters which they now complained of.

In response to questioning, Mr. O'Donoghue confirmed that he had only become involved in the situation in and around August when an issue had arisen in respect of the non-payment of rent and when it appeared that the list of repair works required was growing. He said that suggested an inspection of the dwelling at that time in an attempt to try and resolve the issued between the Parties. He also said that at the inspection that was carried in August 2024 that he had hadn't noticed any mould in the dwelling and that the marks in the photographs submitted could have been dirt. Mr. O'Donoghue stated that he trusted the contractors that had been engaged to carry out the works at the dwelling.

Evidence of Mr. Adam Tew

Mr. Tew, the Respondent Landlords' representative, didn't give direct evidence and instead answered questions put to him by the Appellant Tenants.

Mr. Tew denied that any penalisation of the Appellant Tenants had taken place after finding out that the Appellant Tenants had initiated a dispute with the RTB in respect of their previous tenancy. In this regard, he said that the relationship between the Parties had changed over time and had nothing to do with the previous dispute.

In respect of the issues with the standard and maintenance of the dwelling, Mr. Tew stated that he believed the original contractor had informed him that all the necessary repair works to the dwelling had been completed. He said that in relation to the issue of the leak that multiple contractors had been engaged to investigate and to try and determine the cause. He also said that he had contacted the people living the apartment above the dwelling who he said commenced their own investigation of the problem. Mr. Tew also stated that, having been notified of the problem, certain steps had been taken which he believed would resolve the issue with the leak. In respect of the outstanding issues of repair in the dwelling, Mr. Tew said that the list provided the Appellant Tenants was constantly evolving and that the Appellant Tenants had been strict in providing access to the dwelling.

In response to the allegation that the Appellant Tenant were preventing access to the dwelling, Mr. Tew said that this was in reference to occasions when the Appellant Tenants refused access for blocks of time. He also said that, by insisting on agreeing a scope of works before allowing access to the dwelling, the Appellant Tenants had slowed down the carrying out of repairs.

Closing Submissions

The Respondent Landlords' representative summarised the Respondent Landlords' position stating that dwelling wasn't a new build and that the Appellant Tenants had viewed and inspected the dwelling prior to moving in. It was submitted that the dwelling had been let in good condition having been cleaned and with new furniture in situ. It was further submitted that, pursuant to the terms of the lease agreement, the Appellant Tenants were obliged to ventilate the dwelling and that the Appellant Tenants hadn't cleaned the dwelling during the course of the tenancy as they were also obliged to do.

It was further submitted on the Respondent Landlords' behalf that it was untrue to suggest that the Respondent Landlord hadn't incurred any costs in carrying out repairs to the dwelling when in-fact they had spent in excess of €2,500 on repairs as evidenced by the invoices submitted. In respect of the question of the leak in the dwelling, it was submitted that this was a minor leak but was frustrating and that the Respondent Landlords' representatives had responded, when allowed, to any issues with the dwelling raised by the Appellant Tenants.

Finally, it was submitted that the Appellant Tenants had sought to enrich themselves by making the said complaints to the RTB and that the Respondent Landlords' representatives had not engaged in penalising behaviour by such actions as issuing notices, warning notices and conducting inspections as were allowed for.

6. Matters Agreed Between the Parties:

- (i) The tenancy commenced on 10 November 2023.
- (ii) The rent in respect of the tenancy was €2,250 per month.

(iii) A deposit of €2,250 was paid at the start of the tenancy and is retained by the Respondent Landlords.

(iv) The Appellant Tenants remain in occupation of the dwelling.

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.

7.1 Finding:

The Tribunal finds that the Respondent Landlords were in breach of their obligations under Section 12(1)(b) of the Act in respect of the standard and maintenance of the dwelling at 3A Longford Place, Monkstown, Blackrock, County Dublin, A94 AY61, and the Tribunal finds that the Respondent Landlords shall pay the Appellant Tenants the sum of €4,500 in damages arising from this breach.

Reasons:

1. Pursuant to Section 12(1)(b) of the Act a Landlord is obliged to carry out to: (i) the structure of the dwelling all such repairs as are, from time to time, necessary and ensure that the structure complies with the standards for houses for the time being prescribed under Section 18 of the Housing (Miscellaneous Provisions) Act, 1992 (as amended) and (ii) the interior of the dwelling all such repairs and replacement of fittings as are, from time to time, necessary so that the interior and those fittings are maintained in, at least, the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed.

2. In accordance with the provisions of Section 18 of the Housing (Miscellaneous Provisions) Act, 1992 (as amended), the Housing (Standards for Rented Houses) Regulations, 2019, were introduced. These regulations set-out the minimum standards that must be met in terms of a rental property.

3. Regulation 4(1) of the said Regulations provides that "a house to which these Regulations apply shall be maintained in a proper state of structural repair". Further Regulation 4(2) provides that "for the purposes of Regulation 4(1) 'a proper state of structural repair' means sound, internally and externally, with roof, roofing tiles and slates, windows, floors, ceilings, walls, stairs, doors, skirting boards, fascia, tiles on any floor, ceiling and wall, gutters, down pipes, fittings, furnishings, gardens and common areas maintained in good condition and repair and not defective due to dampness or otherwise."

4. In this case, the Appellant Tenants raised numerous issues in respect of the standard and maintenance of the dwelling. The evidence in this regard was that the issues complained of were present in the dwelling from the start of the tenancy and that, despite being notified of same, the Respondent Landlords failed to act or were extremely slow to carry out the necessary remediation works.

5. Evidence was given by the Appellant Tenants that Dun Laoghaire Rathdown County Council had carried out numerous inspections of the dwelling and the Tribunal were referred to reports furnished by Dun Laoghaire Rathdown County Council after these inspections. Additionally, the Tribunal was referred to correspondence sent by the Appellant Tenants to the Respondent Landlords' agent detailing the repair works that were

required in the dwelling. Furthermore, the Tribunal was referred to numerous videos taken in the dwelling which it was submitted demonstrated the poor standard and condition of the dwelling.

6. In response, the Respondent Landlords' representatives gave evidence that they had engaged numerous contractors in an effort to resolve the issues complained of. It was further submitted that the Appellant Tenants had frustrated the efforts to repair the dwelling in that they had denied access to the dwelling and had insisted that the scope of works to be carried out be agreed before access was provided. Furthermore, it was submitted that the Parties had agreed that the dwelling would be rented "as is".

7. Having considered the oral evidence given and having regard to the documentation furnished in advance of the hearing, the Tribunal finds that, on the balance of probabilities, the Respondent Landlords were in breach of their obligations pursuant to Section 12(1)(b) of the Act. Specifically, the Tribunal finds that, pursuant to the Housing (Standards for Rented Houses) Regulations, 2019, the Respondent Landlords owed a duty to the Appellant Tenants to make sure that the dwelling was maintained in a proper state of structural repair and that they failed in this duty.

8. In making this finding, the Tribunal has considered all the evidence given at the hearing and the documentation submitted in advance of the hearing and in this regard notes the findings as set out in the reports of Dun Laoghaire Rathdown County Council following the inspections carried out of the dwelling on 14 May 2024 and 11 December 2024. As is apparent therefrom, it is clear to the Tribunal that in May 2024 when the initial inspection was carried, numerous issues with the dwelling were identified. Additionally, as is set-out in the report following the inspection carried out 11 December 2024, whilst a number of the issues previously identified have been repaired, there continued to be on-going issues principally in respect of a leak and the presence of mould in the dwelling. The Tribunal is further satisfied from viewing the videos submitted that the issue of the leak in the dwelling is significant and on-going. Furthermore, the Tribunal accepts that mould is present in the dwelling (which may be related to the occurrence of the leak) and that a unpleasant smell is also noticeable in the dwelling (which may also be related to the occurrence of the leak). The Tribunal is satisfied that these issues represent a breach of the Respondents Landlords' obligation in respect of the standard and maintenance of the dwelling. Furthermore, the Tribunal is satisfied that it was not acceptable that the ventilation fan in the bathroom was removed and not replaced for a number of months leaving a situation where wires were exposed in a bathroom setting.

9. In reference to the submissions made on behalf of the Respondent Landlords, the Tribunal finds that the Appellant Tenants are obliged to allow access to the dwelling for the purpose of an inspection and that it is unreasonable to deny access to the dwelling without agreement on the scope of works to be carried out. In this regard the Tribunal notes the provisions of Section 16(c) and (e) of the Act which states:

"In addition to the obligations arising by or under any other enactment, a tenant of a dwelling shall—

...

(c) allow, at reasonable intervals, the landlord, or any person or persons acting on the landlord's behalf, access to the dwelling (on a date and time agreed in advance with the tenant) for the purposes of inspecting the dwelling,

...

(e) allow the landlord, or any person or persons acting on the landlord's behalf, reasonable access to the dwelling for the purposes of allowing any works (the responsibility for the carrying out of which is that of the landlord) to be carried out,

..."

10. However, the Tribunal does not find that the refusal to allow access to the dwelling from time to time entirely remove the obligations on the Respondent Landlords to maintain the dwelling in a proper state of structural repair. It is clear to the Tribunal that the issues complained of were of an on-going nature and that there was ample opportunity at the start of the tenancy and thereafter (before relations between the Parties became strained) to carry out the necessary works. Furthermore, the Tribunal does not accept any submission made on behalf of the Respondent Landlords that, by accepting the dwelling "as is", the statutory obligation on the Respondent Landlords to carry out repairs throughout the course of the tenancy is in some way removed or minimised. Furthermore, in so far as any argument is being made in this regard, the Tribunal does not accept that the building's age is a reason why the necessary repair works should not be carried out.

11. Arising from the findings set-out hereinabove, the Tribunal finds that, in the circumstances as outlined to the Tribunal, the Respondent Landlords shall pay the sum of €4,500 to the Appellant Tenants in respect of damages arising from their breach of obligations under Section 12(1)(b) of the Act in respect of the standard and maintenance of the dwelling. The award of damages is in respect of the existing problem with the leak, the on-going problems with mould and the historic issue of the unrepaired ventilation fan as well in respect of the delay in initially carrying out repair works which have now been completed.

12. In calculating the appropriate award of damages, the Tribunal notes that the Appellant Tenants sought a sum of €25,000, being the rent paid in respect of the tenancy up to the date of the adjudication hearing. The Tribunal does not consider this to be a valid method of calculation for the damages as it is clear to the Tribunal that, whilst the Appellant Tenants undoubtedly experienced inconvenience as result of the outstanding repairs, they were not deprived entirely of the use of the dwelling which would justify a return of the total rent paid. Therefore, in calculating the appropriate award of damages to make, the Tribunal considers the effect that the said issues had on the Appellant Tenants and on their enjoyment of the dwelling. Accordingly, in the circumstances as outlined to the Tribunal and being satisfied that that Appellant Tenants suffered a significant degree of stress and inconvenience arising from the matters complained, the Tribunal finds that the sum of €4,500 is appropriate in this regard. Accordingly, the Tribunal therefore finds that the Respondent Landlords shall pay the total sum of €4,500 to the Appellant Tenants in respect of damages arising from their breach of obligations under Section 12(1)(b) of the Act in respect of the standard and maintenance of the dwelling. Given the size of the award and balancing the Appellant Tenants' right to a prompt remedy, the Tribunal finds that the amount of €4,500 should be paid within 28 days of the date of issue of the Determination Order of the Board.

7.2 Finding:

The Tribunal finds that the Appellant Tenants' claim that the Respondent Landlords engaged in penalisation of the Appellant Tenants, is not upheld.

Reasons:

1. Section 14 of the Acts states:

“(1) A landlord of a dwelling shall not penalise a tenant for—

(a) referring any dispute between the tenant and the landlord to the Board for resolution under Part 6,

(b) giving evidence in any proceedings under Part 6 to which the landlord is a party (whether the tenant is a party to them or not),

(c) making a complaint to a member of the Garda Síochána or to a public authority in relation to any matter arising out of, or in connection with, the occupation of the dwelling or making an application regarding such a matter to a public authority, or

(d) giving notice of his or her intention to do any or all of the things referred to in the preceding paragraphs.

(2) For the purposes of this section a tenant is penalised if the tenant is subjected to any action that adversely affects his or her enjoying peaceful occupation of the dwelling concerned.

(3) Such action may constitute penalisation even though it consists of steps taken by the landlord in the exercise of any rights conferred on him or her by or under this Act, any other enactment or the lease or tenancy agreement concerned if, having regard to—

(a) the frequency or extent to which the right is exercised in relation to the tenant,

(b) the proximity in time of its being so exercised to the tenant's doing the relevant thing referred to in subsection (1), and

(c) any other relevant circumstances,

it is a reasonable inference that the action was intended to penalise the tenant for doing that thing.

(4) This section is without prejudice to any other liability (civil or criminal) the landlord may be subject to for doing a thing prohibited by this section.”

2. In this case, the Appellant Tenants claimed that certain actions undertaken by or on behalf of the Respondent Landlords constituted penalisation. Specifically, the Appellant Tenants submitted that Respondent Landlords have supplied misleading evidence to the RTB (in particular an email dated 23 September 2024) and that they had contacted the Appellant Tenants' previous landlords by initially sending a letter to a partial address which had been provided by the Appellant Tenants with their references at the start of the tenancy. Additionally, the Appellant Tenants submitted that the Respondent Landlords had penalised the Appellant Tenants as their representatives had, in August 2024, contacted the references provided by the Appellant Tenant at the start of the tenancy notwithstanding that the tenancy had been in-being for nine months at that stage.

3. In response the Respondent Landlords representatives denied that any actions of penalisation had taken place.

4. In considering whether or not the Respondent Landlords have engaged in penalisation as alleged the Tribunal notes that Section 14 defines states that a “...tenant is penalised if the tenant is subjected to any action that adversely affects his or her enjoying peaceful occupation of the dwelling concerned”. Accordingly, the issue this Tribunal has to determine

is whether or not the Respondent Landlords' conduct, or the conduct of their representatives, as complained of, adversely affected the Appellant Tenants enjoying peaceful occupation of the dwelling.

5. Having considered the oral evidence given and having regard to the documentation furnished in advance of the hearing, the Tribunal finds that, on the balance of probabilities, the Appellant Tenants' claim that the Respondent Landlords engaged in penalisation of the Appellant Tenants is not upheld. The Tribunal is not satisfied that the Appellant Tenants have sufficiently proved and/or demonstrated, on the balance of probabilities, that the supplying of misleading evidence (as alleged) to the RTB affected their peaceful occupation of the dwelling. In making this finding, the Tribunal notes that the Appellant Tenants lodged the within dispute on 3 May 2024 and that the email in question was sent on 23 September 2024 with the Appellant Tenants confirming that they became aware of the Respondent Landlords' conduct in this regard in late September 2024. As the adjudication hearing (being the first instance hearing of the dispute now under appeal before this Tribunal) was heard on 7 October 2024 the timeframe for the Appellant Tenant to have been adversely affected by the behaviour complained of is short. Regardless of the time-frame involved, and as already stated, the Tribunal is not satisfied that sufficient evidence has been adduced to substantiate the claim that the Appellant Tenants have been penalised by the Respondent Landlords in this regard. Furthermore, the Tribunal is not satisfied that the Appellant Tenants have sufficiently proved and/or demonstrated, on the balance of probabilities, that the act of contacting the Appellant Tenants' previous landlord or the act of engaging in investigations in respect of historic references adversely affected the Appellant Tenants enjoying peaceful occupation of the dwelling.

6. The Tribunal notes that the Appellant Tenants have referred certain aspects of the Respondent Landlords' behaviour to other third-party organisations i.e. the Data Protection Commission. The Tribunal has no jurisdiction to make findings in respect of any such complaints or disputes and for the avoidance of doubt no such findings are made. The Tribunal's function, being an entity independent of the RTB, is to adjudicate upon disputes that arise in the context of a landlord and tenant relationship and the Tribunal is tasked with determining whether or not provisions of the Act have been breached in the circumstances as presented by the Parties. Therefore, in this regard and as set-out above, the Tribunal is not satisfied that the Respondent Landlord have engaged in penalisation as defined and prohibited in the Act.

8. Determination:

Tribunal Reference TR1124-008283

In the matter of Usama Akram and Hali Johnson, Appellant Tenants, and James Ferguson and Mary Ferguson, Respondent Landlords, the Tribunal, in accordance with Section 108(1) of the Residential Tenancies Act, 2004, determines that:

(i) The Respondent Landlords shall pay the total sum of €4,500 to the Appellant Tenants, within a period of 28 days of the date of issue of the Order. This sum represents damages for breach of Landlord obligations under Section 12(1)(b) of the Residential Tenancies Act, 2004, in respect of the dwelling at 3A Longford Place, Monkstown, Blackrock, County Dublin, A94 AY61.

(ii) The Appellant Tenants' claim in respect of alleged penalisation of the Appellant Tenants by the Respondent Landlords is not upheld.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 13/08/2025.



Signed:

Andrew Nugent, Chairperson

For and on behalf of the Tribunal.