

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0625-008879 / Case Ref No: 0125-102327

Appellant Tenant: Geoffrey De Vere

Respondent Landlord: Liam Whelan

Address of Rented Dwelling: 6 Oldtown Court, Clongeen Foulksmills, Wexford, Y35DW40

Tribunal: Dervla Quinn (Chairperson)
Anne Leech, Healy Hynes

Venue: Virtual

Date & time of Hearing: 08 October 2025 at 10:30 a.m.

Attendees: Geoffrey De Vere, Tribunal Appellant Tenant
Rachel Cronin, Threshold for Tenant
Liam Whelan, Tribunal Respondent Landlord
Jackie Whelan, Landlord's wife and witness
Martin Lawlor, Landlord's solicitor

In attendance: recording technician

1. Background:

On 22/01/2025 the Tenant made an application and on 19 February 2025 the Landlord 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 17/04/2025. The Adjudicator determined that:

“1. The Remedial Notice of Termination with a stated date of service of the 2nd day of December 2024 served by the Respondent Landlord on the Applicant Tenant, pursuant to Determination Order made by the Residential Tenancies Board on the 13th day of November 2024 of Dispute Reference DR0424-95013, in respect of the tenancy of the dwelling at 6 Oldtown Court, Clongeen, Foulksmills, Co. Wexford, Y35DW40, is valid.

2. The Applicant Tenant and any other persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 28 days of the date of issue of the Determination Order.

3. The Applicant Tenant’s claim against the Respondent Landlord, for Rent more than market rate, is not upheld.

4. The Applicant Tenant shall continue to pay any further rent outstanding to the Respondent Landlord from the 17th day of April 2025, being the date of the Adjudication Hearing, at the rate of €1,600 per month, or proportionate part thereof at the rate of €52.60 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement, for each month or part thereof, until such time as the above dwelling is vacated by the Applicant Tenant and any other persons residing therein.

5. For the avoidance of doubt, there was no deposit held by the Respondent Landlord at the date of the Adjudication Hearing.

6. The Applicant Tenant shall pay the total sum of €3,568.77 to the Respondent Landlord, by way of 17 consecutive instalments at the rate of €200 per calendar month, on or before the 28th day of each month, followed by one further instalment of €168.77 on or before the 28th day of the immediately succeeding month, commencing the next month after the issue of the Determination Order. This sum represents rent arrears of €3,568.77, in respect of the tenancy of the above dwelling.

7. The enforcement of the Determination Order for such payment of €3,568.77 will be deferred and the total sum owing will be reduced by the cumulative sum paid, in monthly instalments, by the Applicant Tenant to the Respondent Landlord, on each due date, until such time as the total sum of €3,568.77 has been paid in full.

8. 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 Respondent Landlord.”

Subsequently the following appeals were received: Tenant : received on 24/06/2025. The grounds of the appeal: Overholding, Validity of notice of termination (if you are disputing the validity of a termination notice issued), Rent more than market rate (Not Applicable to Approved Housing Body Tenancies) ; Approved by the Board on 07/07/2025.

The RTB constituted a Tenancy Tribunal and appointed Anne Leech, Dervla Quinn, Healy Hynes as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Dervla Quinn to be the chairperson of the Tribunal (“the Chairperson”). On 11/09/2025 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 08/10/2025 the Tribunal convened a virtual hearing.

2. Documents Submitted Prior to the Hearing Included:

RTB case files.

3. Documents Submitted at the Hearing Included:

None.

4. Procedure:

The Chairperson began by drawing to the attention of the parties to the fact that there was an RTB appointed recording technician on the platform and that the hearing was being recorded. She 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 and had no questions on the RTB document entitled “Tribunal Procedures”.

The Chairperson explained the procedure which would be followed. In particular, she outlined that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible, that the person who appealed (the Appellant) would be invited to present his case first, that there would be an opportunity for cross-examination by the

Respondent, that the Respondent would then be invited to present his case, and that there would then be an opportunity for cross-examination by the Appellant. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission. She reminded the parties that, although the Tribunal had read the Adjudicator's decision, the hearing was a de novo hearing.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded and she reminded the parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of €4,000 or up to 6 months imprisonment or both. The Chairperson also reminded the 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.

Prior to commencing evidence, the Chairperson reminded the parties that it was open to them to reach an agreement. The Chairperson advised the parties of the benefits of reaching an agreement and advised them that any agreement reached would be capable of being confidential while retaining the enforceability of an order of the RTB. The Chairperson indicated that, if the parties wished to discuss matters among themselves, the Tribunal would rise and allow them to discuss matters. The parties availed of this opportunity. All parties intending to give evidence entered an affirmation. The Tribunal asked the parties what matters could be noted as agreed. The list of matters referred to below were noted as agreed.

5. Submissions of the Parties:

Appellant Tenant's case:

The Tenant stated that his dispute was in relation to the validity of the Notice of Termination and that the rent being sought by the Landlord was more than market value. He confirmed that he was not challenging the Landlord's intention to sell the Dwelling. He stated that his issue was with the date of service of the Notice of Termination. He stated that he accepted that he was served a rent review notice on 16 September 2024 to increase the rent to €1600 per month and that this was the only rent review since the start of the letting in April 2010.

The Tenant first addressed his claim regarding the market value of the Dwelling. He stated that the Landlord never fixed anything in the 15 years of the tenancy. That he had only painted the Dwelling once or twice and that it was not routinely maintained. Ms Cronin for Threshold stated that the RTB rental index for rents for the area was €1200 for new tenancies and €967 for existing tenancies and that in these circumstances a rent of €1000 would be more reasonable. As Ms Cronin wished to give evidence, she was affirmed before continuing her evidence to the Tribunal. Ms Cronin stated that market rent was what the parties were willing to pay. She stated that the rent should be considered in light of the fact that the letting was insecure as in it was not for a fixed one year as would normally be the case. She stated that the Tenant's days were numbered and that there were concerns as to what was available and that he had no security of tenure. She stated that the RTB index for rentals in the county was €1215 in the town and €989 outside of Wexford town. The Tribunal noted that these figures had not been submitted in evidence in advance of the hearing. The Tenant confirmed that the Dwelling was 15 minutes outside of the town. He confirmed that the rent had not increased in 15 years. He stated that his letter to the RTB in the case file set out all the details as to what needed to be done to the Dwelling and that

as a result of all these issues the rent increase was not market value and that €1000 would be a reasonable rent in the circumstances.

Moving to the Notice of Termination, the Tenant stated that he accepted that it was posted on 2 December but that he did not receive it until Saturday 7 December 2024 and that the clock started on that date. He repeated that he was not challenging the bona fides of the Landlord's intention to sell. The Tenant was asked by the Tribunal to set out how he was prejudiced by the Notice arriving on 7 December. He replied that he had lived a long time in the house, that he was planning to move but that there was no where to go.

Mr Lawlor on behalf of the Landlord chose not to question the Tenant but he challenged the RTB rent figures submitted by Ms Cronin. Ms Cronin confirmed that the rent amounts were for the average home to include 1 bed apartments but she stated that there were not many 1 bed apartments. It was confirmed that the Dwelling was 4 bedroom with one main bathroom, 2 ensembles and a downstairs toilet. Landlord's evidence. The Landlord stated that the 3 properties provided as comparables were the closest available but that they were smaller than the Dwelling, that his brother had properties to rent on the same estate that were getting €1650 unfurnished a year ago. He stated the Tenant had referred to the condition of the Dwelling as top class. He stated that the Tenant had refused access to the Dwelling for inspections. The Tribunal noted that there was no claim for breach of a tenant's obligation to provide access to a dwelling. He stated that he had not sought access to the dwelling or carried out an inspection until January 2025 as part of his attempts to market the Dwelling. He stated that the 2 outside lights that the Tenant had said were not working were decorative, had never worked and were not needed as the street lights provided enough light. He stated that there had never been gravel on the drive way which was always hard core. Regarding the dishwasher he said that the seal had come lose and it only took a wrench to fix it. Regarding the power shower he said that the Tenant had said that he did not want anyone going upstairs and to leave it. He stated that all the bedrooms were furnished with double beds mattresses lockers and wardrobes. Regarding the heating issues, he said that the heating had stopped twice, that he had called a plumber who said that it was due to a lack of use and that he had paid €650 and €70 to have repairs carried out. He stated that the Tenant had spent time in England during the tenancy. Regarding the arrears of rent, he stated that, based on a rent of €1600 per month from 1 January 2025 arrears of €11050 were due as of the date of the Tribunal hearing. When asked by the Tribunal he confirmed that he agreed with the adjudicator's findings. On the issue of grass cutting, he stated that it was a condition of the lease that the Tenant cut the grass and the hedges and spray the drive but that he had to do it and that his mother was paying someone €50 to cut her small garden every 2 weeks. He stated that he had received no contact from the Tenant after serving the Notice of Termination and that he had started the process 4 years ago when he first told the Tenant he was selling and that he had served the first notice 3 years ago. Ms Cronin stated that the arrears if the rent of €1600 was agreed were €10050 not €11050 as claimed by the Landlord. The Tribunal noted that the Tenant is paying €550 per month leaving a shortfall €1050 per month from 1 January 2025 from the €1600 claimed by the Landlord.

Ms Cronin asked how the Landlord could claim that the Dwelling was immaculate as he had not carried out an inspection. The Landlord replied that the Tenant had stated in his evidence that the Dwelling was in good condition, The Tenant stated that he had done the garden for the first 12 years until he was unable due to health issues. He stated that he disputed and disagreed with all the Landlord's submissions.

Mrs Whelan then gave evidence as to the service of the Notice of Termination. She stated that on 2 December 2024 she had served it by registered post on the Tenant and the RTB and that she had also emailed a copy to the RTB and that the RTB had confirmed receipt. She stated that she had tried to track it the next day 3rd December but that there was a problem with the An Post tracking system that day as confirmed to her by her local post office. She stated that it was confirmed as received on 7 December 2025. She referred to the RTB email to her dated 16 April 2025 in which they stated that "Day one of a notice starts the day after the notice is served. The day the notice is served is the day it is last in the physical possession of the landlord."

Closing submissions. Tenant.

Mr De Vere stated that the Tribunal knows what they are doing, that he wants the Tribunal to listen to the evidence. Ms Cronin stated that the Tenant's position is that the notice of termination was not served correctly and was short 2 days. That the market rent should not be more than €1000 based on the average for the area as per the RTB and that she was making no submissions in relation to section 6 (6) of the Act regarding service. Landlord. Mr Lawlor stated that the Landlord had provided comparables, that the Tenant was relying on averages, that the rent is subjective and that the Tribunal should look at the facts, that it was a 4 bed house which by the Tenant's own submission was in good condition as the Tenant had kept it that way. As regards service, section 6 (6) of the Act puts the onus on the Tenant to prove that the notice was not served in sufficient time to enable compliance with the relevant time limit specified in it. He submitted an example would be that the Tenant did not have time to book a furniture removal lorry to move or that a new house was not ready. That the onus is on the Tenant which had not been discharged in this case.

6. Matters Agreed Between the Parties:

The parties agreed that the address of the dwelling is 6 Oldtown Court, Clongeen Foulksmills, Co Wexford, that the tenancy commenced on 1 April 2010, that the the notice of termination dated 2 December 2024 was received by the Appellant Tenant on 7 December 2024, accompanied by the statutory declaration, and that Appellant Tenant remains 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 therefor are set out hereunder.

Finding 1:

The Tribunal finds that the Notice of Termination dated 2 December 2025 is valid and that the Appellant Tenant and any other persons residing in the dwelling shall vacate and give up possession of the dwelling within 28 days of the date of issue of the determination order.

Reasons:

The notice of termination in the present case was served pursuant to ground 3 of the Table under s. 34 of the Act. That ground provides that a landlord may terminate a tenancy where: "The landlord intends, within 9 months after the termination of the tenancy under this section, to enter into an enforceable agreement for the transfer to another, for full

consideration, of the whole of his or her interest in the dwelling or the property containing the dwelling and the notice of termination is accompanied by a statutory declaration referred to in section 35.”

The Tenant accepted the bona fides of the Landlord’s intention to sell the Dwelling. His challenge was only to the date of service of the Notice of Termination and that he received it on 7 December 2024 which, with a vacate date of 2 January 2025 allowed him only 26 days notice as opposed to 28 days. When asked by the Tribunal how he was prejudiced the Tenant’s reply was that he had lived in the house a long time and that there was nowhere to go. The Tenant did not challenge the Landlord’s evidence that he had been informed by the Landlord of his intention to sell and that he had received a notice of termination 3 years ago. Section 6(6) of the Act provides that where, in proceedings under Part 6, it is shown that a notice was served or given in accordance with the provisions of this section and on the date that it is alleged it was served or given, the onus shall be on the recipient to establish to the Board, the adjudicator or Tribunal’s satisfaction that the notice was not received in sufficient time to enable compliance with the relevant time limit specified by or under the Act. The Tribunal is satisfied that the remedial notice of termination together with statutory declaration was served by the Respondent landlord on the Appellant Tenant pursuant to a Determination Order of the RTB of dispute reference DR0424-95013 which issued on the 13th day of November 2024. Paragraph 2 of the Determination Order stated that the landlord was permitted to remedy the defect to their original notice of termination by serving a “remedial notice”, pursuant to Section 66(2A). It stated that the remedial notice may only be served within 28 days of the issue of the determination order. Section 66(2A)(b)(iii) states that where, on the date of service of the remedial notice, the period of notice to be given by the original notice has expired, the period of notice to be given by the remedial notice is 28 days. It is accepted by the parties that the remedial notice and statutory declaration which was posted by the Respondent Landlord on the 2nd day of December 2024 was received by the Appellant Tenant on the 7th day of December 2024. The issue in dispute is regarding the 26 days’ notice which was received by the appellant Tenant instead of 28 days’ notice as set out in Section 66(2A)(b)(iii) of the Act. The Tribunal determines that the Appellant Tenant has not proven that he was prejudiced from complying with the remedial notice of termination by reason of the lessor period of 2 days’ notice of the termination date in respect of it. The Appellant Tenant was aware of the reason for the termination of the tenancy by the Respondent Landlord at least since 2022. The Appellant Tenant was aware and was on notice of the Respondent Landlord’s right to serve a remedial notice up to the 11th day of December 2024 further to the Determination Order which issued from the RTB on the 13th day of November 2024, and the remedial notice was received by him on the 7th day of December 2024. There is no evidence before the Tribunal of prejudice to the Appellant Tenant by reason of the delay in the postal service. Therefore the Tribunal is satisfied that the remedial notice of termination of the Respondent Landlord, dated 2 December 2024 is valid.

The Appellant Tenant’s challenge to the validity of notice of termination is not upheld. The Tribunal has considered the period to be provided now to the Appellant Tenant to vacate the dwelling. The Appellant Tenant has given evidence as to the difficulty the termination of the tenancy shall cause him and the difficulty in sourcing alternative accommodation. However, the Tribunal must have regard to the length of time that has passed since the termination date provided for in the notice of termination, being 2 January 2025, and the length of time that the Appellant Tenant has already been overholding. Considering all those issues, and the right of the Respondent Landlord to a prompt remedy and to prompt

enforcement of the notice of termination, the Tribunal is satisfied that the dwelling should be vacated within 28 days of the date of issue of the determination order of the Board.

Finding 2:

The Tenant's Application For Rent Above Market Rate Is Not Properly Before The Tribunal.

Reasons:

Pursuant to Section 22(2A)(b) of the Residential Tenancies Act 2004 (as amended), any dispute in relation to the setting of rent following a rent review must be referred to the Residential Tenancies Board before either (i) the effective date of the new rent or (ii) within 28 days of receipt of the rent review notice, whichever is later.

The Tenant did not refer such a dispute to the RTB within the statutory period following the service of the Rent Review Notice dated 16 September 2024 nor before the date the rent came into effect being 1st January 2025. The tenants application to the RTB being 22nd January 2025. Accordingly, the Tribunal has no jurisdiction to determine the Tenant's claim that the rent is above market value, and that element of the application is dismissed.

Finding 3:

The Respondent Landlord's Application For Arrears of Rent Is Upheld.

Reasons:

Pursuant to Section 23 and Section 119(1) of the Residential Tenancies Act 2004, the Tribunal is satisfied that the Landlord is entitled to recover arrears lawfully due. Notwithstanding the finding above, the Tribunal, in establishing whether or not arrears exist must consider the rent review validity in its entirety - including the rent being more than market rate. The Tribunal finds the rent review notice of 16 September 2024, effective 1 January 2025, complied with the requirements of Section 22(2A), setting the rent at €1,600 per month and providing three comparable lettings in accordance with Section 19(1) and Section 24(1) defining "market rent." The Landlord has submitted in evidence the rent review served on the Tenant dated 16 September 2024. The rent review contained the required letting values of 3 comparable dwellings, and in addition to this the Landlord gave direct oral evidence of similar rental values achieved for properties within the same estate which were owned by the Landlord's brother. The Tenant's representative gave affirmed evidence as the average rent payable in the area as set out on the RTB website. The Tribunal notes that the RTB index refers to the average rent to include properties of different sizes and distance from the town. The Tenant gave evidence as to the condition of the Dwelling and submitted in evidence a list of matters to include issues with the standard of the Dwelling. The Tribunal notes that the Tenant has not submitted a claim for breach of Landlord's obligations regarding standard and maintenances. The issues raised by the Tenant were raised on the grounds that this would reduce the market value of the Dwelling. The Tribunal is not satisfied that the matters raised would lower the rental value of the Dwelling. The Tribunal accepts the evidence of both parties but is satisfied that the position of the Respondent Landlord, as supported by advertisement for 3 comparable properties, is sufficient to support a rent of €1600 per month.

Accordingly, under Section 119(1), the Tribunal directs that the Tenant shall pay to the Landlord the sum of €9,870.80 for arrears due as of 8 October 2025, comprising nine months' shortfall of €1,050 per month (€9,450) plus eight days' rent at €52.60 per day (€420.80).

8. Determination:

Tribunal Reference TR0625-008879

In the matter of Geoffrey De Vere, Appellant Tenant, and Liam Whelan, Respondent Landlord, the Tribunal, in accordance with s. 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination dated 2 December 2025 served by the Respondent Landlord on the Appellant Tenant, in respect of the tenancy of the Dwelling at 6 Oldtown Court, Clongeen, Foulksmills, Co Wexford, is valid.
2. The Appellant Tenant and any other persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 28 days of the date of issue of the Determination Order.
3. The Appellant Tenant shall also pay any further rent outstanding from 8 October 2025, being the date of the virtual hearing, to the Respondent Landlord, at the rate of €1600 per month or proportionate part thereof at the rate of €52.60 per day, unless lawfully varied, plus any other charges provided under the terms of the tenancy agreement, for each month or part thereof, until such time as the dwelling is vacated by him and by all other current occupants.
4. The Appellant Tenant shall pay the total sum of €9,870.80 to the Respondent Landlord, by way of 19 consecutive instalments at the rate of €500 per calendar month, on or before the 28th day of each month, followed by one further instalment of €370.80 on or before the 28th day of the immediately succeeding month, commencing the next month after the issue of the Determination Order. This sum represents rent arrears of €9,870.80 in respect of the tenancy of the above Dwelling.
5. The enforcement of the Determination Order for such payment of €9870.80 will be deferred and the total sum owing will be reduced by the cumulative sum paid, in monthly instalments, by the Appellant Tenant to the Respondent Landlord, on each due date, until such time #as the total sum of €9870.80 has been paid in full.
6. 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 Respondent Landlord.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 10/10/2025.

Signed:



Dervla Quinn, Chairperson

For and on behalf of the Tribunal.