[L-041-1]

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Case Reference: TR0001126 / Case Reference: DR0004969

Appellant Tenant(s):	Tito Alexandre Lemos Dos Santos
Respondent Landlord(s):	Patrick O'Shea
Address of rented dwelling:	Flat 2, 66 South Circular Road, Dublin 8, D08Y5F6
Tribunal:	Finian Matthews (Chairperson) Anne Leech, John Keane
Venue:	Virtual
Date & time of hearing:	17/11/2025 10:30:00
Attendees:	Tito Alexander Lemos dos Santos (tenant), Christoper Dowley (tenant's representative), Patrick O'Shea (landlord).

1. Background:

On 25 March, 2025 the Appellant Tenant made an application for dispute resolution services to the Residential Tenancies Board (referred to as “the RTB” in this report). On 18 May, 2025 the Respondent Landlord also made an application for dispute resolution to the RTB.

Pursuant to section 93 of the Residential Tenancies Act, 2004 (referred to as “the Act” in this report) the RTB arranged for the matter to be the subject of adjudication under section 97 of the Act. Adjudication took place on 27 June and 15 July, 2025. The Adjudicator’s report in relation to the dispute was sent to both parties. The Adjudicator determined as follows:

1. The Applicant/Respondent Tenant’s application regarding breaches of landlord obligations in respect of the tenancy of the dwelling at Flat 2, 66 South Circular Road, Dublin 8, is not upheld.

2. The Notice of Termination with a date of service of 9 April 2025, served by the Respondent/Applicant Landlord on the Applicant/Respondent Tenant, in respect of the tenancy of the above dwelling, is valid.

3. The Applicant/Respondent Tenant and any other persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 14 days of the date of issue of the Determination Order.

4. The Notice of Rent Review with a date of service of 2 December 2024, served by the Respondent/Applicant Landlord on the Applicant/Respondent Tenant, in respect of the tenancy of the above dwelling, is valid. The new rent is €1,710 per month payable with effect from 3 March 2025.

5. The Applicant/Respondent Tenant shall also pay any further rent outstanding from 15 July 2025, at the rate of €1,710.00 per month, or proportionate part thereof at the rate of €56.22 per day, unless lawfully varied, and any other charges as provided for under the terms of the tenancy agreement for each month or part thereof, until such time as the above dwelling is vacated by the Applicant/Respondent Tenant and any other persons residing therein.

6. The Respondent/Applicant Landlord slhall refund the security deposit of €1,500.00 to the Applicant/Respondent Tenant on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act, in respect of the tenancy of the above dwelling.

Subsequently a valid notice of appeal was received by the RTB from the Appellant Tenant.

The RTB approved referral of the tenant's appeal to a Tenancy Tribunal. In accordance with Sections 102 and 103 of the Act, the RTB constituted such a Tenancy Tribunal and appointed John Keane, Anne Leech and Finian Matthews as Tribunal members. The Board appointed Finian Matthews to be the Chairperson of the Tribunal (referred to as "the Chairperson" in this report). The parties were notified of the constitution of the Tribunal, were provided with details of the date, time and venue set for the hearing and were provided with a copy of the Tenancy Tribunal Hearing Procedures.

On 13 October, 2025 the Tribunal convened a virtual hearing at 10.30 a.m.

2. Documents submitted prior to the hearing included:

The RTB case files.

3. Documents submitted at the hearing included:

None

4. Procedure:

Opening the hearing the Chairperson stated that it had been established by the Residential Tenancies Board, the RTB, to hear an appeal by the Appellant Tenant, Tito Alexandre Lemos Dos Santos, against a determination made following an adjudication held on 27 June and 15 July, 2025 in the case of a dispute between the tenant and the Respondent Landlord, Patrick O'Shea in respect of the tenancy of a dwelling at Flat 2, 66 South Circular Road, Dublin 8. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. He 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 understood the RTB document entitled “Tribunal Procedures”. The Chairman said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson explained that the Tribunal hearing, as stated in its procedures, was not intended to be overly formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Affirmation, would be recorded by the stenographer present, and that based on that recording a transcript could be made available to the Tribunal if necessary, to assist it in preparing its report on the dispute.

The Chairperson also stated that it was against the law for anyone giving evidence to refuse to make an Affirmation, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the RTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.
The Chairperson added that the Appellant Tenant would be invited first to present his case, including the evidence of any Witness; this would be followed by an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present his case, followed by an opportunity for cross-examination by the Appellant Tenant. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

The Chairperson said that at the end of the hearing, both the Appellant Tenant and the Respondent Landlord would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the RTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

The Chairperson stated that the Tribunal would be willing to consider a short adjournment for the purpose of allowing the parties, should they so wish, to enter without prejudice negotiations to try to reach a consent settlement of their dispute.

All persons giving evidence to the Tribunal were affirmed.

5. Verbal Submissions

Appellant Tenant’s Case:

The following is a summary of the evidence of the parties and the main points made by them in their submissions. It is not a transcript or verbatim account of the hearing.

Mr. Dowley on behalf of the Appellant Tenant submitted that the notice of termination served by the landlord on the tenant on 9 April, 2025 is invalid because the prior warning notice served on 3 March, 2025 is invalid. The principal points made by Mr. Dowley in his detailed submissions in support of the foregoing were as follows:

- The amount of arrears owed as specified in the warning letter included arrears that were the subject of a previous Determination Order of the Board.
- The arrears already dealt with under a previous dispute cannot be imported into the current dispute before the Tribunal.
- The submissions of the landlord in this dispute were the same as those in the previous dispute and as such the question was whether they should be struck out.
- The circumstances are complex because we are dealing with a tenancy that was severed and has multiple dates.
- In summary the first registration of the tenancy in November, 2024 was backdated to 1 November, 2021 and in effect severed the tenancy from the original tenancy in November, 2021 or March 2024 or November, 2024.
- The tenancy was severed from a joint to a sole tenancy on 14 November, 2024, by virtue of a change in its occupation from two individuals to one individual.
- The rent increase notice served on the tenant in December, 2024 in specifying the parties to a tenancy, the rental amount and the frequency of payment had all of the components of a lease as defined in law and it is arguable that this was in fact a lease setting out the terms of the tenancy.
- By virtue of the registration of the tenancy as a sole tenancy in November, 2024 a new tenancy began with effect from 1 March, 2024.
- The landlord, in a letter of 19 April, 2024, set out the grounds on which he could assent to a severing of the tenancy and essentially acknowledged that the tenancy was severed.
- He acknowledged that this created a paradoxical question of how an event in November, 2024 could result in the severance of a tenancy that could be backdated to November, 2021.
- The severance removed any forward transfer of arrears.
- The rent arrears amount as specified in the warning letter served on the tenant on 3 March 2025 was not the correct figure attachable to the sole tenancy held by the tenant.
- The tenant's position is that there are little or no arrears attaching to the tenancy he holds and if there are any such arrears, they are offset by 'other things'.
- If the tenancy was severed in March, 2024 it was severed at a point where the tenant was paying his rent fully, had caught up with his arrears and was in fact in credit with his rent.
- The previous tenancy ended either in March, 2024, November, 2024 or even as far back as November, 2021 and a new tenancy was created by the act of removing the previous tenant from the tenancy.
- The figure for the arrears set out in the March, 2025 warning letter is therefore at least suspect, if not totally inaccurate.
- The arrears warning letter created circumstances that could lead to the termination of the tenancy and had to be dealt with.
- The dispute is based on the arrears amount and does not necessarily mean that the tenant is asking the Tribunal to invalidate or go behind the previous Determination Order.
- The tenant is exhausting the remedies available to him
- If one Tribunal cannot make an order against another Tribunal the tenant can seek to appeal to the Courts to resolve the situation.
- The tenant understands the difficulties arising from the existing Determination Order, but is attempting to do what is required to remedy the situation in which he finds himself.
- The existing Determination Order should have been enforced through the enforcement

procedures, but there are no extant District Court proceedings relating to enforcement
- The delay in enforcement undermines the credibility of the previous determination order.
- The tenant has had to withstand impositions which are unlawful and those will be dealt with in other proceedings.

Asked by the Tribunal about the difference between the arrears figure in the previous Determination Order of €15,640 and the figure of €17,140 specified in the warning letter of 3 March, 2025 Mr. Dowley said that he could not account for this, particularly in circumstances where no rent book was ever provided. He submitted further that the contentions of either party as to the rent owed are unprovable. He also said that it was his understanding that the rent of €1500 per month had been paid by the sole occupant i.e. the Appellant Tenant for the months of January, February, March, April, May and June of 2025. He submitted also that the tenant has no arrears imported from any previous tenancy. He said also that the tenant has undertaken separate proceedings in relation to the refusal of his application for Rent Supplement and Fuel allowance, which if successful would make a massive difference in terms of the means he has to pay his rent and any arrears. He added that the denial of social welfare benefits was based chiefly on the landlord's failure to provide proof of ownership, which was eventually provided. He was of the opinion that blocking his application in this regard was discriminatory against the tenant but that was a separate matter.

The tenant's representative was asked by the Tribunal for details of rent payments made by the tenant since the issue of the determination of the previous Tribunal on 19 February, 2025to enable the Tribunal to understand how the arrears figure of €17,140 as of 3 March, 2025 was arrived at, taking into account the arrears of €15,640 set out in the Determination Order of the previous Tribunal dated 19 February, 2025.It was agreed by the parties that the previous Tribunal hearing took place on 31 January, 2025 and that a rent payment of €1500 made by the tenant on 27 January, 2025 was not taken into account by that Tribunal. It was further agreed that there were no further payments until the end of March, when a further payment of €2600 was made by the tenant on 25th of that month, with a further payment of €400 on the following day. The landlord confirmed that these payments were made on those dates. Following further discussion it was agreed that the rent was paid for Jamuary, February, March, April, May and June of this year, 2025. It was also agreed that no payments had been made for July, August, September or October of 2025. There was no agreement on the due date for the rent payments, the landlord stated that it was on the first of each month, the tenant submitted that it was the middle of each month.

In relation to the rent increase notice served on 2 December, 2024 the tenant's representative submitted that there are multiple grounds on which it is defective, in that if the registration of the tenancy was dated back to March, 2024 the increase was within the first 12 months of the tenancy, or if its dated back the dated of severing of the tenancy this was only a month previously in November, 2024 or it's invalidated because of a pending appeal against a previous review dating from October, 2024 which was not retracted. The tenant's preferred argument was that the increase was too close to the creation of the tenancy or it was prohibited by virtue of the pending appeal against the earlier increase. The tenant's representative also submitted that the proposed increase at 14% was above the allowable increase which he understood would be of the order of !0%

With regard to the maintenance issues the tenant's representative submitted that the tenant's claim for re-imbursement for pest control measures is vouched and receipted. With regard to the issue of

access for the purposes of dealing with the repairs to the immersion and washing machine, the tenant's representative submitted that the it would be more appropriate in the case of electrical appliances for the landlord to nominate a qualified person to assess any issues and carry out the necessary repairs and that the landlord was not the appropriate person to investigate or repair any such appliances. He should instead nominate someone with the correct qualifications to do so. He submitted that this was not a question of refusing access to the landlord and was a reasonable request by the tenant, in circumstances where personal interactions between the tenant and the landlord had not gone well in recent times. Pressed by the Tribunal on this, the tenant's representative submitted that the reasonableness test in this case is not that the access was blocked but that it was more appropriate to send a person with the necessary qualifications, especially considering the tenant's apprehension of harassment on the part of the landlord. He submitted that this would also help to mitigate any potential inflammation of the situation between the parties.

Asked by the landlord about his earlier statement that there were no proceedings extant in relation to the enforcement of the determination order of 19 February, 2025, the tenant's representative said that it was his understanding that no enforcement proceedings had been filed in the District or Circuit Court and that nothing had been served on his client. He accepted that there had correspondence between the legal representatives of the parties. The landlord also stated that documents relating to enforcement had been lodged in the District Court. The Chairperson responded that the Tribunal would note that for its information.

In his closing statement the Appellant Tenant's representative stated that at no stage had he been seeking to re-open the February Determination Order relating to the tenancy. He accepted its finality. What he is taking issue with is the inclusion of the arrears in the warning letter served before the new notice of termination was served. He said there is no need to talk about quashing the previous order. However, the figure as presented in the arrears warning letter is the problem. He submitted that once the earlier arrears have been determined, they cannot be put back into the mix for the purposes of calculating any further arrears. On this basis he submitted that the arrears warning letter was invalid on its face, because it includes a figure that is already determined and ready to enforce. On that basis he submitted that the arrears warning and the notice of termination collapse. He added that the rent for January, February and March (2025) had been paid by the end of March, and it was his understanding that a further payment had been made since but he was not in a position to confirm that in the absence of his client.

On the question of access, the tenant's representative requested that if the Tribunal were to grant such it should be kept to a minimum. He said that he also wished to mention that there is likely to be movement on the tenant's applications for social welfare supports. He further submitted that what the tenant was primarily seeking was that the warning letter of 3 March 2025 and subsequent Notice of Termination of 9 April, 2025 be quashed.

Respondent Landlord's case

The landlord submitted that the Tribunal cannot go behind the previous Tribunal. He submitted that the previous tribunal had determined that the tenant owed €15,640 at the end of January 2025. This amount reduced to €14,140 when account was taken of the €1,500 paid by the tenant on the 27th of

January 2025. When the warning notice was served on the 3rd of March 2025 the tenant had not paid the rent for February or March, nor was any further payment made until well after the 28 day notice had been served. He submitted therefore that the warning notice was valid. He submitted that the tenant had also paid no rent for July, August, September and October, 2025 with the result that his total arrears at this stage amounts to €20,140.

The landlord stated that at the adjudication hearing the tenant had submitted that there were no rent arrears and that the landlord in fact owed him money. However, in the papers before the hearing – Casefile 3, Page 227 – the tenant's rent book states that he owed the landlord €8900 at 31 December, 2024, so that the tenant by his own admission is very much in arrears and as of the date of hearing owes €20, 140 i.e. the €15,640 determined by the previous Tribunal, less €1,500 paid in January, 2025 plus four monthly payments for July, August, September and October, 2024. In response to queries from the Tribunal the landlord clarified that he is seeking an order from the Tribunal for the payment of the €6,000 in rent arrears for July, August, September and October of this year. He said that according to the tenant's lease the due date for payment of his rent is the first of each month. He said that some years ago he agreed to change the due date to 15th of each month. However, this was conditional on him paying his rent on time, but with that not happening the due date in his view reverted to 1st of each month.

In relation to the rent review notice of 2 December, 2024, he said that he included copies of the rents for other dwellings in the area, specifying the rate for those tenancies and the dates from which they applied. With regard to repairs to the dwelling, the landlord said that he only became aware that there were issues with heating the water and with a washing machine at a previous adjudication. He said that the matters we're not raised again until a subsequent Tribunal and he was of the view that they were dealt with by that Tribunal. He said that the tribunal have made it clear to the tenant that he had to allow reasonable access to the dwelling to the landlord. He said that he sent a number of emails to the tenant requesting access but the tenant said that he wasn't going to allow the landlord into the flat to inspect the items that needed repair. On the question of the tenantinsisting that professional intervention was required, the landlord said that the problem could be of a minor nature that he could repair himself. He added that if the problems where more serious he would employ an electrician or plumber as appropriate. He further submitted that an inspection was necessary to find out what was wrong before deciding if a professional tradesman was required. He reiterated that the tenant had denied him access for this purpose. The Landlord also said that it is in his own interests to carry out repairs promptly.

The landlord went on to describe in some detail the interaction between him and the tenant in relation to the latter's applications for Rent Supplements or HAP payments. He denied any suggestion that he failed to submit forms to the relevant authorities and said that at one stage he had been advised by Dublin City Council that he had fully complied with the requirements in relation to the tenant's application (for HAP) but sometime later was also advised that the tenant was withdrawing his application. He said that it was in his interests to support the tenant's application with a view to guaranteeing the ongoing payment of the rent. He added that he had supported a further application by the tenant as recently as March of this year. He submitted that there was no foundation to any allegation the landlord had delayed in sending in any forms to support the tenant's applications for rent supports.

The landlord stated that he wanted to make it clear that he had never terminated the tenancy. To do so he would have had to follow the procedures set out under the Act. He also said that he never severed the tenancy agreement- the tenancy commenced in 2018 and has continued since that date. Because the tenancy is a Further Part 4 tenancy, he said that, by virtue of section 41 of the Act it was extended for a 6 year period from 1 March, 2024. He noted that the tenant is arguing that because his husband moved out in November, 2021 the tenancy was thereby terminated. However, he submitted that section 52 of the Act clearly states that when one tenant leaves a dwelling the tenancy continues and the other tenants retain the benefits of the tenancy, adding that a landlord cannot terminate a tenancy simply because one tenant leaves. The landlord asked if the Tribunal wished him to go into the tenant's claim that he does not owe any rent arrears, but the Tribunal indicated to him that he should not do so as the issue appears to relate to a previous case.

The hearing was adjourned at 1.15 p.m. appx, with a further date to be arranged for the continuation of the hearing.

On the resumption of the hearing on 17 November, 2025, Mr. Dowley, the Appellant Tenant's representative informed the Tribunal that the tenant had contacted him that morning to say that he was ill and could not attend the hearing and would submit documentary evidence to support this later. Mr.Dowley said that he had not been in a position to take instructions from his client and in the circumstances he wished to apply for a further adjournment of the hearing. The Respondent Landlord objected on the grounds of the delays that had already occurred in resolving the dispute. The Tribunal adjourned for a short period to consider the adjournment request.

When the hearing resumed the Tribunal advised the parties that it proposed to proceed with the hearing, having regard to the stage reached by the Tribunal, with direct evidence having been given by both parties and the only remaining business being the cross-examination of the landlord's evidence by the tenant's representative and the parties' closing statements.

In response to questions from the tenant's representative, the landlord said that when he receives a complaint from a tenant he always visits the relevant dwelling to assess the problem and see if it's a something relatively simple he can fix himself before deciding whether he needs to engage a plumber or electrician or other professional person as appropriate. He agreed that this could save him from having to pay call out charges, adding that when a tenant tells him something is wrong he pays a visit within 24 hours, in the interests of quickly diagnosing the problem and engaging a service engineer if necessary. He said he was not aware of any regulatory requirement that a competent person was required to carrying out something simple like changing the fuse in a 3 amp plug or opening the drain plug in a washing machine. If necessary he would then engage the services of a qualified person for whatever the particular job was. In this he said that when the tenant told him over a year ago that there was a problem with the immersion and the washing machine he asked the tenant for his agreement that he go to the dwelling to see what was wrong. However, he said that the tenant refused and said he was not going to allow the landlord into the dwelling under any circumstances. He added that he still wants to go to the dwelling to see what's wrong and if for example the immersion needs to be replaced he will engage a service engineer for that purpose. He also said that he would not attempt to fix an immersion himself.

In response to further questions the landlord agreed that he had said in his direct evidence that the

tenant's social welfare benefits had nothing to do with him. In relation to certain assertions he had made in relation to the tenant's working in the United States he said that around December of 2022 when the tenant wasn't paying his rent he received e-mails from the tenant to the effect that he had jobs in the US, while he said that the tenant also sent him a copy of his social welfare claim for those months he was away and the dwelling was vacant. In relation to Airbnb he said that during the months the tenant was away he got telephone calls people who asked him to come down to open the dwelling for him because they had rented it on Airbnb.

In relation to other questions the landlord said that in his view the tenant's qualifying for social welfare benefits through habitual residence was not an issue for him. He also said that he had provided all of the information he has been requested to provide in relation to the tenant's application for rent supplement and that the reasons for the refusal of that application had nothing to do with him. He denied that his failure to provide proof of ownership was the reason for such refusal. He said that he was unaware of a Department of Social Protection report that confirmed that the tenant was in urgent need of support and was suitable for rent supplement. He said he was aware that the tenant was an Irish citizen. He said he did not know if the tenant had been a habitual resident since 2020.

The landlord confirmed that he got an e-mail from the tenant's former husband in December, 2022 asking to be removed from the lease and he was almost certain the Appellant Tenant had informed him of this before then. He said he could not recall writing to that tenant in April, 2024 saying that to remove the tenant from the lease he would have to terminate for both of them and then offer the Appellant Tenant a new tenancy. He added that if he said this it could not be correct because he could not, under RTB rules and regulations, sever or terminate a tenancy where there is a tenant in situ. He also said that he did not remove the tenant's former partner from the lease, it was the RTB that removed his from the registration of the tenancy. He agreed that he had consented to that.

In response to further questioning the landlord re-iterated that he cannot sever a tenancy and that if one tenant leaves and the other tenant has been there is situ, the tenancy continues. He agreed that he had served notice to increase the rent in December, 2024 on the Appellant Tenant as the sole tenant, adding that the tenant had held the tenancy since 2018.

In his closing statement the Respondent Landlord, confirmed that the 28 day warning letter was served on the tenant on 3 March, 2025, at which point the tenant was aware that there were arrears arising from the previous Tribunal and that the February and March, 2025 rent had not been paid. He said that the notice of termination was served on 9 April, and thus he had proved that the notice was served on time in a timely manner. The tenant had also paid no rent for July, August, September, October and November, 2025 with the result that a further €7,500 is now due. This brought the total arrears to €21,640. Because of these serious arrears he said he is seeking an order that the tenant shall vacate the dwelling. He said that he was also seeking a determination that the tenant should remove a CCTV camera from the common areas of the building. In relation to the rent increase he submitted he had met all the relevant requirements. On the access issue he pointed out again that the tenant is blankly refusing him access to the dwelling for the purposes of an inspection. On the severance issue he repeated that he cannot sever a tenancy for a tenant in situ.

The Chair thanked both parties and advised them that following the hearing the Tribunal will prepare a report and make its Determination in relation the dispute and will notify the RTB of that Determination.

6. Matters agreed between the parties:

Before inviting the parties to make their submissions the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

- Prior to the service of a disputed notice of rent review served on the tenant on 2 December, 2024 the rent for the tenancy was €1500 per month,
- The deposit is held by the Respondent Landlord.
- The landlord served a Notice of Termination on the tenant on 9 April, 2025
- The expiry date for the tenancy specified in the notice was 17 May, 2025
- The stated grounds for termination of the tenancy were because the tenant had breached his tenancy obligations in failing to pay rent and had not remedied this breach following the warning notice served on him on 3 March, 2025.
- The tenant remains in occupation of the dwelling.

Both parties were in agreement in relation to the foregoing matters.

7. Findings and reasons:

At the outset of the hearing the Tribunal Chairperson noted that this was the second of two disputes the tenant had lodged with the RTB in relation to the tenancy. The first of these disputes had been heard by an Adjudicator and Tribunal and was the subject of a Determination Order of February, 2025. The Chairperson pointed out that this could give rise to the issue of *res judicata* for the Tribunal. On a related point it was acknowledged that there is nothing to prevent a landlord or tenant from lodging two or more dispute applications in relation to a tenancy but that one of those cases cannot be used to re-open issues already dealt with in another case.

For ease of reference the full text of the Determination Order made by the Board on 19 February, 2025 is as follows:

‘In the matter of Patrick O’Shea, [Appellant Landlord] and Tito Alexander Lemos dos Santos [Respondent Tenant] the Residential Tenancies Board, in accordance with section 121 of the Residential Tenancies Act, 2004, determines that:

1. The Notice of Termination served by the Landlord on the Tenant on 16 April, 2024 is invalid.
2. The Respondent Tenant shall pay the total sum of €15, 640 to the Appellant Landlord, within 28 days of the date issue of this Determination Order. This sum represents rent arrears in respect of the tenancy of the dwelling at Flat 2, 66 South Circular Road, Dublin 8 due up to 31 January, 2025..

This Order was made by the Residential Tenancies Board on 19 February, 2025.”

There are a number of points to note about this Determination Order i.e.

- The named parties to the order are Patrick O'Shea as Appellant Landlord and Tito Alexander Lemos Dos Santos as Respondent Tenant.
- The persons named are the same parties as the parties to this dispute.
- A notice of termination served by the landlord on the tenant on 16 April, 2024 is invalid
- Rent arrears amounting to €15,640 are owed in respect of the tenancy of the dwelling up to 31 January, 2025..
- The named tenant, Tito Alexander Lemos dos Santos, was required to pay that amount of arrears to the landlord within 28 days of the date of issue of the above Determination Order.

While some of these points may be obvious or self-evident each is relevant to the delineation of the matters in respect of which it is open to this Tribunal to make findings and a determination.

It was agreed at the hearing in this case that the rent arrears owed under the terms of the above order had not to date been paid by the tenant.

It should also be noted that under the provisions of section 123 of the Act the above Determination Order embodying the terms of the determination of the previous Tribunal became binding on the parties concerned on the expiry of the 'relevant period' – the relevant period being defined as the period of 21 days beginning on the date that the determination order concerned is issued to the parties. In those circumstances it is not open to this Tribunal to make any finding or determination that could re-open or 're-determine' issues that are subject to a binding Determination Order under the Act.

In his summation at the end of the hearing the Appellant Tenant's representative stated that he accepted the finality of the Determination Order of 19th February, 2025 and was not seeking to the re-open that determination. However, over the course of the hearing the Appellant Tenant's representative sought to argue that that the tenancy entered into by the tenant and his then partner in 2018 had somehow subsequently been severed when his former partner left and he became the sole tenant in a new tenancy which commenced either in November, 2021, March 2024 or November, 2024. On that basis he argued that the rent arrears amount specified in the warning notice served on the tenant on 19 February, 2025 did not attach and were not attachable to the tenancy held by the tenant.

These two issues i.e. the nature and length of his tenancy and any arrears of rent the tenant owes are inextricably linked. However, as previously stated a Tribunal has made a binding determination that the tenant owes rent arrears of €15,640 for the period up to 31 January, 2025 in respect of the tenancy of the dwelling. For this Tribunal to make any finding or determination in relation to the severance of the tenancy entered into by the tenant in 2018 would in the Tribunal's view require it to revisit in some manner the determination in relation to rent arrears made by the previous Tribunal, having regard to the link between the nature and length of the tenancy and the arrears, and having regard also to the fact that the dates from which the 'new' tenancy is said to have commenced all predate the date of the determination order of the Board of 19 February, 2025. The Tribunal is of the view that it would not be appropriate and would be unlawful for it to revisit the Determination Order

in this manner. The Tribunal therefore proposes to make no findings or determination in relation to the issue of the severance of the tenancy as raised by the Appellant Tenant.

The Tribunal confines its findings and determination to the validity of the notice of termination served by the landlord on the tenant on 9 April, 2025, the rent arrears (if any) owed by the tenant at the date of the hearing over and above the rent arrears owed by him as at 31 January, 2025, the validity of a notice of rent review served on the tenant on 2 December, 2024, breach of tenant obligations in relation to access to the dwelling insofar as any such breaches relate to the period after 19 February, 2025 and breach of landlord obligations relating to repairs to the dwelling insofar as any such breaches relate to the period after 19 February, 2025. Other matters raised in the tenant's dispute application i.e breach of rent book regulations and penalisation of the tenant are not addressed either because they are not a matter for the RTB or a tenancy tribunal or have been dealt with by a previous Tribunal.

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 in relation to the matters on which it proposes to make findings are set out hereunder.

Finding 1

The Notice of Termination served by the Appellant Landlord on the Respondent Tenant on 9 April 2025 is valid.

Reasons

The Residential Tenancies and Valuation Act 2020 (RTVA) enacted new procedures necessary to terminate a tenancy on foot of rent arrears. Those procedures require that before a tenancy may be terminated on foot of rent arrears, a tenant must be served with a warning notice, specifying the amount of rent in arrears, and affording the Respondent Tenant a period of 28 days to clear such arrears, before a Notice of Termination may be served. Moreover, the RTVA also requires that copies of the warning notice referred to above, and any subsequent Notice of Termination, be served upon the RTB on the same day as they are served upon a tenant.

Section 67(3) of the Act, as amended by section 12 of the RTVA 2020 requires that where the reason for a proposed termination of a tenancy is for failure to pay an amount of rent due, the condition specified in section 67(3) must be met, before serving a Notice of Termination giving 28 days' Notice of Termination, namely:

a. *The Respondent Tenant and the Board have been given a notification (in such form as may be specified by the Board) in writing by the Appellant Landlord that such an amount of rent as is specified in the notification has not been paid to the Appellant Landlord, and*
b. *That amount is not paid to the Appellant Landlord within a period of 28 days following-*
    i. *Receipt of the notification by the Respondent Tenant, or*
    ii. *Receipt of the notification by the Board,*
    whichever occurs later.

The foregoing are the statutory provisions applicable in circumstances whereby the Respondent Landlord has sought to terminate the Appellant Tenants tenancy by serving a Notice of Termination

on him based on their failure to pay rent on dates rent was due, the tenancy being a tenancy of longer than six months in duration and therefore protected by the provisions of Part 4 of the Act.

The tenant challenged the warning notice served on him on 3 March 2025 on the grounds that the amount of rent arrears owed as specified in the that notice was either inaccurate or suspect firstly because the arrears determined by a previous Tribunal did not relate or attach to the sole occupancy tenancy held by the tenant and secondly that the rent arrears owed at the date of the warning notice should not have included the arrears already the subject of a previous determination on 19 February, 2025.

In relation to the first of those grounds the Tribunal cannot as already stated revisit the determination made by the previous Tribunal in relation to the arrears owed up to 31 January, 2025.

Taking into account the wording of Section 67(3) of the Act as amended by section 12 of the RTV Act, 2020 the warning notice was required to specify the amount of rent arrears owed by the tenant to the landlord. At the date of that warning notice i.e. 3 March 2025 the tenant had not paid the amount of rent arrears determined by a Tenancy Tribunal to be owed by him for the period up to 31 January. To reflect accurately the amount of rent arrears owed by the tenant at the date of the warning notice the landlord was obliged to take account of rent owed by the tenant for the period up to 31 January, 2025.

The previous Tribunal determined that the tenant owed rent arrears of €15, 640 up to 31 January, 2025. It was accepted at the hearing that the tenant had paid €1500 in rent towards the end of January, 2025. This reduced the arrears owed at the end of January to €14, 140. It was also agreed that as at 3 March 2025 the tenant had not paid rent for February or March, a total of €3000. This further amount brought the total he owed at the date of the warning letter of 3 March to €17, 140 i.e. the precise amount specified in that warning letter.

Having considered the evidence in full, the Tribunal is satisfied that the rent arrears claimed by the landlord to have been owing at the date of the warning notice have been substantiated. The Tribunal concludes therefore that the warning notice of 3 March was validly issued and properly served. The arrears were not cleared within the 28-day period provided

The Tribunal is further satisfied that the notice of termination served on 9 April, 2025 complied with the requirements of the Residential Tenancies Act 2004 (as amended), including in respect of service, content, and notice period, with a copy of the notice having been sent to the RTB on the same day as it was served on the tenant. The notice is accordingly found by the Tribunal to be valid.

The Tribunal, therefore, in accordance with its powers under section 115 (2) (f) of the Act declares the Notice of Termination in respect of the tenancy served by the Respondent Landlord on 9 April, 2025 to be valid.

In balancing the Respondent Landlord's right to vacant possession of the dwelling on foot of a valid notice of termination based on rent arrears and the length of time for which the tenant has been overholding, the Tribunal considers a period of 28 days from the date of the Determination Order to be appropriate in terms of the tenant's vacating and giving up possession of the dwelling.

Until such time as vacant possession is delivered, the tenant shall continue to pay rent in accordance with the terms of the tenancy agreement.

Finding 2

The Appellant Tenant is in breach of section 16(a) of the Act and owes arrears of rent to the Respondent Landlord in the amount of €20,140, of which €15,640, is the subject of a binding Determination Order of 19 February, 2025.

Reasons

Section 16(a) of the Residential Tenancies Act 2004 (as amended) provides:

"In addition to the obligations arising by or under any other enactment, a tenant of a dwelling shall— (a) pay to the Appellant Landlord or his or her authorised agent (or any other person where required to do so by any enactment)— (i) the rent provided for under the tenancy concerned on the date it falls due for payment".

Having considered the evidence in full, the Tribunal is satisfied that as at the date of the hearing the tenant owes rent arrears in the amount of €20,140 to the landlord. Of that amount the sum of €15,640 is subject to a binding order of a Tribunal dated 19 February, 2025. The Tribunal proposes to determine therefore that a balance of €4500 must also be paid by the landlord to the tenant.

The total arrears amount of €20,140 referred to in the previous paragraph is calculated as follows: A previous Tribunal determined that the tenant owes rent arrears of €15,640 for the period up to 31 January, 2025. It was agreed at the hearing that this amount did not take account of a payment of €1500 made by the tenant on 27 January, 2025. Deducting that amount from the arrears determined by the Tribunal would have reduced the arrears to €14,140. It was also agreed on the first day of the hearing that the tenant had not pay his monthly rent of €1500 for July, August, September and October, 2025, thus increasing the arrears by €6,000 to €20,140. However of that amount €15,640 is already the subject of a binding order of a Tribunal, leaving a balance of €4,500 to make up the €20,140 owed by the tenant.

Thus the Tribunal determines that the rent arrears in the amount of €4,500 shall be paid by the tenant to the landlord within a period of 28 days of the date of the Determination Order of the Board.

On the second day of the hearing the landlord stated that the tenant had also not paid his rent for November, 2025. However, in the absence of the tenant from the hearing and the fact that his representative who was at the hearing did not have an opportunity to take instructions from his client in the matter, the Tribunal makes no finding in relation to the rent for November, 2025. In any event the landlord at the first day of the hearing limited his claim for additional rent arrears to €6000 i.e. the rent owed for July, August, September and October, 2025.

Finding 3.

The notice of rent review served on the tenant by the landlord on 3 March, 2025 is invalid.

Reasons

Under section 22 of the Act a notice of rent review served by a landlord on a tenant must contain the following information.

- The amount of the new rent and the date from which it is to have effect.
- A statement that any dispute in relation to the setting of the new rent must be referred to the Board by a certain specified date
- A statement by the landlord that the new rent is not greater than market rent
- The amount of rent sought for 3 comparable dwellings in a comparable area
- A statement showing how any increase in the rent was calculated, in cases where the dwelling is located in a Rent Pressure Zone.

The notice of rent review signed by the landlord and dated 2 December, 2024 complies with most of these requirements. However, it does not contain the required statement showing how the proposed increase in the rent from €1500 per month to €1710 per month was calculated. In that regard where landlords use the RTB Rent Pressure Zone calculator to calculate the maximum permissible rent increase, if any, it is required that landlords attach a copy of the calculation to a notice of rent review. No such calculation was attached to the copy of the rent review of 2 December, 2024 supplied in evidence to the Tribunal. The Tribunal has no alternative therefore but to deem that notice of rent review to be invalid.

Finding 4

The Appellant Tenant is in breach of his obligations under sections 16 (c) and (e) of the Act.

Reasons

Under sections 16 (c) and (e) of the Act a tenant is obliged to allow a landlord, or anyone acting on the landlord's behalf, reasonable access to the dwelling for the purposes of inspecting the dwelling or for the purposes of allowing any works to for which the landlord is responsible to be carried.

It was established at the hearing that the Appellant Tenant has refused to allow access to the dwelling to the landlord to assess defects reported to the landlord by the tenant, with a view to the landlord's deciding on what needs to be done and engaging the appropriate professional expertise where necessary. The tenant has insisted instead that the landlord cannot attend at the dwelling under any circumstances and should instead send another person to act on his behalf where defects are reported to the landlord. This approach is considered by the Tribunal to be entirely unreasonable and a breach of the provisions of both sub-section (c) and (e) of the Act.

It should be noted that this finding relates only to the period after 19 February, 2025.

Finding 5

The tenant's application that the landlord is in breach of his obligations under sections 12 (a) and (b)(ii) of the Act.

Reasons

There was no evidence that the landlord has not allowed the tenant to enjoy peaceful and exclusive occupation of the dwelling.

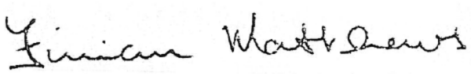
In circumstances where the tenant has refused repeatedly to allow the landlord access to the dwelling for the purposes of carrying out inspections or for the purposes of allowing any necessary works to be carried out, the landlord cannot be held to be responsible for any alleged failure to carry out necessary repairs or maintenance to the structure or interior of the building.

8. Determination:

In the matter of Tito Alexandre Lemos Dos Santos, Appellant Tenant, and Patrick O'Shea, Respondent Landlord, the Tribunal in accordance with section 108(1) of the Act, determines that:

1. The Notice of Termination with a date of service of 9 April 2025, served by the Respondent Landlord on the Appellant Tenant, in respect of the tenancy of the dwelling at Flat 2, 66 South Circular Road, Dublin 8, 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 Notice of Rent Review with a date of service of 2 December 2024, served by Respondent Landlord, in respect of the tenancy of the above dwelling, is invalid.
4. The Appellant Tenant shall pay the sum of €4,500 to the Respondent Landlord within 28 days of the date of issue of the Determination Order. This sum represents rent arrears due in respect of the dwelling at Flat 2, 66 South Circular Road, Dublin 8.
5. The Appellant Tenant shall also pay any further rent outstanding from 1 November 2025, at the rate of €1,500 per month, or proportionate part thereof at the rate of €49.31 per day, unless lawfully varied, and any other charges as provided for under the terms of the tenancy agreement for each month or part thereof, until such time as the above dwelling is vacated by the Appellant Tenant and any other persons residing therein.
6. The Respondent Landlord shall refund the security deposit of €1,500.00 to the Appellant Tenant on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act, in respect of the tenancy of the above dwelling.
7. The Appellant Tenant's application regarding breaches of landlord obligations in respect of the tenancy of the dwelling at Flat 2, 66 South Circular Road, Dublin 8, is not upheld.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 10 January, 2026.

Signed: 

Finian Matthews, Chairperson
For and on behalf of the Tribunal.