

## Residential Tenancies Board

### RESIDENTIAL TENANCIES ACT 2004

#### Report of Case Reference: TR0001225 / Case Reference: DR0005200

<b>Applicant Tenant(s):</b>	Imelda O'Donnell
<b>Respondent Landlord(s):</b>	Charles Roarty
<b>Address of rented dwelling:</b>	Apartment 4 Gateway Apartments, Foyle View, Lifford, Donegal, F93PY11
<b>Tribunal:</b>	Brian Murray (Chairperson) John Keane, Brian Murray, Mary Doyle
<b>Venue:</b>	Virtual
<b>Date &amp; time of hearing:</b>	22/01/2026 10:30:00
<b>Attendees:</b>	Imelda O'Donnell, Applicant Tenant; Siobhán McCormack, North Connacht and Ulster Citizens Information Centre -Representative for the Applicant Tenant; Charles Roarty, Respondent Landlord; RTB appointed stenographer / logger

#### **1. Background:**

The Tenant made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 78 of the Act. The matter was referred to a Mediation. Following the mediation, an appeal was received and the RTB constituted a Tenancy Tribunal and appointed Mary Doyle, John Keane, Brian Murray as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Brian Murray to be the chairperson of the Tribunal ("the Chairperson").

On 22 January 2026 the Tribunal convened a virtual hearing.

#### **2. Documents submitted prior to the hearing included:**

1. Tribunal Case Files and Mediation Case files

#### **3. Documents submitted at the hearing included:**

None.

#### **4. Procedure**

The Chairperson asked the persons present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the persons present 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 Applicant Tenant would be invited to present her evidence and case; that there would be an opportunity for cross examination of this evidence by the Respondent Landlord; that the Respondent Landlord would then be invited to present his evidence, that there would be an opportunity for cross examination of this evidence by the Applicant Tenant or her representative and at the end of this process both Parties would be invited to make their final submissions to the Tribunal.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official stenographer/recording technician present and he reminded the Parties attending 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.

Those giving evidence gave their affirmations.

## **5. Verbal Submissions**

### **Submissions on behalf of the Applicant Tenant**

Ms Siobhán McCormack, on behalf of the Applicant Tenant, made submissions at the outset of the hearing. She stated that the Applicant Tenant was confining her case entirely to the legal issue concerning the validity of the Notice of Rent Review and was not pursuing any argument in relation to the reasonableness of the rent or the comparative dwellings.

Ms McCormack referred the Tribunal to section 22(1) of the Residential Tenancies Act 2004, which provides that the setting of a new rent pursuant to a rent review "*shall not have effect unless and until*" the condition specified in subsection (2) is satisfied. She submitted that these words make compliance with subsection (2) a mandatory condition precedent to the validity of any rent review.

Ms McCormack submitted that section 22(2) clearly requires that, at least 90 days before the date from which the new rent is to have effect, a notice in the prescribed form must be served on the tenant stating the amount of the new rent and the date from which it is to have effect.

She submitted that the Notice of Rent Review in this case was dated and posted by ordinary post on 10 January 2025 and stated that the new rent was to have effect from 10 April 2025.

She submitted that, even taking the landlord's best case as to service, the Notice failed to provide the minimum statutory notice period. A notice served on 10 January 2025 could not lawfully specify 10 April 2025 as the effective date, as this amounted to only 89 days.

Ms McCormack further submitted that the Applicant Tenant's evidence was that she did not receive the Notice until 13 January 2025, which would further reduce the notice period and compound the defect. She submitted that the Act does not provide for service by ordinary post and that, in any event, later receipt could not cure a failure to comply with the statutory requirement.

Ms McCormack submitted that the legislation was clear, that the Notice was invalid by operation of section 22, and that the Tribunal was obliged to find that the rent review "*shall not have effect*". She further submitted that, as a consequence of the invalidity of the Notice, the Applicant Tenant was entitled to be refunded the additional rent paid pursuant to the purported rent review.

### **Evidence of the Applicant Tenant**

The Applicant Tenant gave evidence that she was served with a Notice of Rent Review dated 10 January 2025 proposing to increase the rent from €563 per month to €900 per month with effect from 10 April 2025.

She stated that the Notice was sent by ordinary post and that she did not receive it until the Monday following its posting, which she identified as 13 January 2025. She explained that the Notice came as a shock to her, both because of the scale of the increase and the short timeframe involved.

The Applicant Tenant stated that she took advice following receipt of the Notice. She confirmed that, notwithstanding her concerns regarding the validity of the Notice, she ultimately paid the increased rent from the date from which it was stated to take effect. She explained that rent was paid by bank transfer and that any arrears were backdated once advice had been obtained.

The Applicant Tenant gave evidence that she continued to pay the increased rent until she vacated the dwelling on 8 January 2026. She stated that the difference between the old rent and the new rent amounted to €337 per month and that the total additional rent paid over that period amounted to €3,008.

### **Evidence of the Respondent Landlord**

The Respondent Landlord gave evidence that the Notice of Rent Review was dated and posted on 10 January 2025 by ordinary post. He accepted that this date fell on a Friday.

He stated that he did not take issue with the Applicant Tenant's evidence that she did not receive the Notice until the following Monday. He accepted that ordinary post would not be delivered over the weekend.

The Respondent Landlord gave evidence regarding the basis on which the rent increase was proposed and referred to comparative properties which he said supported the rent sought.

The Respondent Landlord was asked whether he disputed that the Applicant Tenant paid the increased rent from the date specified in the Notice. He did not dispute this. He did not dispute the calculation that the additional rent paid by the Applicant Tenant amounted to €3,008.

### **Closing Submissions**

On behalf of the Applicant Tenant, it was submitted that section 22(2) of the Act requires strict compliance and that the Notice failed to comply whether service was calculated from 10 January 2025 or from the date of actual receipt. It was submitted that the Notice was invalid and that the Applicant Tenant was entitled to repayment of the overpaid rent.

The Respondent Landlord stated he was a landlord of multiple properties and had not been before the RTB before.

### **6. Matters agreed between the parties:**

1. Tenancy commenced: September 2022
2. The Tenant vacated the property on 8 January 2026
3. The rent payable immediately prior to the rent review was €563 per month.
4. A Notice of Rent Review was dated and sent on 10 January 2025.
5. The Notice of Rent Review was served by ordinary post.
6. The Notice of Rent Review proposed a new rent of €900 per month.
7. The Notice of Rent Review stated that the new rent was to have effect from 10 April 2025.

### **7. Findings and reasons:**

#### **Finding 1:**

The Notice of Rent Review dated 10 January 2025 is invalid.

#### **Reason:**

Section 22(2) of the Residential Tenancies Act 2004 provides that a landlord shall not be entitled to set a new rent unless, at least 90 days before the date from which the new rent is to have effect, a notice in the prescribed form is served on the tenant stating the amount of the new rent and the date from which it is to have effect.

The Tribunal accepts the evidence of the Applicant Tenant, which was not disputed by the Respondent Landlord, that the Notice of Rent Review was not received until 13 January 2025. On that basis, the earliest possible date of service was 13 January 2025. Excluding the date of service, the earliest lawful date from which a new rent could have effect would

have been 14 April 2025. The Notice instead specified 10 April 2025 as the effective date and therefore failed to provide the minimum statutory notice period.

Further, and in any event, even if the Tribunal were to proceed and treat the Notice as having been posted on 10 January 2025 and received on 11 January 2025, the Notice would still fail to comply with section 22(2). A Notice served on 10 January 2025 could not lawfully specify 10 April 2025 as the date from which the new rent was to have effect, as this allowed only 89 days' notice rather than the required minimum of 90 days.

Accordingly, the Tribunal finds that the Notice of Rent Review was invalid.

In circumstances where the Notice of Rent Review is invalid for failure to comply with section 22(2) of the Act, the Tribunal finds that it is neither necessary nor appropriate to make any determination in relation to the comparative dwellings relied upon or the issue of market rent and notes that this was not pursued by the Applicant Tenant in the appeal in any event.

## **Finding 2**

The Applicant Tenant overpaid rent in the sum of €3,008.

### **Reason**

It was not disputed that the Applicant Tenant paid the increased rent from 10 April 2025 until she vacated the dwelling on 8 January 2026. It was also not disputed that the difference between the previous rent and the increased rent over that period amounted to €3,008.

As the Notice of Rent Review was invalid, the Respondent Landlord was not entitled to charge the increased rent. The Tribunal therefore finds that the sum of €3,008 was overpaid by the Applicant Tenant and is due to be repaid to her by the Respondent Landlord.

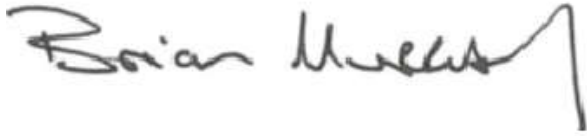
## **8. Determination:**

### **Tribunal reference TR0001225**

In the matter of Imelda O'Donnell (Applicant Tenant) and Charles Roarty (Respondent Landlord), the Tribunal, in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Rent Review in respect of the tenancy of the dwelling at Apartment 4, Gateway Apartments, Foyle View, Lifford, Co Donegal dated 10 January 2025 is invalid.
2. The Applicant Tenant overpaid rent in the sum of €3,008 and the Respondent Landlord shall repay to the Applicant Tenant the sum of €3,008.
3. The said sum shall be paid by the Respondent Landlord to a bank account nominated by the Applicant Tenant within 28 days of the date of issue of the Determination Order.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination.

A handwritten signature in black ink that reads "Brian Murray". The signature is written in a cursive style with a long, vertical stroke at the end.

**Signed:**

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**Brian Murray**  
**Chairperson**

For and on behalf of the Tribunal.