Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Case Reference: TR0001404 / Case Reference: DR0002085

Appellant Landlord(s):	Gary O'Donoghue
Respondent Tenant(s):	Siobhan Cleary
Address of rented dwelling:	1 Patrick Street, Tramore, Waterford, X91 VF74
Tribunal:	Ciara Doyle (Chairperson) Eoin Byrne, Dairine MacFadden
Venue:	Virtual
Date & time of hearing:	22/04/2026 14:30:00
Attendees:	Gary O'Donoghue, Appellant Landlord Siobhan Cleary, Respondent Tenant

1. Background:

Adjudication held on 11 November 2025.

2. Documents submitted prior to the hearing included:

RTB Casefiles

3. Documents submitted at the hearing included:

None

4. Procedure:

The Chairperson asked the participating parties to identify themselves and to identify in what capacity they were taking part in the Tribunal.

The Chairperson asked the parties to confirm that they had received the relevant papers from the RTB in relation to the case Tribunal. The parties were also asked to confirm that they had received the RTB document entitled "Tribunal Procedures".

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; that the Appellant Landlord would be invited to present his case first; that there would be an opportunity for crossexamination by the Respondent Tenant; that the Respondent Tenant would then be invited to present her case and that there would be an opportunity for cross-examination by the Appellant Landlord. The Chairperson said that members of the Tribunal might ask questions of both Parties from time to time. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

She stressed that all evidence would be recorded by a recording technician, 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 up to €4,000 or up to 6 months imprisonment or both.

She said that following the hearing, the Board would make a Determination Order which would be issued to the parties and that it was the practice of the RTB to publish reports of hearings and determination orders on its website. She explained that the hearing before the Tribunal was a de novo hearing and a final hearing as to matters of fact and that a Determination Order made by the RTB could be appealed to the High Court on a point of law only.

5. Verbal Submissions:

Submissions of the Appellant Landlord:

1. **Overholding**

The Appellant Landlord submitted that he served a warning notice on the Respondent Tenant on the 4th April 2025 warning her of a breach of her tenancy obligations, by persistently failing to pay her rent on time.

He referred the Tribunal to a schedule of rental payments during the tenancy in the casefile and submitted that the Tenant had not paid her rent on the due date of the 5th of the month since December 2023. He said the Tenant continued to pay her rent late, after the service of the warning notice, and on the 8th May 2025 he served a Notice of Termination on her on the grounds of persistent late payment of rent.

When questioned by the Tribunal as to why the warning notice did not notify the Tenant of the amount of rent due and owing, the Landlord said that the warning notice was served on the grounds of persistent late payment of rent after the 5th of each month. He accepted that the arrears due and owing from the rent schedule he had submitted on the casefile, were €75 on the date of the warning notice. He said his warning was based on persistent late payment and the notice was based on the same breach. He submitted he was entitled to service a Notice of Termination on these grounds and that the Tenant is overholding.

2. **Rent Arrears**

The Landlord submitted that by his calculations the Tenant is in arrears of rent in the sum of €11,300 as at the date of the hearing. He referred again to his rent ledger on the casefile which he said reflected all payments received by him during the tenancy. He said his calculations were based on a monthly rent of €925 and that this new rent had taken effect after he and the Tenant had entered into a new tenancy agreement in January 2024.

He said prior to the new rental agreement he had sent an email to the Tenant suggesting an increase in the rent of €125, that the Tenant had agreed but this new rental figure was not initiated until 3 months later when they signed the new lease.

3. **Breach of Landlord Obligations**

The Landlord referred the Tribunal to his evidence in the case files documenting the maintenance history of the property from 2018 to 2026. He said he had installed a new condenser boiler. He had upgraded fire safety. He had put in a new mattress, replaced white goods and redecorated the property. He said he had a current quote for electrical works and he had instructed an electrician to go ahead with the works.

In relation to the Tenant's allegation of unresolved bathroom repairs, he said November 2024 was the first time the Tenant had complained about the bathroom. He said he spent months trying to

schedule remedial works with the Tenant, to arrange access for his contractor Barry Murphy. He referred to various emails with the Tenant in the casefile in relation to those efforts.

He said the Tenant had engaged her own plumber in August 2024 and following that inspection her plumber had agreed there was no leak. In November 2024 the position changed, and it took several months to arrange for his contractor to carry out works. He accepted there had been a leak through the ceiling of the bathroom into the sitting room which had affected the electrics downstairs and that this had been caused by his contractor flushing the toilet without it being sealed. He said the Tenant had ordered the contractor out of the dwelling following this incident and that was the reason the works were not done.

He accepted that damp and mould had arisen due to the bathroom leak but denied there was any problem with damp and mould in the property before then. He submitted that the cause of the mould was due to ventilation issues and that he had looked at replacing windows and doors, but access had been refused. He said he had provided a dehumidifier to the Tenant. He referred to various photos from his contractor which he said showed the property in good condition. He denied using toxic paint.

He said it was a standard internal/external sealant, and it was done in a room where the front door was opened.

He said the current situation is his contractor is unwilling to go back due to the behaviour of the Tenant. He understands that work is still to be done, that it is work in progress and he is just waiting for the electrician's start date.

When questioned by the Tenant, he said he did not accept there was extensive damp in the property in 2020. He said the property had been fully decorated by him prior to the Tenant moving in and there was no damp at the time. He accepted there were issues with the opening of downstairs windows. He said a contractor had been engaged to put a bracket on them to open them. He accepted he received a request from the Tenant for the floor to be redone in 2025 but said he did not know what reply he had given. He accepted the Tenant had drafted the Lease and given it to him to sign.

Submissions of the Respondent Tenant:

The Respondent Tenant said she was satisfied with the findings of the adjudicator, that the Notice of Termination dated the 11th March 2025 is invalid, that the Notice of Termination dated the 8th May 2025 is invalid, and that damages be awarded to her of €2,000 for breach of Landlord obligations. She also submitted the Landlord had carried out an unlawful rent review.

In respect of the Notices of Termination, she submitted that the first Notice of Termination was invalid and was under dispute when the Landlord served a second Notice of Termination. It was her case that he is not entitled to serve a second Notice of Termination when the first Notice of Termination was under dispute. For that reason, she submitted that both Notices should be deemed invalid.

She also submitted that the Landlord had given her 90 days' notice when she was entitled to 180 days' notice. She submitted that the Notices did not comply with statutory requirements and her late payment of rent was not a breach of obligation in circumstances where she had notified the Landlord in advance of her rent being paid late and he had not raised any objection. She said for that reason she did not accept she is overholding the property.

She said the Landlord had increased the rent more than the 2% RPZ limit and that he had increased the rent by 15.6% which was unlawful. She accepted the Landlord's rent ledger reflected all

payments made by her, but it was her case that she had over paid rent of €125 on foot of an invalid rent review for 16 months.

She said she had issued a notice to the Landlord on the 11th May 2025 in relation to the bathroom floor. She said she had put a temporary bathroom floor in the bathroom in October/November 2024 but the mould and damp, shower and tiling all needed attention in the bathroom. She told the Landlord she couldn't deal with the repairs any longer.

She said she had engaged a plumber in August 2024, but issues got worse and she couldn't deal with the required repairs herself. She said she had commitments such as hospital visits to her parents, and she facilitated access requests from the Landlord when she could.

When she asked the Landlord to replace the floor and deal with the bathroom, he did not respond and he only responded after she issued the notice to him on the 11th May. She said there was a flood in the sitting room due to the builder flushing the toilet when it was not sealed and this had left her without any electric sockets or lights in the sitting room. She had been without sockets or lighting there since September 2025. She said an electrician had attended recently after a Waterford City Council inspection and the Landlord was forced to carry out the works for health and safety reasons.

Finally, she complained the Landlord had used toxic paint in the dwelling. He asked her during cross examination if she had got a professional report to verify the toxicity and she said she had referred it to the National Poison Centre.

Closing Submissions of the Appellant Landlord:

The Landlord said he was seeking a determination based on the documentary evidence submitted which shows no rent paid by the Tenant since April 2025. He was seeking an order for vacant possession and for arrears of rent in the sum of €11,300 and a dismissal of the Tenant's claim that he had failed to comply with his obligations in relation to the standard and maintenance of the dwelling.

Closing Submissions of the Respondent Tenant:

The Tenant requested that the Tribunal find both Notices of Termination invalid on the basis that they fail to comply with statutory requirements, to dismiss the Landlord's claim for possession, to uphold the adjudicator's report in full grounded on the evidence submitted. She disputed the Landlord's claim that she obstructed access and asked the Tribunal to uphold the finding of €2,000 damages for breach of Landlord obligations.

6. Matters agreed between the parties:

1. The tenancy commenced on the 8th January 2020.
2. The security deposit paid was €800.
3. The rent at the commencement of the tenancy was €800.
4. The rent was increased to €925 by lease dated 5th January 2024.
5. A Notice of Termination dated 11th March 2025 was served by the Appellant Landlord and received by the Respondent Tenant.
6. The Notice of Termination dated the 11th March 2025 is invalid.
7. A warning notice dated the 4th April 2025 was served by the Appellant Landlord and received by the Respondent Tenant.

8. A Notice of Termination dated 8th May 2025 was served by the Appellant Landlord and received by the Respondent Tenant.
9. The Respondent Tenant has paid no rent since April 2025.

7. Findings and reasons:

Finding 1:

The Respondent Tenant is in arrears of rent in breach of her obligations under Section 16(a) of the Act in respect of the tenancy of the dwelling at 1 Patrick Street, Tramore, Co. Waterford, X91 VF74, Ireland.

Reasons:

Under Section 16 (a) of the Act a Tenant is obliged to pay to the landlord or his or her agent the rent provided for under the tenancy concerned on the date it falls due for payment. Evidence was given by the Landlord that the Tenant owed a sum of €11,300 in rent arrears in respect tenancy.

The Respondent Tenant accepted the Landlord's rent schedule, as submitted in the casefile, reflected all rent paid by her during the tenancy and accepted that she had not paid any rent whatsoever since April 2025. However, the Tenant submitted that the Landlord had unlawfully increased the rent in breach of RPZ rules, in February 2024, from €800 to €925, and therefore she had overpaid rent from that date to April 2025, by €125 per month.

The Landlord relied on the fact that a new lease was entered into between the parties in January 2025, recording the increase in rent agreed by them both at the time. However, it was accepted by the Landlord that no rent review notice was served. Consequently, and as provided for in s.22(1) of the Act, the rent review could not take effect. The Act is mandatory in this regard and gives the Tribunal no discretion whatsoever on this. As stated in s.22(1) "*The setting of a rent (the "new rent")…..shall not have effect unless and until the condition specified in subsection (2) is satisfied".* Subsection (2) is the section that sets out the requirements in relation to the Notice which must be served and what that notice must contain. There is a prescribed form. Further the dwelling is located in a rent pressure zone and any increase was limited accordingly.

It follows therefore that the increases in the rent from to €800 to €925 in February 2024 was unlawful and did not take effect. The Tenant has therefore overpaid rent to the Landlord and the Tribunal calculates the overpayments as follows:

For the period from February 2024 to April 2025- 15 months @ €125 = €1,875

As the monthly rent lawfully remains at €800 per month and the Tenant has not paid rent since April 2025, the rent due and owing from May 2025 to April 2026, is 12 x €800 = €9,600.

The arrears are therefore calculated as follows:

€9,600 less €1,875 - €7,725.

Finding 2:

The Notice of Termination dated the 11th March 2025 served by the Appellant Landlord on the Respondent Tenant in respect of the dwelling at 1 Patrick Street, Tramore, Co. Waterford, X91 VF74, Ireland is invalid.

Reasons:

The Appellant Landlord accepted that the Notice of Terminated dated 11th March 2025 was invalid.

Finding 3:

The Notice of Termination dated the 8th May 2025 served by the Appellant Landlord on the Respondent Tenant in respect of the dwelling at 1 Patrick Street, Tramore, Co. Waterford, X91 VF74, Ireland is invalid.

Reasons:

Part 4 of the Act sets out a scheme by which certain Tenants of residential premises enjoy the benefit of a degree of statutory security of tenure. In accordance with Chapter 2 of that Part, a Tenant who has been in occupation of a residential dwelling for a continuous period of 6 months enjoys, primarily, the right to continue in possession as a Tenant for the period of six years from the commencement of the tenancy, or until the expiration of a period of notice, whichever is the later.

This is known as a 'Part 4 tenancy'. In respect of the case before it, the Tribunal finds that the Appellant Tenant enjoyed a 'Part 4 tenancy'.

A 'Part 4 Tenancy' may be terminated by a Landlord in accordance with the provisions of Section 34 of the Act on one or more of the grounds specified in the Table to the said Section. Paragraph 1A of the Table to Section 34 states that a valid ground for termination arises if a Tenant has failed to comply with Section 16(a) of the Act and the Tenant has been notified in writing of the failure by the Landlord and that notification states that the Landlord is entitled to terminate the tenancy if the failure is not remedied within 28 days and the Tenant does not remedy the failure within that specified time. Additionally, pursuant to Section 67 of the Act, a copy of the said warning notice must be served on the Board.

Section 62 of the Act sets out the information that must be contained in a Notice of Termination for it to be valid. Pursuant to Section 62, a valid Notice of Termination must: be in writing; be signed by the Landlord or his authorised agent; specify the date of service of it; state the reasons for the termination; specify the termination date, and; state that any issue as to the validity of the notice or the right of the Landlord to serve it must, in the instance of a breach of Tenant obligations, be referred to the Board under Part 6 within 28 days from the date of receipt of it. Section 6(1) of the Act states that a notice required to be served under the Act shall be addressed to the person concerned by name and may be served on or given to the person by, *inter alia*, by delivering it to the person, by leaving it at the address at which the person ordinarily resided, sending it by post in a prepaid letter to the address at which the person ordinarily resides. Additionally, pursuant to Section 39A of the Act, where a Landlord serves a Notice of Termination in relation to the tenancy of a dwelling he shall, on the day on which he so serves that Notice of Termination, serve a copy thereof on the Board.

Pursuant to Section 16(a)(i) of the Act, a Tenant must pay to the Landlord the rent provided for under the tenancy concerned on the date it falls due for payment. It was evident from the rent schedule provided that there was a pattern of persistent late payment of rent by the Tenant. It was accepted that both the Warning Notice and the Notice of Termination were served on the Tenant and the RTB.

However as the Respondent Landlord in this case sought to terminate the tenancy on the basis that the Appellant Tenant was in breach of her tenancy obligations by not paying the agreed rent when it fell due, being a breach of Section 16(a)(i) of the Act, in order to terminate the tenancy, the Respondent Landlord was required to serve a warning letter on the Appellant Tenant to pay any rent outstanding and giving her 28 days to remedy the failure. It is a requirement of s. 67(3) of the Act that such a warning letter specify the amount of rent due. The warning letter submitted by the Landlord did not specify the amount due and

owing by the Tenant, which the Landlord confirmed at hearing was €75. In those circumstances the Tribunal finds that the warning notice dated 4 April 2025 was invalid.

As the warning letter dated 4 April 2025 was invalid it follows that the Notice of Termination served on 8 April 2025 was invalid.

Finding 4:

The Landlord is in breach of his obligations under Section 12(1)(a) of the Act and shall pay the Respondent Tenant the sum of €2,000 in relation to same.

Reasons:

Under Section 12 of the Act a Landlord is obliged to carry out repairs as are from time to time necessary to ensure the structure of the dwelling complies with the standards for houses for the time being prescribed under Section 18 of the Housing (Miscellaneous Provisions) Act 1992.

The Tribunal accepts the evidence of the Landlord that he carried out several repairs to the property during the tenancy, and the Tribunal finds that the Tenant's complaints in relation to breach of obligation by the Landlord in relation the alleged use of toxic paint is not upheld. No evidence was provided by the Tenant to establish this claim, and the Landlord gave evidence that the product used was suitable for internal and external use.

Evidence was given of a leak in the bathroom which went through the sitting room ceiling causing a power outage. The leak was caused by an incident which led to a breakdown in relations between the Respondent Tenant and the Landlord's contractor and the Landlord submitted that the Tenant had been obstructive in relation to access for his contractor, Mr. Murphy since then.

Evidence was given by the Respondent Tenant that she has been without electricity in the sitting room of the dwelling since September 2025, which meant she had no working lights or sockets in the room and the issue is ongoing. This was not contested by the Appellant Landlord. He said he had a current quote for the electrical work and had given the go ahead in relation to same. The Tenant submitted that this was only being done on foot of an inspection by the local authority, and the Landlord did not deny that inspection had taken place.

The Landlord submitted that the Tenant had been obstructive in relation to access for his contractor, Mr. Murphy, however on the balance of probabilities the Tribunal finds that in relation to the electrical works the delay was not caused by the Tenant's refusal of access to the Landlord's contractor but by the delay in the Landlord resolving the issues arising following a leak, including the power outage. The Tribunal also finds that the delay in resolving the bathroom repairs was excessive and was not satisfied in relation to the evidence provided by the Landlord that the delay was owing to the Tenant refusing access. The Tribunal accepts the evidence of the Tenant that she notified the Landlord of the issues.

The Tribunal finds that the Landlord shall pay the Tenant the sum of €2,000 in damages in relation to same, given the nature of the issues and the length of time for which they have been ongoing.

8. Determination:

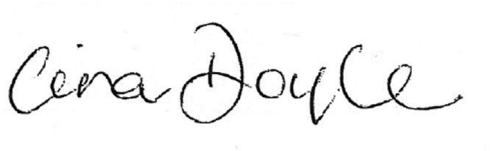
Tribunal reference TR0001404

In the matter of Gary O'Donoghue, Appellant Landlord and Siobhan Cleary, Respondent Tenant, the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act 2004, as amended, determines that:

1. The Notice of Termination served on the 11th March 2025 in respect of the tenancy of the dwelling. in respect of the dwelling at 1 Patrick Street, Tramore, Co. Waterford, X91 VF74, Ireland is invalid.

2. The Notice of Termination dated the 8th May 2025 served by the Appellant Landlord on the Respondent Tenant in respect of the tenancy of the dwelling in respect of the dwelling at 1 Patrick Street, Tramore, Co. Waterford, X91 VF74, Ireland is invalid.
3. The Respondent Tenant shall pay the Appellant Landlord the sum of €5,725 in 5 consecutive instalments at a rate of €1,000 per month on or before the 28th of each month followed by one further instalment of €725 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 €7,725.00 less damages of €2,000 payable to the Respondent Tenant by the Appellant Landlord for breach of Landlord obligations in respect of the tenancy of the dwelling at 1 Patrick Street, Tramore, Co. Waterford, X91 VF74.

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



Ciara Doyle, Chairperson

For and on behalf of the Tribunal