

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Case Reference: TR0001469 - DR0002358

Appellant Tenant(s):	Fernando Lima
Respondent Landlord(s):	Gerda McLoughney
Address of rented dwelling:	Apartment 33, Drury Hall, 23-27 Stephen Street Lower, Dublin 2, D02 P525
Tribunal:	Michael Valleley (Chairperson) John Keaney, Michelle O'Gorman
Venue:	Virtual
Date & time of hearing:	02/06/2026 at 10:30:00
Attendees:	Appellant Tenant, Fernando Lima Werlesson Da Costa, Witness for tenant Respondent Landlord's Representative, Anne-Marie Matthews RTB digital audio recorder RTB appointed Translator, Fabio Fulci

1. Background:

On 28/07/2025 the Tenant made an application to the Residential Tenancies Board ("the RTB"). The matter was referred to an Adjudication which took place on 15/12/2025.

Subsequently the Landlord submitted an Appeal on 06/02/2026. This was approved by the Board.

The RTB constituted a Tenancy Tribunal and appointed John Keaney, Michael Valleley, Michelle O'Gorman as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Michael Valleley to be the chairperson of the Tribunal ("the Chairperson"). 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 02/06/2026 the Tribunal convened a hearing.

2. Documents submitted prior to the hearing included:

3 Adjudication Case Files

Adjudication Report

Adjudication Video

4 Tribunal case Files

3. Documents submitted at the hearing included:

None

4. Procedure:

Although both parties submitted an appeal following the Adjudication for ease of reference the Tenant is referred to as the Appellant Tenant and the Landlord is referred to as the Respondent Landlord. The Chairperson asked the parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the parties that they had received the relevant papers from the RTB in relation to the case and that they had received the RTB document entitled "Tribunal Procedures".

The Chairperson explained the procedure which would be followed. In particular, he outlined that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible, that the Appellant Tenant would be invited to present their case first, as this was the most practicable avenue in the circumstances of the case, that there would be an opportunity for cross-examination by the Respondent Landlord and then matters reversed with the Landlord giving their evidence and cross-examination by the Tenant and each party would be allowed a closing submission.

The Chairperson stressed that all evidence would be taken by way of affirmation and be recorded by the official recording technician present, and he also advised the parties that this was the only recording of the proceedings which was permissible. He reminded the parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or 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 could only be appealed to the High Court on a point of law.

Prior to commencing evidence, the Chairperson reminded the parties that it was open to them to reach an agreement between themselves. The Chairperson advised the parties of the benefits of reaching an agreement and advised them that any agreement reached would be capable of 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 leave the virtual meeting and allow them to discuss matters among themselves. The parties declined to avail of this opportunity.

5. Verbal Submissions:

Appellant Tenant's case

The Tenant says that on 4th July 2024 he received a Notice of Termination stating that the Landlord required the property for her own occupation and expected to reside there indefinitely. He says that, as a result, he was required to vacate the property by 10th January 2025. He initially accepted the validity of the termination notice and the Statutory Declaration that was served on him.

The Tenant says that, after leaving the property, he had to secure alternative accommodation in Dublin during a very difficult rental market. He says that his previous rent at Drury Hall was €1,768 per month and that his new rent at Grand Canal Harbour is €2,650 per month, representing an increase of €882 per month and €10,584 over twelve months.

He says that after vacating the property, he became aware that the apartment appeared to be occupied by a person other than the Landlord. He says that he documented what he observed and submitted a video recorded on 9th July 2025 directly to the RTB for the purposes of these proceedings. He said this clearly showed another person in the apartment who confirmed he was staying there until the next day and he says this clearly evidences that the Landlord was offering short term lets despite the false claim that she needed it for her own occupation. The Landlord simply wanted to rent at a higher price to someone else in his opinion, which was in breach of their obligations.

He says that the uncertainty, the urgency of finding new accommodation, increased financial pressure, and the discovery that the property appeared to have been re-occupied contrary to the stated reason for termination significantly worsened his stress and anxiety at a time when he was already undergoing treatment for an anxiety disorder and he had been prescribed Sertraline an anti-anxiety medication for his stress and anxiety.

He says that he acted throughout in good faith by complying with the Notice of Termination, securing new accommodation at a substantial additional cost, bringing his complaint through the RTB process, and providing his evidence directly to the RTB and would like the tribunal to consider the false claim by the Landlord for occupation and the consequences for him.

He had sought compensation comprising €10,584 for increased rent over twelve months, €10,000 for stress, anxiety and pressure caused by the urgent relocation, and €9,500 by way of aggravated damages, being a total of €30,084.

The tenant was questioned by the tribunal and confirmed that the new accommodation had two bedrooms and 2 bathrooms. He expressly stated that he was the only person who paid over the deposit in the new property which he shares with one person and denied that the other tenant had paid 50% of the deposit.

The tenant stated that he was now paying €1550.00 for the last six months, with another tenant in occupation, having initially paid the full rent of €2650.00 since leaving on the 10th January 2025.

The tenant was specifically asked how much of the €1768.00 was paid by him for the subject dwelling and he clarified that he paid €1200 towards this rent. Thereby the tribunal noted that the differential until he brought a new tenant into the new property represented a figure of €1450.00 per month and €350 thereafter since January 2026 approximately.

Closing Submission

He would like compensation for the stress and inconvenience that he has suffered including emotional distress and that he is still suffering today.

Respondent Landlord's case

On behalf of the Landlord Ms Gerda McLoughney, Ms. Ann Marie Mathews as her representative submitted that the Landlord's intention to occupy the property personally was genuine at the time the Notice of Termination was served. The tenant had been given the requisite statutory 180 days' notice.

It was submitted that the Landlord's husband died on 18th May 2025 and that this unforeseen event caused a significant change in the Landlord's circumstances and delayed her ability to occupy the property as originally intended.

It was submitted that, in the meantime, a short-term letting was arranged so that the property would not be left vacant for an extended period and for insurance, security and management reasons. She had little to say in evidence but wished clarity on the matters raised in the dispute.

The tribunal asked why a couple in their eighties would want to move to Dublin to occupy the apartment and she stated that they had always intended to use it in later life. She accepted that in hindsight the apartment should have been re-offered back to the tenant. However, they were never motivated by personal gain and there was never a denial that short term rental arrangements were made. There was also another tragedy where the Landlord's son-in-law had died, and she said they are not in good financial circumstances. She said that the Landlord never put pressure on the tenant to leave, and the tribunal was asked to note that the new tenancy was an improved one with better accommodation and higher rent that she believed was relevant to the tenant's claimed loss.

Furthermore, she queried whether the extra rent differential claimed relating to only this tenant or did others also pay in the new place. She also said that the tenant had pre-existing anxiety and the landlord should not be responsible for his upset.

She was allowed to ask the tenant whether he was the only person paying the new €2650.00 rent and he replied that he was now paying €1550 monthly for the past six months in 2026 when the new tenant moved in.

She was asking the tribunal to reduce the award that was made by the adjudicator and does not believe the tenant has suffered the harm that he has claimed for.

Cross examination by tenant

He asked why it was easier to enter into short term letting agreements as opposed to offering back the apartment to him which the landlord is obliged to do so even with the stress that they were under from the loss of their husband. The representative replied that they were short weekly arrangements that would not have suited the Appellant tenant. The lets were usually to executives and were not holiday lets or Air B&B arrangements.

6. Matters agreed between the parties:

- i. The rented dwelling is Apartment 33, Drury Hall, 23-27 Stephen Street Lower, Dublin 2, D02 P525.
- ii. The tenancy commenced on 4 May 2021.
- iii. The rent at the end of the tenancy was €1,768 per month, payable monthly, and a security deposit of €1,700 had been paid at commencement of tenancy.
- iv. A Notice of Termination dated 4 July 2024 was issued, and the notice stated that it was served on the tenants and the RTB on 5 July 2024 with a termination date specified in the Notice of Termination of 10 January 2025.
- v. The reason specified for termination was that the Landlord required the dwelling for her own occupation and expected to occupy it indefinitely.
- vi. The accompanying statutory declaration stated that the Landlord would offer the Tenant the opportunity to re-occupy the dwelling under a tenancy if the dwelling was vacated within the relevant twelve-month period and the statutory conditions were met.
- vii. The Appellant Tenant vacated the dwelling on foot of that notice and received a full refund of his security deposit.
- viii. The dwelling was re-let to third-party short-term tenants after the termination of the tenancy and was not re-offered to the Appellant Tenant.

7. Findings and reasons:

Finding 1

The Appellant Tenant's claim against the Respondent Landlord pursuant to section 56 of the Residential Tenancies Act 2004, as amended, is upheld and he is awarded damages in the amount of €19,522.50 in this regard.

Reasons

The tenancy commenced on 4 May 2021, and the Appellant Tenant remained in continuous occupation of the dwelling for more than six months without any valid termination taking effect

during that initial six-month period. On that basis, the Appellant Tenant had secured a Part 4 tenancy within the meaning of the Act. This part 4 tenancy was to run in a six-year cycle to 4 May 2027.

With a Part 4 tenancy, a tenant has security of tenure, and a landlord can only terminate the tenancy for a limited number of reasons as set out in section 34 of the Act. One of those reasons is where a landlord requires the dwelling for his own occupation or occupation by a family member. This reason is provided for in paragraph 4 of the Table in s.34 of the Act.

In this case the Landlord served a Notice of Termination on the Tenant which had a service date of 5 July 2024 and a termination of tenancy date of 10th January 2025. The reason for termination specified in the Notice of Termination was that the Landlord requires the dwelling for occupation by a family member. It stated that “to occupy the dwelling indefinitely”.

The Notice of Termination was accompanied by a Statutory Declaration sworn by the Landlord on 2 July 2024. In the Statutory Declaration the Landlord declared that:

“I will offer you the opportunity to re-occupy the dwelling under a tenancy if the dwelling is vacated by within a period of twelve months from:

“the expiry of the period of notice given by the notice of termination that accompanies the statutory declaration, or

the final determination of a dispute, if a dispute in relation to the validity of the notice of termination has been referred to the Residential Tenancies Board (“RTB”) for resolution under Part 6 of the Residential Tenancies Act 2004 (as amended) (“the Act”), and: The tenancy to which the notice of termination relates has not otherwise been validly terminated on the grounds specified at paragraphs 1.1A, 2,3 or 6 of the Table to the Act....”.

Section 56 of the Act provides a remedy in damages for an unjust deprivation of possession of a relevant dwelling. It applies where a tenant under a Part 4 tenancy has vacated possession on foot of a notice under section 34 and, where in this case the Section 34 paragraph 4 ground is relied upon, the occupation by the person concerned does not take place within a reasonable time after service of the notice or the landlord does not comply with the obligation to make the relevant offer back to the tenant. The Tribunal accepts that the Landlord’s circumstances changed after the death of her husband on 18 May 2025 and accepts that this may have caused a genuine change in her plans.

However, the changed circumstances did not relieve the Landlord of the statutory and expressly declared obligation to offer the dwelling back to the Appellant Tenant before letting it to third parties. The representative candidly stated in hindsight that the property should have been re-offered back to the tenant. On foot of the aforesaid evidence presented, the Tribunal is satisfied that the Landlord failed to comply with the undertaking contained in the statutory declaration and that the Appellant Tenant was unjustly deprived of possession of the dwelling within the meaning of section 56 as of the 18 May 2025 being the key date when it should have been offered back and when the unjust deprivation begins and his protected six year Part 4 tenancy should have continued until the 3rd May 2027 six years after the commencement of the tenancy on the 4th May 2021.

The Appellant Tenant complied with the notice, vacated the dwelling, and then had to secure alternative accommodation in Dublin at a rent of €2,650 per month.

The evidence before the RTB records that this was an increase of €882 per month over the previous rent. The tenant stated on being asked that he was now paying €1550 for the last six months, with another tenant in occupation, having initially paid the full rent of €2650.00 since leaving on the 10th January 2025. The tenant was also questioned by the tribunal and confirmed that the new

accommodation had two bedrooms and 2 bathrooms. He expressly stated that he was the only person who paid over the deposit in the new property which he shares with one person and denied that the other tenant had paid 50% of the deposit. The tribunal noted the important evidence that the tenant was only paying €1200 of the €1768.00 monthly rent until he left the subject dwelling on foot of the notice, not the full amount. The tribunal noted the new property had an extra bathroom but without any submitted figures on behalf of the landlord as to what effect this would have on the rent differential it can make no findings in this regard.

The Tribunal also takes account of the Appellant Tenant's evidence that the process of having to vacate, search for replacement accommodation during a housing crisis, and bear a substantially higher rent caused him severe frustration, upset, anxiety, and pressure. The medical evidence stated that the tenant was prescribed Sertraline for continuous use in the treatment of an anxiety disorder, with treatment recorded as having commenced on 9 March 2025.

The Tenant also sought aggravated damages, but the tribunal is limited in its jurisdiction pursuant to Section 115 of the Act which is silent on aggravated damages and thereby as a creature of Statute regulated by the Act has no jurisdiction under the Act to make any such award.

The direct financial loss is on foot of the period from May 2025 when the landlord's husband died at which date when it was clear that she was not going to occupy the property being the pertinent time when the tenant was unjustly deprived of possession and no offer was made to him to move back into the dwelling. The end period to be calculated to is when the tenant's Part 4 tenancy would have run to being for a six-year term from 4 May 2021 to the 3 May 2027 as follows:

Tenant's losses for the period from 18 MAY 2025-3 MAY 2027

i. 18 MAY 2025-18 JAN 2026 8 months at a rent differential of €1450.00 per month, being difference between the new rent of €2650.00 and his share of the rent in the previous subject property of €1200 which amounts to -

€11600 sub-total 1

ii. 18 JAN 2026 TO 3 MAY 2027

15 Months and 15 days at a rent differential of €350.00 per month being the difference between the new rent that he pays in the amount of €1550.00 and his previous share of the rent in the subject property of €1200 which amounts to €5250 for 15 months and €172.50 for the 15 days at a daily rate of €11.50 per day to the end of the protected part 4 tenancy giving a figure of –

€5422.50 sub-total 2

iii. Deposit paid on taking up the new tenancy

The tribunal carefully listened to the Appellant's evidence that he solely paid the full amount of €2650.00 as a deposit for his current dwelling but the Appellant Tenant will be entitled to be reimbursed this amount at the termination of the new tenancy. If he suffers any deduction, then that is because of his own default. In the circumstances no award is made in relation to the increased deposit.

iv. The Appellant Tenant is also entitled to damages for the anxiety, stress and upset that he has suffered from losing his protected tenancy and the tribunal is satisfied that he has had an exacerbation of an existing stress disorder and the tribunal measures damages in this regard at €2500.00.

€2500.00 subtotal 3

The sum total of his losses total including the financial loss, the loss of possession, the upset and anxiety suffered, is measured at €19,522.50.

8. Determination:

Tribunal reference TR0001469

In the matter of Fernando Lima (Appellant Tenant) and Gerda McLoughney (Respondent Landlord) and concerning the tenancy of Apartment 33, Drury Hall, 23-27 Stephen Street Lower, Dublin 2, D02P525, the Tribunal, in accordance with section 108(1) of the Residential Tenancies Act 2004 as amended, determines that:

1. The Appellant Tenant's claim pursuant to section 56 of the Residential Tenancies Act 2004, as amended, is upheld.
2. The Respondent Landlord shall pay to the Appellant Tenant within 90 days of the date of issue of the Determination Order the sum of €19,522.50 by way of Section 56 damages for the unjust deprivation of his possession of the dwelling.

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



Michael Vallely, Chairperson

For and on behalf of the Tribunal.