

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Case Reference: TR0001618 / Case Reference: DR0002709

Appellant Tenant(s):	Barbara Kruczek
Respondent Landlord(s):	Ciaran Owens
Address of rented dwelling:	3 Sean Lios, Gorey, Wexford, Y25X535, Ireland
Tribunal:	Brian Murray (Chairperson) James Egan, Mary Doyle
Venue:	Virtual
Date & time of hearing:	19/06/2026 14:30:00
Attendees:	Barbara Kruczek, Appellant Tenant; Ciaran Owens, Respondent Landlord, Mr Kevin O'Doherty, O'Doherty Warren Solicitors; Respondent Landlord's Legal Representative RTB appointed audio recording technician.

1. Background:

Adjudication dispute application made by the landlord on 7th August 2025

2. Documents submitted prior to the hearing included:

Tribunal Case Files, Adjudication files and Dispute Resolution Case Files.

3. Documents submitted at the hearing included:

None

4. Procedure:

The Chairperson opened the Hearing by asking the persons attending the Virtual Hearing to identify themselves and to identify in what capacity each was 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, that the Appellant Tenant would be invited to present first, followed by an opportunity for cross-examination by the Respondent Landlord, then the Respondent Landlord would be invited to present his case, followed by an opportunity for cross-examination by the Appellant Tenant. Both parties would then be entitled to make a closing submission.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official recording technician present and 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 the hearing was a de novo hearing and 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. The Chairperson confirmed with the parties that the sole issue for determination was the validity of the notice of termination dated 12 February 2024 and indicated that the Tribunal might intervene to keep the parties focused on that issue.

Those giving evidence gave their affirmations.

5. Verbal Submissions

Evidence of Ms Barbara Kruczek (Appellant Tenant)

Ms Kruczek confirmed that the notice of termination the subject of the appeal is that dated 12 February 2024, and that she had received it. In answer to a question from the Tribunal as to how the notice had been served upon her, she stated that it had been served by post.

Ms Kruczek gave evidence that she has resided in the dwelling since 2009, that her youngest child was born there, and that she lives in the dwelling with her three children, the eldest being twenty-five, the second twenty-three and the youngest sixteen years of age, the youngest having special needs.

She gave evidence that, following the breakdown of her marriage, the Landlord began to call to the property unannounced; that he entered the rear garden to spray the grass with chemicals without notice; and that on one occasion he had let himself into the house using his own key while she was asleep. She gave evidence that she believed the Landlord had been making unwanted advances towards her, and that, when she did not respond to them, notices of termination followed. She gave evidence that she had asked, through the agent and in writing, that the Landlord not call to the property without reason, and that her correspondence

had gone unanswered. She gave evidence of an incident at the time of an inspection, when, she said, the Landlord let himself into the house before the agent had arrived while she was partially dressed, and did not leave when asked until her son came to the top of the stairs.

Ms Kruczek gave evidence as to previous notices of termination served upon her. She referred the Tribunal to a notice dated 13 March 2015 giving 112 days' notice and to a notice of rent review and a notice of termination dated 28 April 2022 which had been found invalid by the RTB by Determination Order dated 1 February 2023. She gave evidence that she believed there had been three or four notices of termination over the years, of which the present notice was the most recent, and that no intelligible ground had been given for the earlier notices.

As to the ground stated in the present notice, Ms Kruczek gave evidence that, to her knowledge and as had been said to her neighbours over many years, the dwelling had been acquired solely as an investment and had never been intended for the Landlord's occupation. She gave evidence that the Landlord owns another property at Ardmore in which he resides, approximately fifteen to twenty minutes' walk from the dwelling, and that she sees him passing her house on his way to the town and the park. She gave evidence that the Landlord had contended that the dwelling was nearer the town and that he wished to "downsize", but that she did not accept this, the dwelling being a four-bedroom house with a garage and therefore, she said, larger than the Landlord's own four-bedroom property, which has no garage. She gave evidence that she found it difficult to believe that the Landlord genuinely required the dwelling, and that she considered the notice to be a further attempt to remove her from it.

In answer to a question from the Tribunal as to whether she accepted the Landlord's assertion that the notice had been hand delivered as well as posted, Ms Kruczek stated that she had no recollection of any service by hand, but that she accepted that she had received the notice by post. In answer to a question from a member of the Tribunal as to the position prior to 2015, she stated that, while her husband resided with her, the Landlord had not called to the property and that any dealings in relation to the tenancy had been with the Landlord's mother or with the agent.

Cross-examination by the Respondent Landlord's representative:

Mr O'Doherty put it to Ms Kruczek that the Landlord had not made any advances towards her; she did not accept this. Asked to identify the location of the town park in relation to her front door, she stated that the park was across the road and that, while there was another entrance on the far side, the Landlord had been appearing at her door uninvited. Asked how often the Landlord had entered her house uninvited, she stated that she was aware of three occasions. Asked whether there had been an arrangement for an inspection on the relevant morning, she accepted that there had been an arrangement for an inspection with the agent, but stated that the Landlord had let himself in before the agent arrived. Asked whether she was suggesting that the Landlord's conduct had prevented her from buying a house, she stated that the Landlord's lack of communication had set her back, and that she had been close to purchasing a house at the time the notice issued.

In her closing submission Ms Kruczek submitted that the Landlord's evidence contained a number of inconsistent and contradictory statements, including matters initially denied and subsequently accepted, and that the evidence led her to believe that the Landlord did not have a genuine reason to move into the dwelling other than to remove her from it.

Evidence of Mr Ciaran Owens (Respondent Landlord)

Mr Owens accepted that previous notices of termination had been served upon the Tenant and that they had been invalid or ineffective for various reasons. When it was put to him that

the Tenant alleged that he had made advances towards her, he stated that this was “absolute lies” and that it had never happened. In relation to the inspection, he gave evidence that he had attended and entered the property and had apologised afterwards for doing so, and he disputed the Tenant’s account of that occasion in other respects.

Mr Owens gave evidence that his mother, who is 83 or 84 years of age, resides at Coolishall, and that he himself has not resided there since 2004. He gave evidence that Ardmore is approximately 1.2 to 1.5 kilometres from the centre of the town and that the dwelling is approximately 400 to 500 metres from the market house. He gave evidence that he had sworn a statutory declaration to the effect that it was his intention to reside in the dwelling, and confirmed that he was conscious that this carried both a legal and a moral obligation. He denied watching the Tenant or her house.

In answer to questions from the Tribunal, Mr Owens stated that he resides at Ardmore. He confirmed that his statement of 2 June 2026 in the case files expressed an intention to sell his property at 33 Ardmore and to move into the dwelling, and that he wished to do so because the dwelling was nearer the town and “much handier” and would suit him better as he got older. Asked when he had decided upon that course, he stated that it had been the position for “ten years at least, maybe more”; when it was put to him that this would mean a decision in or about 2016, he stated that it was “a possibility”; and asked when the decision had crystallised, he stated “around 2018”. Asked why, having so decided in 2018, he had waited some six years to serve the notice, he stated that he supposed he should have served notice earlier. Asked what he said to the Tenant’s suggestion that he did not require the dwelling because he was living in the other property, he maintained that he wished to sell Ardmore and to live in the dwelling.

Asked by the Tribunal what steps he had taken to sell the property at Ardmore, and whether it had been valued or advertised, Mr Owens stated that he had had it valued about a year previously. In answer to questions from a member of the Tribunal he confirmed that he had not engaged an auctioneer or estate agent to value either property, that the valuation referred to was an informal comparison he had carried out himself by reference to comparable properties, that he had not approached a solicitor in relation to conveyancing, and that he had not placed the property on the market, stating that there was no point in doing so until the present proceedings were concluded. In answer to a question from the Tribunal as to how the notice of termination had been served on the Tenant, and whether it had been served by him or by the agent, Mr Owens stated that the agents had dealt with service, that he had “nothing to do with it” and had not gone near the Tenant, and, in answer to a further question regarding hand delivery, that he had not effected any hand delivery and that the agents had done so.

Cross-examination by the Appellant:

Ms Kruczek put it to Mr Owens that, although he claimed to have resided at Ardmore for some twenty years, correspondence had issued to her in 2015 and 2016 bearing different addresses. The Tribunal noted that a letter dated 13 March 2015 bore the address 33 Ardmore, Gorey, while a personal letter from the Landlord dated 29 July 2016, and a memorandum of agreement of July 2016, used the Coolishall address. Mr Owens stated that the letting agents had always used the Coolishall address, that he may have written a letter from Coolishall, but that he had not been living at Coolishall since 2004. Ms Kruczek put it to Mr Owens that his evidence as to valuation was inconsistent; he stated that he had carried out valuations himself by reference to comparable sales but that these were not proper valuations and that he had not gone to an auctioneer. In relation to the occasion on which he entered the house, Mr Owens stated that he had rung the bell, that the agent had been with

him “only five minutes earlier”, that he may have opened the door, and he accepted that he had entered the house, stating that he had apologised at the time.

Closing Submission of the Appellant Tenant

Ms Kruczek submitted that there were a number of inconsistent statements from Mr. Owens and her view was that he does not have a genuine reason to move to my house other than just to remove her from that house.

Closing submission, made on the Landlord’s behalf by Mr O’Doherty:

It was submitted that the Landlord is a man who is getting on in years and is retired; that it is his wish to live in the dwelling; that, although no formal valuations had been prepared, sales of comparable properties in the area over the preceding two to three years were known to him; that he ought not to be penalised for not having marketed the property; and that he is entitled to recover the dwelling for his own occupation, having been advised of the consequences of doing so. It was accepted on the Landlord’s behalf that the previous notices of termination had been served and that errors had been made in them.

6. Matters agreed between the parties:

1. The notice of termination the subject of the appeal is dated 12 February 2024 and specifies a termination date of 18 October 2024, served on the ground that the Landlord requires the dwelling for his own occupation.
2. The tenancy commenced on 9 August 2009.
3. The rent is €1,090 per month.

7. Findings and reasons:

Having considered all of the documentation before it, and having considered the evidence and submissions of the parties, the Tribunal’s findings and the reasons therefor are set out hereunder. The sole issue for determination is the validity of the notice of termination dated 12 February 2024, and the onus of establishing the validity of that notice, and that the ground relied upon in it is made out, rests upon the Landlord.

Finding 1:

The notice of termination dated 12 February 2024 is invalid, the Landlord not having established that a copy of the notice was served upon the Residential Tenancies Board on the same day as the notice was served upon the Tenant.

Reason:

A landlord is required to serve a copy of a notice of termination upon the RTB on the same day as the notice is served upon the tenant. At the material time this requirement was governed by Section 39A(1) of the Act, and Section 35(11) of the Act provides that a notice of termination served in contravention of Section 39A(1) shall be invalid. The requirement is mandatory and a failure to comply with it renders the notice of termination invalid.

Where a notice of termination is sent by post, the date on which it is served is not the date of posting. By virtue of Section 25 of the Interpretation Act 2005, service by post is deemed, unless the contrary is proved, to be effected at the time at which the letter would be delivered in the ordinary course of post. In *Argutinski v Residential Tenancies Board* [2026] IEHC 225 the High Court (Simons J) confirmed that a posted notice of termination is to be treated as served either on the date upon which it would be delivered in the ordinary course of post, or on the date of actual receipt where the evidence establishes that to be a different date.

It is not in dispute that a copy of the notice of termination was furnished to the RTB on 12 February 2024. For the same-day requirement to be satisfied, the Landlord was required to establish that the notice of termination was served upon the Tenant on 12 February 2024. The Tribunal is not satisfied on the evidence that it was. The Tenant gave evidence, which the Tribunal accepts, that she received the notice by post and had no recollection of any hand delivery. Mr Owens gave evidence that he had not effected any hand delivery and that service had been carried out by the agents. The person said to have effected service was not called to give evidence, and no evidence (whether a record or certificate of hand delivery, or evidence from the person said to have delivered the notice) was put before the Tribunal capable of establishing that the notice was hand delivered to the Tenant on 12 February 2024.

The only mode of service established on the evidence is service by post. Service by post being deemed to take effect on delivery in the ordinary course of post, the notice was served upon the Tenant on a date later than 12 February 2024, whereas the copy was furnished to the RTB on 12 February 2024. The Landlord has not established that the notice was served upon the Tenant on the same day as the copy was furnished to the RTB. Having failed to discharge the onus upon him, the requirement under Section 39A (1) has not been shown to be satisfied and the notice of termination is, by reason of Section 35(11), invalid.

Because the Tribunal also arrived at the finding set out at Finding 2 below, the notice is not otherwise in compliance with the act and the issue of a remedial; notice is not engaged.

Finding 2:

Further, and in any event, the Tribunal is not satisfied that, as at the date of service of the notice of termination, the Landlord required the dwelling for his own occupation within the meaning of the Act. The notice of termination is invalid on this independent ground also.

Reason:

The ground relied upon in the notice of termination is the ground specified in the Table to Section 34 of the Act, namely that *"the landlord requires the dwelling or the property containing the dwelling for his or her own occupation or for occupation by a member of his or her family"*. A notice served on this ground must be accompanied by a statutory declaration.

The onus of establishing that this ground is made out rests upon the Landlord, and the intention relied upon must be a genuine intention assessed as at the date of service of the notice (*Kelly v Residential Tenancies Board* [2024] IEHC 730; *Hennessy v Private Residential*

Tenancies Board [2016] IEHC 174). The threshold is not one of strict necessity. The Landlord is not required to show that he has nowhere else to live, and the fact that he resides in another property does not, of itself, defeat the ground. What must be established is a genuine and presently held intention to take up occupation of the dwelling, and not a mere wish or an unformed or speculative aspiration (*O'Sheehan v Residential Tenancies Board* [2024] IEHC 409). The issue in this case is not the nature of the proposed use but the genuineness of the Landlord's intention to put the dwelling to that use.

The Landlord swore a statutory declaration that he requires the dwelling for his own occupation and intends to occupy it indefinitely. The Tribunal accepts that the declaration is in proper form. However, a statutory declaration does not in and of itself enjoy conclusive or definitive evidential status and its weight falls to be assessed against the evidence as a whole.

Assessing the Landlord's intention against his conduct and the objective evidence, the Tribunal is not satisfied that the Landlord held a genuine intention to occupy the dwelling. On his own evidence the Landlord had taken no step of any substance towards giving effect to the intention asserted: he had obtained no professional valuation of either property, the valuation referred to being an informal comparison carried out by himself; he had not instructed an auctioneer or estate agent; he had not consulted a solicitor in relation to conveyancing; and he had not placed his existing home on the market. The Tribunal has weighed his explanation that he did not propose to take any such step until the conclusion of these proceedings, but the proceedings concern only the validity of a notice served in February 2024, and the Landlord's own evidence was that his intention had been formed long before. The complete absence of any preparatory step is difficult to reconcile with a genuine and presently held intention to occupy the dwelling.

The Landlord gave evidence that the intention had been in his contemplation for "ten years at least" and had crystallised "around 2018", yet he took no step to act upon it and did not serve the present notice until 2024, offering no explanation for the intervening delay beyond stating that he supposed he should have served notice earlier. An intention long entertained as a "possibility" but never acted upon is not, without more, the genuine and settled intention which the ground requires; in *Hennessy* an intention *simpliciter* was held insufficient. The reasons advanced for the move i.e. that the dwelling is nearer the town, is "handier", and would suit the Landlord better as he ages were not sufficiently persuasive and the difference between the two properties in proximity to the town being, on the Landlord's own evidence, modest, and the dwelling being, on the Tenant's uncontradicted evidence, larger than the Landlord's existing home.

The Tribunal has also had regard to the history of the tenancy, including the Determination Order of the RTB dated 1 February 2023 and the evidence that previous notices of termination were served upon the Tenant and found to be invalid, and that earlier notices were served for which no intelligible ground was identified. The Tribunal relies upon this history only to the limited extent that it bears upon the genuineness of the intention asserted in the present notice. The Tribunal makes no finding in respect of the Tenant's allegations of unwanted advances, of inappropriate behaviour, or of any romantic interest on the part of the Landlord; it is neither necessary nor appropriate to determine those allegations, and the Tribunal expressly refrains from doing so.

Taking the evidence as a whole, the Tribunal is not satisfied that the Landlord genuinely required the dwelling for his own occupation as at the date of service of the notice. The Tribunal has not found, and does not find, that the Landlord's purpose was to recover possession in order to re-let the dwelling at a higher rent, and it is unnecessary to make any

such finding; it is sufficient that, the onus being upon the Landlord, the Tribunal is not satisfied on the evidence that he held the requisite genuine intention. The Tribunal regards the question as finely balanced, but concludes that the Landlord has not discharged that onus. The ground relied upon in the notice has accordingly not been made out, and the notice is invalid on this independent ground also.

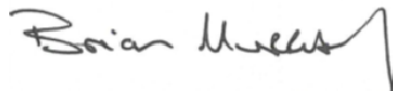
8. Determination:

Tribunal reference TR0001618

In the matter of Barbara Kruczek (Appellant Tenant) and Ciaran Owens (Respondent Landlord) the Tribunal, in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that in respect of the tenancy of the dwelling at 3 Sean Lios, Gorey, Co. Wexford, Y25X535:

1. The notice of termination dated 12 February 2024 served by the Respondent Landlord on the Appellant Tenant is invalid.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 19th June 2026



Signed:

Brian Murray

Chairperson

For and on behalf of the Tribunal.