Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004
Report of Case Reference: DR0005563 - TR0001286

Appellant Tenant(s):	Mary Dowling
Respondent Landlord(s):	Zita Dennehy
Address of rented dwelling:	2 Leckaun, Old Youghal Road, Cork, T23R1H2
Tribunal:	Hugh Markey (Chairperson) Peter Shanley, Ciara Doyle
Venue:	Virtual
Date & time of hearing:	Day 1: 13/03/2026 at 10:30:00 Day 2: 03/07/2026 at 10:30:00
Attendees:	For the Appellant Tenant: Mary Dowling (Days 1 & 2) Alfie O Brien, Appellant Tenant's son (Day 1) Ruadhán O Ciaráin BL, Appellant Tenant's Legal Counsel (Days 1 & 2) James Leahy RDJ LLP, Solicitors for the Appellant Tenant (Days 1 & 2) For the Respondent Landlord: Zita Dennehy (Days 1 & 2) RTB Appointed stenographer (Days 1 & 2)

1. Background:

On 13/08/2021 the Tenant(s) made an application to the Residential Tenancies Board ("the RTB"). The matter was referred to an Adjudication which took place on 28/10/2021.

Subsequently the Tenant(s) submitted an Appeal on 14/12/2023.

The RTB constituted a Tenancy Tribunal and appointed Peter Shanley, Hugh Markey, Ciara Doyle as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Hugh Markey 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 03/07/2026 the Tribunal convened a hearing.

2. Documents submitted prior to the hearing included:

RTB Case Files

3. Documents submitted at the hearing included:

None

4. Procedure:

Day 1. 13 March 2026

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".

At this point, the Respondent Landlord (hereafter the 'Landlord') indicated that while she was on notice of the Hearing, she had not received any documentation in relation to the appeal.

Under the circumstances and in order for the Landlord to properly defend the appeal, the Tribunal adjourned the Hearing. Before doing so, counsel for the Appellant Tenant (hereafter the 'Tenant') explained the background to the delay in having the appeal heard; that it had required an application to the Circuit Court in Cork under s. 88 of the Act. He explained that the Tenant was inconvenienced in applying for parking permits as she was not able to demonstrate that hers was a tenancy coming within the scope of the Act.

The Parties also consented to the title of the Appeal being changed to reflect the change of Landlord.

Day 2 03 July 2026

The Chairperson welcomed the Parties to the resumed Hearing and asked those attending the virtual Hearing to identify themselves and to identify in what capacity each was attending the Hearing.

The Chairperson confirmed with the Parties attending 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 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 Tenant's counsel would be invited to present their case; that there would be an opportunity for cross examination of this evidence by the Respondent Landlord; that the Landlord would then be invited to present her case; that there would be an opportunity for cross examination of this evidence by the Tenant's counsel 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 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. He emphasised to the Parties that the Hearing was a de novo Hearing, and that the Parties should give all of their evidence to the Tribunal during the Hearing. He also emphasised to the Parties that the Hearing is a final Hearing as to matters of fact.

The Chairperson 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 only [reference section 123(3) of the 2004 Act].

The Chairperson offered the Parties an opportunity to have a 'without prejudice' discussion with a view to settling the matters in dispute. The Parties did not wish to avail of this opportunity and the Parties giving evidence gave their affirmations.

5. Verbal Submissions:

Submissions: Day 2

Appellant Tenant's Submission:

Counsel for the Tenant had submitted a written legal submission in advance of the hearing– this is at Tribunal Case File 3 (TCF 3). In introducing this submission to the Tribunal, counsel outlined the background to the Tenancy; how the Tenant had lived her lifetime in the dwelling and how, after her parent's passing, it was decided that a formal lease be put in place. This is at page 12 et seq. of TCF 2. He outlined how, at para. 5(b) of this lease (page 16 of TCF 2) there was a provision for the Landlord to terminate the lease should there be a breach of the covenants of the lease for non-payment of rent or otherwise. He said this provision meant that the Tenant's occupation of the Dwelling could not be by way of a 'life interest'.

He went on to note that the Second Schedule to the lease, included the term "*terminating on either the death of the tenant or when the tenant wishes to vacate the premises on a permanent basis or if the premises have been vacant for a period in excess of six months."*

He indicated that the Tenant's position was that the position adopted by the Adjudicator that the occupation was by way of a 'life interest', was incorrect.

Counsel outlined how the Land and Conveyancing Law Reform Act 2009 (the "2009 Act"), does not make any reference to the term 'life interest'. He noted that S.14(c) of the 2009 Act prohibits the granting of a lease for "*any term coming to an end on the death of a person or persons".* He said, however, the section does not have retrospective effect and, accordingly, it does not impinge upon the existence of a leasehold estate for the fixed term of a person's life that was created before 2009.

In his submission, counsel noted that s.3 of the Residential Tenancies Act provides that the Act applies to "*every dwelling, the subject of a tenancy*". A tenancy is defined in s.5 as including "*a periodic tenancy and a tenancy for a fixed term, whether oral or in writing or implied* ". In support of his opinion in relation to a fixed term, he cited Professor Wylie in 'Wylie on Irish Landlord and Tenant Law' 4th ed., 1 May 2022 which, he noted, provides the following guidance at ¶*4.03: "Fixed Term of Years [4.03] A tenancy may be created for any fixed term, however long or short. […] Indeed, until changes were made by the Land and Conveyancing Law Reform Act 2009, it remained the case in Ireland that a tenancy could be created for any freehold estate, e.g. creation of the relation of landlord and tenant for the life of the tenant To be distinguished from a freehold life interest coming within the Settled Land Acts 1882-90." [*sic].

Counsel suggested the second schedule of the lease meant that it fell within the jurisdiction of the of the RTB. This schedule states '***For the Lifetime Tenant*** *Commencing on the 1st day of November, 2006 terminating on either the death of the tenant or when the tenant wishes to vacate the premises on a permanent basis or if the premises have been vacant for a period in excess of six months'*

He added that the fact the letting agreement included the provision for quinquennial rent reviews also placed it in a leasehold context. These reviews were to be determined by arbitration in the absence of agreement.

He further noted the right of the landlord to terminate the letting for breach of covenant, to include non-payment of rent.

He understood the Landlord's position was that the letting fell outside the jurisdiction of the RTB. In support of his opinion that the letting fell within the jurisdiction of the RTB, counsel introduced the case of National Bank Ltd v Keegan [1931] IR 344. He said the legal 'life interest' referred to in this case could only be conferred by a deed or a will. He noted there is no deed or will.

For the reasons outlined above, counsel contended that the Tenant's occupancy cannot be on the basis of a life estate or life interest. Instead, the Tenant possesses a Part 4 tenancy for a fixed period, coterminous with her life or when she vacates the Property. He suggested the preconditions for the valid creation of a life estate are not in existence as there is no deed conveying such an estate nor was it passed by way of a will. Any finding other than it being a Part 4 tenancy would result in a breach of s.54, s.58 and s.26 of the Act.

Respondent Landlord's Evidence/Submission:

The Landlord began by stating that only a pittance had been paid for many years. She explained that the Tenant's solicitor had drafted the tenancy agreement in 2006 and the tenant had never increased the rent - the rent payable of €675 was, she suggested, a very low rent. She said that it was unfair, the agreement was not being upheld. She suggested that if the Tribunal found that the tenancy came under the jurisdiction of the RTB that the '6-year Rule' should apply.

Closing Submissions:

Counsel for the Appellant Tenant

Counsel contended that it was not possible to have a life tenancy pre-2009, that would have required a deed or a will. He suggested that while the tenancy was for a longer term than normal, it was permitted by the Act (S. 26).

Respondent Landlord

The Landlord declined the opportunity to sum up.

6. Matters agreed between the parties:

Address of the Dwelling: 2 Leckaun, Old Youghal Road, Cork, T23R1H2

Tenancy Commenced: 26 March 1944

Monthly Rent: €675.00

Lease: The Landlord and Tenant entered into a lease from 1st November 2006 for the life of the Tenant or sooner vacation or after 6 months vacancy.

Landlord Identity: It is agreed that Zita Dennehy is now the Landlord and the title of the appeal be amended to reflect this change.

7. Findings and reasons:

Having considered all of the documentation before it and having considered the evidence presented to it by the Parties, the Tribunal's finding, and reasons therefor, are set out hereunder

Finding 1:

The tenancy of the Dwelling, 2 Leckaun, Old Youghal Road, Cork T23 R1H2 falls within the jurisdiction of the Residential Tenancies Act 2004 (as amended).

Reasons:

1. Section 3 of the Act sets out the nature of the dwellings which are the subject of the Act. This is set out in full below:

3.—(1) Subject to subsection (2), this Act applies to every dwelling, the subject of a tenancy (including a tenancy created before the passing of this Act).

(2) Subject to section 4 (2), this Act does not apply to any of the following dwellings—

(a) a dwelling that is used wholly or partly for the purpose of carrying on a business, such that the occupier could, after the tenancy has lasted 5 years, make an application under section 13 (1)(a) of the Landlord and Tenant (Amendment) Act 1980 in respect of it,

(b) a dwelling to which Part II of the Housing (Private Rented Dwellings) Act 1982 applies,

(c) a dwelling let by or to—

(i) *a public authority, or*

(ii) *a body standing approved for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act 1992 and which is occupied by a person referred to in section 9 (2) of the Housing Act 1988 ,*

(d) a dwelling, the occupier of which is entitled to acquire, under Part II of the Landlord and Tenant (Ground Rents) (No. 2) Act 1978 , the fee simple in respect of it,

(e) a dwelling occupied under a shared ownership lease,

(f) a dwelling let to a person whose entitlement to occupation is for the purpose of a holiday only,

(g) a dwelling within which the landlord also resides,

(h) a dwelling within which the spouse, parent or child of the landlord resides and no lease or tenancy agreement in writing has been entered into by any person resident in the dwelling,

(i) a dwelling the subject of a tenancy granted under Part II of the Landlord and Tenant (Amendment) Act 1980 or under Part III of the Landlord and Tenant Act 1931 or which is the subject of an application made under section 21 of the Landlord and Tenant (Amendment) Act 1980 and the court has yet to make its determination in the matter.

There was no evidence put forward to suggest the Dwelling is not one which falls outside the scope of the Act, rather the Respondent Landlord relied on the perceived unfairness of the passing rent as not reflecting the market rate.

2. Further, the Act, at Section 5 (1), provides guidance as to what constitutes 1) landlord 2) lease 3) tenancy and 4) tenant, as follows:

"landlord" means the person for the time being entitled to receive (otherwise than as agent for another person) the rent paid in respect of a dwelling by the tenant thereof and, where the context so admits, includes a person who has ceased to be so entitled by reason of the termination of the tenancy;

"lease" means an instrument in writing, whether or not under seal, containing a contract of tenancy in respect of a dwelling;

"relevant date" means the date on which *Part 4* is commenced;

"tenancy" includes a periodic tenancy and a tenancy for a fixed term, whether oral or in writing or implied, and, where the context so admits, includes a sub-tenancy and a tenancy or sub-tenancy that has been terminated;

"tenant" means the person for the time being entitled to the occupation of a dwelling under a tenancy and, where the context so admits, includes a person who has ceased to be entitled to that occupation by reason of the termination of his or her tenancy.

(2) A reference in this Act to—

(a) the landlord of a dwelling is a reference to the landlord under a tenancy of the dwelling, and

(b) the tenant of a dwelling is a reference to the tenant under a tenancy of the dwelling.

3. The Tribunal finds that the lease held by the Appellant Tenant has all of the qualities of a lease, as defined in the Act.

4. Section 26 of the Act states—*Nothing in this Part operates to derogate from any rights the tenant enjoys for the time being (by reason of the tenancy concerned) that are more beneficial for the tenant than those created by this Part.*

   This is relevant to the instant case; the Landlord gave more beneficial terms to the Tenant in an agreement willingly entered into and cannot contend that the tenancy falls outside the Act. In fact, this contention was not advanced by the Appellant Landlord.

5. The Parties to the tenancy were free to agree more tenant favourable terms than required by the Act. This was done in the drafting of the lease. The Tribunal's view is reinforced by the fact that the then landlord registered the tenancy with the PRTB in both 2008 and 2015 (pps. 22 & 23 of TCF 2)

Finding 2:

The Tribunal, having determined that it has jurisdiction to consider the matter must then consider the validity of the rent review notice served on the Appellant Tenant by the Respondent Landlord in respect of the Dwelling on 10th May 2021. The Tribunal finds this notice of rent review to be invalid.

Reasons:

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 notice of rent review served on the Tenant was in the form of a letter stating '*the rent has not been revised for many years'* and purporting to increase the monthly rent to €2,000. The letter also included several 'comparisons' to support this view. The letter is not in the prescribed form for the purposes of a rent review under the Act.

In circumstances where the Notice of Rent Review is invalid for failure to comply with section 22 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.

8. Determination:

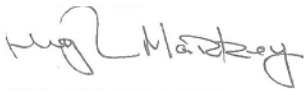
Tribunal reference TR0001286

In the matter of Mary Dowling [Appellant Tenant] and Zita Dennehy [Respondent Landlord] the Tribunal, in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Tribunal has jurisdiction to deal with the Dispute between the Parties.

2. The Notice of rent review served by the Respondent Landlord on the Appellant Tenant in respect of the tenancy of the dwelling at 2 Leckaun, Old Youghal Road, Cork, T23 R1H2 is invalid.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on the 3rd July 2026.



Hugh Markey, Chairperson

For and on behalf of the Tribunal