

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Case Reference: DR0006516 - TR0001627

Applicant Tenant(s):	Bartosz Milinski, Marta Kostanowicz
Respondent Landlord(s):	Rita McInerney
Address of rented dwelling:	Main Street, Doonbeg, Kilrush, Clare, V15R884
Tribunal:	Ciara Doyle (Chairperson) Karen Ruddy, Eoin Byrne
Venue:	Virtual
Date & time of hearing:	16/06/2026 at 10:30:00
Attendees:	Bartosz Milinski, Applicant Tenant Rita McInerney, Respondent Landlord

1. Background:

On 10/12/2025 the Tenant(s) made an application to the Residential Tenancies Board ("the RTB"). The matter was referred to a Mediation which took place on 09/03/2026.

Subsequently the Tenant(s) submitted an Appeal on 15/03/2026. This was approved by the Board.

The RTB constituted a Tenancy Tribunal and appointed Karen Ruddy, Eoin Byrne, Ciara Doyle as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Ciara Doyle 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 16/06/2026 the Tribunal convened a hearing.

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 Applicant Tenant would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present her case and that there would be an opportunity for cross-examination by the Applicant Tenant. 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 Applicant Tenant:

The Applicant Tenant submitted that the rent review served by the Landlord in March 2025 increasing the rent from €650 to €1,500 was invalid on the basis that €1,500 did not represent market rent for the dwelling.

He submitted the increase in the rent was disproportionate, that he had made enquiries locally and had established that similar properties in the area were let for between €700 and €1,000. He also said he referred to the RTB index for the area in May 2024 and it indicated the rent payable for a comparable property were in or around €900 to €1,000.

He said he sent an email to his landlord outlining his objection to the rent increase but did not receive a reply. He described the property as a 5-bedroom property with two reception rooms and small garden in the back. He said he did not know the BER for the property. He said friends of his lived in a bigger house and they were only paying €850 and the house next door to them was paying €950.

In relation to the comparables used by the Landlord in the rent review notice, he argued they were not comparable as Kilkee was a holiday village with a population of 1000 and rent of €1,500 for a property in Kilkee was not comparable to a dwelling in Doonbeg which had a population of 300 people and had no beach.

He said both villages were 10 to 15 kilometres away. He said the current RTB index as of May 2026 indicates the rent payable for a comparable property of €950 to €1,250 for existing tenancies.

In relation to the Notice of Termination for rent arrears, he submitted it was invalid on the grounds that he had paid the rent arrears demanded in the warning of letter of €5,100 on the 5th December 2025 and this was within the 28 days provided for in the warning notice. On that basis he submitted the Landlord was not entitled to serve the Notice of Termination.

In relation to the Notice of Termination on the grounds of Landlord's occupation, he indicated he would like the Tribunal to deal with the validity of this Notice despite the fact it had not been served at the time he lodged his original application for dispute resolution. He said he was making every effort to find alternative accommodation in advance of the termination date set out in that Notice of December 2026. He was informed by the Tribunal that as it had an appellate jurisdiction, there would be no appeal permitted by him on this matter, if the Tribunal determined it, other than to the High Court on point of law.

In relation to this Notice, he questioned the Landlord's intention to occupy, as the property had always been a rental property and the Landlord had not lived there.

Submissions of the Respondent Landlord:

The Landlord submitted that she served the Notice of rent review on the 3rd March 2025 increasing the rent to €1,500 from the 1st June 2025. She said the previous rent of €650 was well below market value, that the asset was under performing and she wanted to review the rent.

She said it was a 5-bed property detached house and each bedroom had an ensuite. She said at the time she served the rent review notice, she looked at what was advertised and reviewed the daft rental price report. She said she was not aware of what other people were paying locally.

She submitted that Daft rental report noted that the market rent for a 5 bedroom property in the area was €1,600. She said the Daft report today highlights 21 properties in similar villages for a rent between €1,750 and €2,000. She said she attached the 3 advertisement she relied upon to the rent review notice.

In relation to the Kilkee apartment advertised for rent at €1,400, she said this was a 2 bedroom apartment. She said she found it difficult to find comparable properties rented within 4 weeks in the area as Doonbeg is a highly sought after area.

She could not confirm what the BER rating for the property was but confirmed that the property was fully insulated with double glazed windows. She said properties in Kilkee and Kilrush were comparable as a lot of people drive to Doonbeg from there.

In relation to the Notice of Termination served on the grounds of rent arrears, she submitted she was entitled to serve the Notice of Termination despite the Tenant having paid the rent arrears outstanding within 28 days of the date of the warning letter, because he continued to default in paying the new rent in December 2025 and January and February 2026.

In relation to the Notice of Termination served on the grounds of her own occupation, she said her father died in July 2025 and her mother is also deceased, that she had moved into her parents home several years ago to care for them. However she said she had originally built the dwelling, the subject of the dispute in or around 2005 and she had rented out the property when she moved in with her parents. She said under the terms of her father's Will her brother now owned the family home, so she needed to vacate it as soon as possible and take up occupation of her own house, which she said was her only house. She said she had engaged the services of a property management company to serve the Notice of Termination, and they had served it on the Tenant by email and sent a copy to the RTB on the same day.

6. Matters agreed between the parties:

1. The tenancy commenced on the 1st April 2016 at a rent of €550 per month.
2. No security deposit was paid.
3. The rent was increased in July 2019 to €650 per month.
4. On 3rd March 2025 the Landlord served a rent review notice increasing the rent from €650 to €1,500 with effect from 1st June 2025.
5. The Landlord served a warning notice in respect of rent arrears on the 12th November 2025.
6. The Landlord served a Notice of Termination on the 12th January 2026 in relation to rent arrears.
7. The Tenant paid the arrears of rent of €5,100 specified in the warning notice dated 11th December 2025 on the 5th December 2025.
8. The Landlord served a Notice of Termination on the 5th March 2026, with a termination date of the 9th December 2026, on the grounds she required it for own occupation.
9. The Tenant has paid rent at a rate of €650 per month since January 2026.

10. The Notice of Rent Review and two Notice of Termination were all received by the Tenant.

7. Findings and reasons:

Finding 1:

The notice of rent review served by the Respondent Landlord on the Applicant Tenant on 3rd March 2025, is invalid.

Reasons:

Section 22(1) of the Act stipulates that the setting of a rent pursuant to a review of the rent under a tenancy which is otherwise lawful shall not have effect until the following conditions set out in Section 22(2) of the Act are complied with: The notice must be served at least 90 days before the rent is to have effect and state the amount of the new rent and the date from which it is to have effect; the notice must include a statement that a dispute must be referred to the Board before the date the new rent becomes payable or before the expiry of 28 days from the receipt by the tenant of that notice, whichever is later; the notice must include a statement by the landlord that in his or her opinion the new rent is not greater than market rent having regard to the other terms of the tenancy, letting values of dwellings of a similar size, type and character and situated in a comparable area; specify the amount of rent sought for 3 dwellings of a similar size, type and character and situate in a comparable area to the dwelling which have been advertised for rent in the 4-week period immediately preceding the date on which the notice is served; the notice must be signed by the Landlord or an authorised agent and include the date on which the notice is signed; where the dwelling is in a rent pressure zone, the notice must state how the rent set under the tenancy was calculated having regard to section 19(4) or where 19(4) does not apply, state why it does not apply.

The requirements in relation to Rent Pressure Zones did not apply as the dwelling was not situated in a Rent Pressure Zone at the time the Notice of Rent Review was served.

A copy of the rent review notice, in dispute, was not submitted in evidence to the Tribunal for consideration. The Landlord gave evidence the rent review notice was sent in the prescribed form, but said she had not realised it was not included in the evidence on the casefile she had submitted. The Tenant accepted he received a rent review notice in March 2025 but disagreed with the Landlord's opinion of the market rent, which he said did not reflect the rent paid by his friends renting in the local area or the information he had seen on the RTB rent index for properties in the area.

Even if the Tribunal were to accept, that the Landlord had served the required rent review notice, the Tribunal would then need to determine whether the comparables used by the Landlord as part of the process of the rent review were valid comparables.

The Tribunal accepts that Landlord' evidence that it is difficult to get exact comparables due to the lack of properties being advertised.

However the requirements of Section 22(2) are clear, the notice must include a statement by the landlord that in his or her opinion the new rent is not greater than market rent having regard to the other terms of the tenancy, letting values of dwellings of a similar size, type and character and situated in a comparable area; specify the amount of rent sought for 3 dwellings of a similar size, type and character and situate in a comparable area to the dwelling which have been advertised for rent in the 4-week period immediately preceding the date on which the notice is served.

The Tribunal finds that Landlord did not include adequate comparables to support her contention that the reviewed rent was the market rate. The Landlord submitted 2 comparables in the case file before the Tribunal but her evidence was that she had included 3 comparables in the rent review notice. She said she could not locate a copy of the notice at the hearing. The Tenant could not say with certainty if he received advertisements for 3 comparables or if the comparables submitted in the Landlord's

casefile were the same or different to those in the rent review notice. The Tenant could not locate a copy of the notice at the hearing. It is noted that the Tenant in his application for a Tribunal made reference to 3 comparables and referred to them as having rents of €1,200, €1,400 and €1,800.

The advertisements included on the casefile related to a 3 bed semi detached house in Doonbeg for €1,750 and the other related to a 2 bedroom apartment in Kilkee for €1,400.

Even if the Tribunal was to accept the Landlord included 3 comparables in the rent review notice, the Tribunal finds that at least one of the comparables submitted on the casefile relating to a 2 bedroom apartment is not of a similar size, type or character as the dwelling as is required under Section 22 (2) of the Act. The dwelling in dispute is a 5 bedrooomed detached dwelling with garden. It could not be said to be of a similar size, type or character of a 2 bedroom apartment. They are fundamentally different in every material respect. The size is different. A house is a different type and character of a dwelling from an apartment. That being the case, even without sight of the rent review notice or the third comparator, the Tribunal can only find that the process was fundamentally flawed by this issue in a way that cannot be remedied.

Having carefully considered the evidence the Tribunal finds that the Landlord did not comply with the requirements of Section 22(2) of the Act and the rent review was unlawful. As the rent review was unlawful the rent payable in respect of the tenancy remains at €650 per month unless lawfully varied.

Finding 2:

The Landlord shall refund the Tenant the sum of €5,100 in relation to overpaid rent in relation to the tenancy.

Reasons:

As the Tribunal has found that the rent review notice is invalid, it follows that the new rent did not lawfully come into effect on 1 June 2025. The rent for the tenancy remains at €650 per month unless lawfully varied. The Tenant paid the Landlord the sum of €5,100 in December 2025, relating to the difference in rent between €650 and €1500 for the months of June – November 2025, to clear arrears which the Landlord had demanded, on foot of the unlawful rent review.

The Landlord shall therefore refund the Tenant the sum of €5,100 in relation to this overpaid rent. Given that this a refund of overpaid rent already paid, the Tribunal is satisfied that it should be returned within 28 days of the date of issue of the determination order of the Board.

Finding 3:

The notice of termination dated 12th January 2026 is invalid.

Reasons:

The Landlord served a warning letter on the tenant on 11 December 2025 in relation to rent arrears demanding a sum of €5,100 be paid within 28 days. The Tribunal has found that the Tenant was not in arrears of rent when the warning letter was served on 11 December 2025 as there was no lawful rent review, the rent remained payable at €650 per month. As such the warning letter was invalid and it follows that the Notice of Termination dated 12th January 2026 served on foot of the warning notice was therefore invalid.

Finding 4:

The notice of termination dated 5th March 2026 is valid.

Reasons:

The Tribunal was requested to deal with this notice, despite it being served after the original application for dispute resolution was lodged by the Tenant in relation to the rent review notice. Both

parties indicated they would like the Tribunal to determine the validity of it, notwithstanding the fact there could be no further appeal by either party in relation to the findings and determination of the Tribunal, other than to the High Court on a point of law. In circumstances where both parties consented to the matter being dealt with, the Tribunal deems it appropriate to deal with the notice of termination dated 5th March 2026.

The Tenant questioned the Landlord's intention to occupy the dwelling herself when she had always rented it out. The Landlord gave evidence that her personal circumstances had changed, and she now required the dwelling for her own use.

A 'Part 4 Tenancy' may be terminated by a Landlord in accordance with the provisions of Section 34 of the Act and on one or more of the grounds specified in the Table to the said Section. Paragraph 4 of the Table to Section 34 states that a valid ground for termination arises if a Landlord requires the dwelling for her own occupation or for occupation by a member of his family. If relying upon such grounds, Paragraph 4 of the Table to Section 34 states that the requisite Notice of Termination must contain or be accompanied by a Statutory Declaration, specifying (i) the intended occupant's identity and (if not the Landlord) his relationship to the Landlord and (ii) the expected duration of that occupation. Furthermore, the said notice or statement must specify that the Landlord is required to offer to the Tenant a tenancy of the dwelling if the dwelling is vacated by the person mentioned above within a period of 12 months from the expiry of the notice period in the said notice or within 12 months from the final determination of any dispute referred to the RTB in relation to the validity of the Notice of Termination.

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; 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 be referred to the Board under *Part 6* within 90 days from the date of receipt of it. Further, 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 to the person or by leaving it at the address at which the person ordinarily resides. Since 1 March 2026 a Landlord is permitted to serve a notice of termination on the Tenant by email, as was the case here, and the Tenant did not dispute receipt of the notice by email on 5 March 2026.

Section 66 of the Act sets out the relevant notice periods which must be provided in a Notice of Termination. In the case of a tenancy lasting more than 8 years, the relevant notice period is 224 days and 279 days have been given. Additionally, pursuant to Section 62(1A) 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 on the same date. Evidence was given that the notice was served by email on the RTB on the same date it was served on the Tenant and this was not disputed by the Tenant.

The Landlord in this case sought to terminate the tenancy on the basis that she required the dwelling for her own use. Accordingly, in order to terminate the tenancy, the Landlord was required to serve the requisite Notice of Termination and accompanying Statutory Declaration on the Tenant and this was done by way of Notice of Termination and Statutory Declaration served on the Respondent Tenants on 5 March 2026.

In respect of the Notice of Termination served on 5 March 2026 and the accompanying Statutory Declaration, the Tenants accepted that they had received the said documents. Additionally, the Tribunal finds that the Notice of Termination served on 5 March 2026 contains the necessary information as required in accordance with Section 62 of the Act, provided the appropriate notice

period in accordance with Section 66 of the Act and was served on the RTB in accordance with Section 62((1A) of the Act.

As set out in the Notice of Termination served on the Respondent Tenants on 5 March 2026, the Landlord sought to terminate the tenancy on the basis that the dwelling was required for her own use. Evidence was given by her that her personal circumstances had changed, that her parents with whom she lived for the last number of years had died, and their family home had been left to her brother who now wanted vacant possession and she needs her own dwelling for use as her own home in the circumstances.

The Tribunal also notes that a Statutory Declaration was sworn by the Landlord on 5 March which also averred to the fact that the dwelling was required for her own use.

The Tribunal notes the High Court decision of Mr. Justice Barrett in the case of *Mary Duniyva.v. Residential Tenancies Board [2017] IEHC 578*. In considering the said decision, the Tribunal notes that, at paragraph 5 of the said Judgment, Mr. Justice Barrett ruled that “...the court considers that the use of the thirdperson singular form of the verb “to require” in para.4 of the Table to s.34 has the result that a landlord must “need” the dwelling in issue, which has the effect that termination of the tenancy must be essential or very important to him (or her), rather than just desirable. That need has a subjective and an objective dimension, in the sense that a Tenancy Tribunal would need to look to whether a landlord subjectively requires a dwelling (here the statutory declaration, it seems to the court, would typically be determinative) and also to whether that perceived requirement is a bona fide requirement and not (i) a requirement that a landlord purports to exist but which does not in truth exist, or (ii) a requirement that is advanced to achieve an unlawful objective, e.g., the perpetration of unlawful discrimination contrary to the Equal Status Acts.”

Based on the oral evidence given and having regard to the documentation furnished in advance of the hearing, the Tribunal is satisfied that, on the balance of probabilities, the Landlord requires the dwelling for her own use. In this regard, and applying the reasoning of Mr. Justice Barrett as set-out hereinabove, the Tribunal is satisfied that the Landlord subjectively and objectively requires the dwelling. The Statutory Declaration sworn by the Landlord on 5 March 2026 is before the Tribunal and the Tribunal considers that the contents thereof in addition to the direct evidence of the Landlord, is determinative of their requisite need.

Additionally, the Tribunal finds that the Landlords’ requirement is a bona fide requirement, that the need as stated, exists and that the requirement being advanced is not being advanced to achieve an unlawful objective or to penalise the Tenant. The technical requirements of the Act have also been complied with.

As a result of the foregoing, the Tribunal finds that the Notice of Termination served on the Respondent Tenants on 5 March 2026, with a date of termination of 9th December 2026 is valid.

In respect of the period to be provided to vacate the dwelling, the Tribunal is satisfied that the notice is valid and should be given effect to. The tenant should vacate on or before the termination date; in the event that the determination order in this case is issued within 28 days of the termination date, however, the dwelling should be vacated at the latest within 28 days of the date of issue of the order. That is the maximum leeway that can be afforded, in all the circumstances.

8. Determination:

Tribunal reference TR0001627

In the matter of Bartosz Milinski, Applicant Tenant, and Rita McNerney, Respondent Landlord, the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act 2004, as amended, determines that:

1. The Notice of Rent Review served by the Respondent Landlord on the Applicant Tenant on 5th March 2025 is invalid and the lawful rent payable in respect of the tenancy of the dwelling at Main Street, Doonbeg, Co. Clare, V15 R884, Ireland is €650 per month unless lawfully varied.
2. The Respondent Landlord shall repay the Applicant Tenant the sum of €5,100 within 28 days of the date of the issue of the Determination Order, being overpaid rent, in respect of the tenancy of the dwelling at Main Street, Doonbeg, Co. Clare, V15 R884, Ireland.
3. The Notice of Termination dated 12th January 2026 served by the Respondent Landlord on the Applicant Tenant in respect of the tenancy of the dwelling at Main Street, Doonbeg, Co. Clare, V15 R884, Ireland is invalid.
4. The Notice of Termination dated 5th March 2026 served by the Respondent Landlord on the Applicant Tenant in respect of the tenancy of the dwelling at Main Street, Doonbeg, Co. Clare, V15 R884, Ireland is valid.
5. The Applicant Tenant and all persons residing in the above dwelling shall vacate and give up possession of the dwelling on or before 9th December 2026 or within 28 days of the date of the determination order, whichever is the later.
6. The Applicant Tenant shall continue to pay rent at a rate of €650 per month or proportionate part thereof at a rate of €21.37 per day, unless lawfully varied, until such time as he vacates and gives up possession of the dwelling.

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

A handwritten signature in black ink, reading 'Ciara Doyle' in a cursive script.

Ciara Doyle, Chairperson

For and on behalf of the Tribunal