Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Case Reference: DR0006772 - TR0001685

Applicant Tenant(s):	Dragan Tomic, Sejla Tomic
Respondent Landlord(s):	Xerico Limited
Address of rented dwelling:	Apartment 169 Tí Dháithí, Gleann Na Rí, Murrough, Galway, H91 Y166
Tribunal:	Dervla Quinn (Chairperson) Michael Valleley, Dairine MacFadden
Venue:	Virtual
Date & time of hearing:	08/07/2026 at 10:30:00
Attendees:	For the Applicant Tenants: Sejla Tomic (Applicant Tenant). Neasa Brennan (Applicant Tenants representative from Threshold) For the Respondent Landlord: Michelle Savage (Respondent Landlord's agent).

1. Background:

On 20/12/2025 the Tenants made an application to the Residential Tenancies Board ("the RTB"). The matter was referred to a Mediation which took place on 24/03/2026.

Subsequently the Tenant submitted an Appeal on 30/03/2026. This was approved by the Board.

The RTB constituted a Tenancy Tribunal and appointed Dervla Quinn, Michael Valleley, Dairine MacFadden as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Dervla Quinn 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 08/07/2026 the Tribunal convened a hearing.

2. Documents submitted prior to the hearing included:

Case files.

3. Documents submitted at the hearing included:

No documents were submitted at the hearing.

4. Procedure:

The Chairperson asked the parties present to identify themselves and to identify in what capacity they were attending the Tribunal. Ms Savage confirmed that she was duly authorised to represent the Landlord to the Tribunal, and that she was the Landlord's agent. Sejla Tomic confirmed that she was authorised to represent Dragan Tomic to the Tribunal and that Mr Tomic would not be attending the hearing. 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 and had no questions on the RTB document entitled "Tribunal Procedures".

The Chairperson explained the procedure which would be followed. In particular, she outlined that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible, that the persons who applied for the Tribunal hearing (the Applicants) would be invited to present their case first, that there would be an opportunity for cross-examination by the Respondent's representative, that the Respondent's representative would then be invited to present its case, and that there would then be an opportunity for cross-examination by the Applicants. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission. She reminded the parties that the hearing was a *de novo* hearing.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official stenographer present 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 €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 would be issued to the parties and could be appealed to the High Court on a point of law only.

All parties intending to give evidence were affirmed. The Tribunal asked the parties what matters could be noted as agreed. The matters referred to below were noted as agreed.

5. Verbal Submissions:

Applicant Tenants' case:

Ms Neasa Brennan of Threshold presented the Tenants' case to the Tribunal. She stated that the notice of termination was received by the Tenants in their post box on 7 October 2025 and that they got in touch with Threshold on the same day. She stated that Threshold had highlighted some issues and had recommended that the Tenants dispute the validity of the notice. She stated that the statutory declaration that accompanied the notice omitted the date and place of issue. She referred to Section 52 of the Civil Law (Miscellaneous Provisions) Act 2008. She also referred the Tribunal to the decision of Simons in the High Court Argutinski case which was delivered on the 12th March 2026 the day of the hearing as opposed to a reserved judgment that is considered and delivered after a period of time. *Argutinski v. Residential Tenancies Board* [2026] IEHC 225. She noted that in case file 2 the Landlords agent had stated that the notice had been sent on 6 October 2025 and received by the Tenants on 7 October 2025 and emailed to the RTB on 6 October 2026, which was not the same day as the service on the Tenants and was not in accordance with the High Court ruling in the Argutinski case.

The Tribunal questioned the inclusion in the case files of a rent review notice. Ms Brennan confirmed that this was an error and that the only challenge by the Tenants was to the validity of the notice of termination on the issue of the passport issue date and the name of the issuing state on the Statutory Declaration and the date of service of the Notice of Termination.

The Tribunal questioned Ms Brennan on the application of the Interpretation Act 2005 and in particular section 12 thereof and noted that a deviation in a form could be rectified in certain circumstances. Ms Brennan stated that the mistake in this case does prejudice the Tenants, that the Tenants are on HAP,

that it is very difficult to find accommodation in the Galway area, and that the Tenants would be homeless. The Tribunal noted that section 49 of the Civil Law (Miscellaneous Provisions) Act 2008 does not refer to requirements for place and date of issue of passport. Ms Brennan referred to Section 52 of the Civil Law (Miscellaneous Provisions) Act, which sets out the new form of a statutory declaration. She stressed that the Tenants were prejudiced as they would find it very difficult to get another tenancy. She stated that only the RTB can confirm the validity of a notice of termination and that if the Tenants vacated on foot of a notice that was not valid, the local authority would not allow access to housing support and that the Tenants had young children.

Ms Savage questioned the Tenant on behalf of the Landlord. She confirmed that the Tenants had no reason to challenge and were not challenging the intention of the Landlord to sell the Dwelling. She stated that the notice period given by the Landlord was in excess of that required, that the Landlord had gone over and above to give the Tenants the maximum time to find accommodation. She stated that the Tenants can change from one tenancy to another with HAP. Ms Brennan replied that there would be difficulty accessing homeless support from the council. Ms Savage asked and Ms Brennan confirmed that the Tenants are looking for new rental accommodation.

Respondent Landlord's case:

Ms Savage on behalf of the Landlord, stated the position of the Landlord was set out in TR case file 2 from page 2. She stated that the intention of the Landlord to sell was not being challenged by the Tenants and she outlined the steps taken by the Landlord to bring the dwelling to market during the summer months. She stated that the likely buyer was an owner occupier and that they would require vacant possession.

Ms Savage stated that the Landlord had been proactive in trying to help the tenants. She outlined the steps taken to engage with the Council on the Tenant in Situ scheme but she stated that there had been no engagement with them from Galway Council.

She stated that the Statutory Declaration was served on the Tenants along with the Notice of Termination on the same day as it was emailed to the RTB, that the Declaration was witnessed and stamped by a certifying officer in Cyprus, that the Landlord was not resident in Ireland so the Declaration had also been apostilled by an appropriate identifying officer. She stated that the RTB, as the governing body of the residential tenancies sector, set out the rules and regulations governing the issue of notices of termination, that the Landlord had relied on the template provided by the RTB on their website, that either the certifying person knows the identity of the declarant or inserts the details of the identifying document, that it is not stated that the passport number, date of issue and state of issue have to be included and that if this was required the RTB template should have included this information. She stated that the RTB cannot in good faith issue a template and then say that it is invalid because of omissions. She stated that any omissions were inadvertent and were not an attempt to mislead anyone. She stated that the Landlord had attended the office of the certifying officer, that the certifying officer had checked that the identity documents were valid and in date, that the information had been recorded on the declaration and that there had been no difficulty in the swearing of the declaration. She referred to section 12 of the Interpretation Act 2005, that a deviation from the form which does not materially affect the substance of the form or is not misleading in content or effect does not invalidate the form used. She stated that Section 12 would save the declaration, that it was not misleading in anyway, that the apostille provided an additional layer of identification.

Regarding the issue of service and the reference by Threshold to the decision in Argutinski, she stated that the RTB had previously accepted that the date of service was the date of postage, that the notice was sent by tracked post, that the Landlord's agent was based in Dublin and relied on an Post to carry out delivery, that the advice from the RTB was to allow additional days for delivery, that the notice should be sent to the RTB on the same day that it is sent to the tenant, that there is no reference to it

being delivered. Ms Savage them referred to the application of the slip rule as set out in section 64A. She stated that the Tenants were given 227 days' notice which was more that mandated, that the notice being emailed to the RTB on 6 October and delivered to the Tenants on 7 October does not affect the Tenants understanding of the notice and therefore the slip rule in section 64A could be applied to the notice..

The Tribunal asked Ms Savage did she accept that there was a deviation in the form and that the net effect was the loss of a family home for the Tenants and their family. Ms Savage replied that it was very unfortunate but that the Landlord was making a business decision to sell and that they should not be impeded by a technicality. She stated that if the notice was found to be invalid that the Landlord still planned to sell the Dwelling and would serve another notice of termination.

Ms Brennan on behalf of the Tenants stated that the requirements for a statutory declaration are on the RTB website, that the template provided does set out on the second page the need to have passport number date and state of issue, that it has always been there. She stated that the High Court ruling in 2026 referred to a notice served in 2023.

Closing submissions:

Ms Brennan on behalf of the Tenants stated that they would like to receive a legally valid notice of termination and that otherwise they would proceed to a tribunal to get the right decision.

Ms Savage stated that the Landlord has complied with the obligations, followed the guidance, that they intended to sell and were looking to have the notice upheld.

6. Matters agreed between the parties:

The parties agreed that the address of the dwelling is Apartment 169 Tí Dháithí, Gleann Na Rí, Murrough, Galway, H91 Y166 ; that the tenancy began on 27 January 2020, that a notice of termination and statutory declaration were served by the Respondent Landlord on the Applicant Tenants dated 6 October 2025 providing a termination date of 21 May 2026; that the rent payable was €1115 per month; no arrears of rent are due and that the Applicant Tenants remains in occupation of the dwelling.

It was the Tenants evidence that they had paid to the Landlord a deposit of €994. Ms Savage was not in a position to confirm this so the matter was not noted as agreed.

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 findings and reasons therefor are set out hereunder.

Finding 1.

The Tribunal finds that the Notice of Termination served by the Respondent Landlord on the Applicant Tenants on 6 October 2025, specifying a termination date of 21 May 2026, is valid.

Reasons for findings.

Grounds for Termination of Tenancy

The tenancy commenced on 27 January 2020. Accordingly, at the date of service of the Notice of Termination, namely 6 October 2025, the Tenants had been in continuous occupation of the dwelling for a period substantially in excess of six months.

By virtue of section 28 of the Residential Tenancies Act 2004, a tenant who has remained in occupation of a dwelling for a continuous period of six months acquires the rights of a Part 4 tenancy. In the case of a tenancy that commenced on or after 24 December 2016 but before 11 June 2022,

those rights entitled the Tenants to remain in occupation for a period of six years, unless the tenancy was validly terminated in accordance with the provisions of the Act.

Section 34 of the Act provides that a landlord may terminate a Part 4 tenancy only on one or more of the grounds specified in the Table to that section, provided that the landlord serves a valid Notice of Termination giving the requisite statutory notice period and specifying the ground or grounds relied upon.

In the present case, the Respondent Landlord relied upon paragraph 3 of the Table to section 34, namely that the Landlord intended to enter into an enforceable agreement for the transfer to another, for full consideration, of the whole of his or her interest in the dwelling or the property containing the dwelling within nine months of the termination date. The Tribunal notes the evidence of Ms Savage that the Landlord's intention to sell was based on commercial reasons and that the intention to sell was not disputed by the Tenants. In those circumstances, the Tribunal accepts that the Respondent's stated intention was bona fide and that the statutory ground for termination has been established.

Compliance with Section 62.

The Tribunal is further satisfied that the Notice of Termination complied with the formal requirements prescribed by section 62 of the Residential Tenancies Act 2004 (as amended). Section 62 provides that a Notice of Termination shall— "(a) be in writing,

(b) be signed by the landlord or his or her authorised agent or, as appropriate, the tenant, (c) specify the date of service of it,

(d) be in such form (if any) as may be prescribed,

(e) if the duration of the tenancy is a period of more than 6 months, or the tenancy is a further Part 4 tenancy, state (where the termination is by the landlord) the reason for the termination,

(f) specify the termination date, that is to say, the day (stating the month and year in which it falls)—

(i) on which the tenancy will terminate, and

(ii) on or before which (in the case of a termination by the landlord) the tenant must vacate possession of the dwelling concerned (and indicating that the tenant has the whole of the

24 hours of the termination date to vacate possession), and

(g) state that any issue as to the validity of the notice or the right of the landlord or tenant, as appropriate, to serve it must be referred to the Board under Part 6 within 28 days from the date of receipt of it." This referral period is extended to 90 days by virtue of s. 80(b) where a notice of termination is served otherwise than by reason of a breach of obligation.

Validity of Statutory Declaration.

The Tribunal has considered the written submissions furnished by the Tenants to the RTB in Case File TR 3, in which the validity of the Notice of Termination was challenged on two separate grounds.

First, the Tenants submitted that the accompanying statutory declaration was defective because it did not record both the issuing State and the date of issue of the passport produced by the Landlord for identification purposes before the certifying Cypriot officer. In relation to the first issue, the Tribunal notes that the statutory declaration substantially complies with the requirements prescribed by the Residential Tenancies Act 2004 (as amended). The omission of the passport's issuing State and date of issue from the solicitor's attestation does not affect the substance of the statutory declaration, or the validity of the declaration itself. The Tribunal is satisfied that this amounts, at most, to an irregularity which does not invalidate either the statutory declaration or the Notice of Termination. The Tribunal must also be aware that a statutory declaration is in the manner of a statutory form, one

prescribed by an enactment. Under s. 12 of the Interpretation Act 2005, where a form is prescribed in or under an enactment, “a deviation from the form which does not materially affect the substance of the form or is not misleading in content or effect does not invalidate the form used”.

The substance of the statutory declaration in this case must be the evidence of intention to sell. There can have been no doubt to the Applicant Tenants as to the identity of their Landlord and the evidence of its intention that the statutory declaration provided. There is no way that they could have been misled by the declaration, simply as it did not contain the issue date of the declarant’s passport or the State of issue of the passport. Indeed, the evidence of the Applicant Tenants in their Appeal stated, “Notice of Termination Invalid after Threshold review”. That all being the case, the Tribunal is satisfied that any issues with the declaration in this case do not materially affect the substance of the declaration, nor are they misleading in content or effect. As such, there are no issues that invalidate the statutory declaration.

Service of Notice of Termination.

Secondly, the Tenants submitted that the Notice of Termination specified a date of service of 6 October 2025, whereas the Tenants stated that they received the Notice on a different date and that the RTB had received a copy of the Notice on the preceding day, being 6 October 2025, the stated date of service in the Notice of Termination.

Section 39A of the Act requires that a copy of a notice of termination be served on the RTB on the same day it is served on a tenant. The Notice of Termination was posted to the Tenant on 6 October 2025 and emailed to the RTB on the same date. The Tribunal accepts the evidence of Ms Savage in this regard. It was the evidence of Ms Tomic, which evidence is also accepted, that they received the notice in the post box on 7 October 2025. The Tribunal finds that the same day service requirement has been met.

Argutinski v Residential Tenancies Board **[2026] IEHC 225**

The Tribunal has considered the judgment of Argutinski v Residential Tenancies Board in reaching its determination. The Tribunal considers three matters to be of particular relevance.

First, the proceedings concluded with the High Court quashing the Tribunal's determination by consent of the RTB. In those circumstances, the observations contained in the judgment concerning service are properly regarded as persuasive rather than a binding authority.

Secondly, the comments of the High Court in respect of service appear to have been made obiter dicta. The central issue before the High Court concerned the identity and authority of the person who signed the Notice of Termination, rather than the legal principles governing the date upon which service is affected.

Thirdly, and most significantly, the Tribunal is not satisfied that the High Court was addressed on the operation and effect of section 64 of the Residential Tenancies Act 2004. The judgment contains no substantive consideration of that provision. Instead, the observations concerning service appear to proceed by reference to section 25 of the Interpretation Act 2005.

However, section 4 of the Interpretation Act 2005 expressly provides that the interpretative provisions contained in that Act apply only insofar as a contrary intention does not appear in the enactment under consideration.

Section 4 of the 2005 Act provides:

"A provision of this Act applies to an enactment except in so far as the contrary intention appears in this Act, in the enactment itself or, where relevant, in the Act under which the enactment is made."

The Tribunal considers that section 64 of the Residential Tenancies Act 2004 demonstrates such a contrary legislative intention.

Section 64 of the Residential Tenancies Act provides:

> "(1) For the avoidance of doubt, the specification in a notice of termination of a date as being its date of service does not comply with section 62(1)(c) if any relevant step in the service of that notice remains untaken on that date.
>
> (2) A relevant step in the service of a notice remains untaken for the purposes of subsection (1) if any of the steps that are within the power or control of the landlord or tenant or agent (as appropriate) to take for the purpose of effecting such service remains untaken."

In the Tribunal's view, the language of section 64 is clear. The section directs attention to whether every step within the landlord's control necessary to effect service has been completed on the date specified as the date of service. Where the landlord has completed all acts within his or her control by posting the Notice of Termination in accordance with the Act, no further step remains untaken for the purposes of section 64.

This interpretation is reinforced by the structure of the Act as a whole. Where the Act intended legal consequences to flow from actual receipt of a document, it expressly employed the phrase "date of receipt", including in 80 and s.87 of the 2004 Act which deliberately uses a different expression, “the date of receipt”, when determining the limitation period to refer a dispute to the RTB concerning a notice of termination and remedial action taken by a party. Also in section 22(3), concerning the time frame to challenge rent reviews this is stated to be before “the expiry of 28 days from the receipt by the tenant of that notice”.

By contrast, sections governing the service of Notices of Termination employ the distinct expression "date of service". The Tribunal considers that these expressions were deliberately chosen and must be given different meanings. It is a well-established principle of statutory interpretation that where the legislature employs different language in different provisions, it is presumed to have intended different legal consequences.

The Tribunal also notes that the methods of service prescribed by section 6 of the Act do not require service by registered post or any method requiring proof of delivery. That omission is significant. Had it been intended for service to depend upon actual receipt by the recipient, it could readily have required a method of service providing confirmation of delivery, such as registered post. It did not do so.

Accordingly, the Tribunal concludes that where a Notice of Termination is served by post in accordance with the Residential Tenancies Act 2004 (as amended), the relevant date of service is the date upon which the notice is posted, provided that all steps within the landlord's control necessary to effect service have been completed on that date.

For those reasons, the Tribunal is satisfied that the Notice of Termination in the present case was validly served on 6 October 2025 and complies with the requirements of the Residential Tenancies Act 2004 (as amended).

In all the circumstances the Tribunal finds that the Notice of Termination is valid and that the Tenant is overholding. Bearing in mind that the Tenant has been overholding since 21 May 2026, but in recognition of the fact the Tenants have a young family, the Tribunal considers it appropriate to order that the Tenant vacate the dwelling within 56 days of the issue of the Determination Order.

Regarding the return of the deposit, it was the Tenants evidence that they had paid to the Landlord a deposit of €994. Ms Savage was not in a position to confirm this but the Tribunal accepts the Tenant’s’ evidence on the matter.

8. Determination:

Tribunal reference TR0001685

In the matter of Dragan Tomic and Sejla Tomic, Applicant Tenants, and Xerico Limited, Respondent Landlord, the Tribunal, pursuant to section 108(1) of the Residential Tenancies Act 2004, determines as follows:

1. The Notice of Termination dated 6 October 2025, served by the Respondent Landlord on the Applicant Tenants in respect of the dwelling known as Apartment 169 Tí Dháithí, Gleann na Rí, Murrough, Galway, H91 Y166, is valid.
2. The Applicant Tenants, together with any other persons residing in the dwelling, shall vacate and deliver up vacant possession of the dwelling to the Respondent Landlord within 56 days of the date of issue of the Board's Determination Order.
3. The Applicant Tenants shall pay to the Respondent Landlord any rent accruing from 8 July 2026, being the date of the Tribunal hearing, at the contractual rate of €1,115.00 per calendar month, or, where applicable, a proportionate amount calculated at the daily rate of €36.66 (being €1,115 × 12 ÷ 365), unless the rent is lawfully varied in accordance with the Residential Tenancies Act 2004. The Applicant Tenants shall also discharge any other sums properly payable under the tenancy agreement, including any contractual charges lawfully due, until vacant possession of the dwelling has been delivered in accordance with paragraph 2 above.
4. Upon the Applicant Tenants, together with any other persons residing in the dwelling, vacating and delivering up vacant possession of the dwelling in accordance with the Determination Order, the Respondent Landlord shall refund the full security deposit in the sum of €994.00 to the Applicant Tenants, subject only to such deductions as are lawfully permitted under the Residential Tenancies Act 2004.

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



Dervla Quinn
Chairperson
For and on behalf of the Tribunal.