

Press Report on Crosscare/CLM Case

A landlord who claimed his tenant's flat was in such poor repair he would be making a "liar" of himself if he signed a Housing Assistance Payment (HAP) form has been ordered to pay her €10,000 for discrimination.

Upholding a complaint of discrimination on the housing assistance ground under the Equal Status Act, a Workplace Relations Commission (WRC) official said the case was on the "more serious end of the scale".

The landlord had left the woman "stuck in a poverty trap in substandard accommodation" because of his refusal to complete the papers, the official wrote.

An order was made not to identify any of the parties to the case because of the tenant's status as a refugee.

The tenant told the WRC at a hearing last year that the Department of Social Protection wrote to her in June 2018 after she started a job as a care worker to say she was entitled to claim Housing Assistance Payment — a scheme worth more than the rent supplement scheme. She asked her landlord to take the payment around that time but got no response, she said. She said she "repeatedly" asked her landlord to take HAP when he came weekly for the rent.

This went on until December 2018, when the landlord said he would serve eviction notices on all tenants for renovations, she said.

The tenant said her flat was "black with damp" and that the roof would leak when it rained and that although work had been done on the roof, her flat was never fixed.

Although one of her neighbours was evicted, she was never served with notice of termination, nor asked to move flat to facilitate repairs as the landlord claimed in his evidence, she said.

The following summer, she asked her landlord to take the HAP again and received a letter notifying her of a rent increase from €480 to €700 from October 2019 — but stating that HAP would be "acceptable" from that point.

When the tenant sought an increase in rent supplement, the Department of Social Protection refused — telling her the increase was “unlawful” because of the rental cap, the tribunal was told. She sent the HAP form to her landlord in September 2019. He responded that he did not want to accept the form because of the damp in her flat; that it was “not good for her health to live there long-term”, and that he wanted to serve her with a notice of termination, the tenant told the tribunal. She repeated her request towards the end of the year, she said.

A Crosscare representative assisting her asked the landlord in mid-January to complete the form within 10 days but when the complainant asked later if he had filled it out he told her he had “thrown it away”, the tribunal was told.

James Kane, who appeared for the tenant instructed by Community Law & Mediation Northside, said his client’s rent supplement was cut by a routine means test in March 2020 — leaving her paying more towards her rent than she would have been getting via HAP.

Efforts were made to serve the landlord the statutory notification form seeking an explanation for the refusal to take HAP by post, the tribunal heard.

The tenant’s case was that she attempted to deliver the form personally but the landlord refused to accept it and no reply was ever received.

“Because of the condition of the flat I cannot honestly sign this form because I am making myself a liar by signing it,” the landlord told the tribunal. He also expressed concern that if he signed the form and the HAP was stopped because of a failed inspection of the property that he would be “left with a tenant who could not pay her rent for an extended period”.

He said there had been a leak in the tenant’s flat in 2017 and that she had declined an offer to move to another flat in the building for repairs — which he said could not be done without vacant possession. He said that with “frustration setting in” during the “impasse” on the HAP, he suggested she take a neighbouring flat but that she would only agree to take it if a shower and toilet were installed.

“She had no intention of moving flats and wanted to move out altogether. This could only be done by giving notice of termination which would have been viewed as victimisation,” he told the tribunal. He denied the whole building was damp and said damage to the complainant’s flat was the result of two separate leaks.

A surveyor's report submitted in evidence by the landlord's barrister Declan Chambers stated that the current issues "mean the flat will not meet basic housing standards" and that repair works would take two-three months, making it impossible for the tenant to live there for the duration.

In her decision, WRC adjudicating officer Aideen Collard noted that a landlord has recourse to the Residential Tenancies Board if a tenant is not facilitating necessary repairs. She said she would make a determination on the point for "completeness" — and said she preferred the tenant's evidence.

Ms Collard added that the landlord could have asked her to move in the letter informing her of a rent increase in July 2019 and that he could have gone to the RTB about the matter too.

"I am of the view that there were other reasons for the respondent's failure to bring the complainant's flat in line with statutory housing standards," she wrote.

Ms Collard said she found the tenant's evidence "wholly credible" and said that the landlord's "ongoing refusal" to sign the HAP papers "amounts to less favourable treatment than a tenant not so entitled".

She added that there was no onus on a tenant to ensure that a property subject to a HAP application was up to standard and rejected that argument as a defence. She also rejected the argument that discrimination could not have occurred because the tenant had previously been in receipt of housing assistance in the form of rent supplement.

Upholding the complaint, Ms Collard wrote that the discrimination was at the "more serious end of the scale".

"She was effectively stuck in a poverty trap in substandard accommodation," she wrote.

The tenant was left in fear of losing her security of tenure under rent supplement, and her ability to work more hours to increase her income was "significantly curtailed causing financial hardship".

She said the landlord's "recalcitrant attitude and refusal to engage" had aggravated his tenant's difficulties, causing her "financial loss and distress, inconvenience and upset" — amounting to an "affront to her dignity".

She ordered the landlord to pay the tenant €10,000 in compensation, a sum she said included compensation for loss of earnings and the difference in the complainant's €3,127 contribution to the rent during the period. **[Irish Times]**