



Relate

Contents

Page No.

- 1 Housing**
Housing legislation
- 1 Local authority housing**
Arrears on local authority loans or rents and losing local authority housing
- 3 Private rented tenancies**
The legislation applying to private rented accommodation and the role of the Private Residential Tenancies Board
- 8 Other housing developments**
Long-term leasing and the social housing leasing initiative

The journal of developments in social services, policy and legislation in Ireland

Housing

The problems faced by people who are having difficulties paying their mortgage are examined in the *Relate* special edition on mortgage problems, February 2010. In this issue we look at some recent developments in housing and at the situation as it applies to people in local authority housing or in private rented accommodation.

Housing legislation

The legislation governing local authority housing and social housing options is now very complex. The Housing Act 1966 remains the principal legislation on local authority housing. It has been amended on numerous occasions and a number of other relevant Acts have been passed. The most recent legislation – the Housing (Miscellaneous Provisions) Act 2009 – is very long and it amends or replaces sections of a large number of Acts as well as introducing totally new provisions. This Act also amends the Residential Tenancies Act 2004 which sets out the rules in relation to the private rented sector. Parts of the 2009 Act have not yet been implemented.

Local authority housing

Local authority loans

If you have a loan from a local authority for buying or improving your house, you may face the same mortgage repayment problems as people with commercial loans. The rules and codes of practice for mortgage arrears which are described in the *Relate* special edition on mortgage problems apply to loans from banks and building societies. They do not apply to loans from local authorities.

The law in relation to defaults on local authority loans is contained in Section 11 of the Housing (Miscellaneous Provisions) Act 1992. This allows the local authority to repossess your home if you default on the loan. It also allows the local authority to make such monetary arrangements with you as it considers equitable to take account of your particular circumstances. In effect, this means that if you are having problems paying your local authority mortgage, you should approach the local authority to see if you can make an arrangement to facilitate you paying over a longer term or to restructure the mortgage in some other way.

Each local authority deals with such cases in its own way. There are no national guidelines at present but the Department of the Environment, Heritage and Local Government is currently developing guidelines "to ensure that cases of local authority mortgage arrears are handled in a manner that is sympathetic to the needs of the particular household, while also protecting the position of the local authority concerned". These guidelines will be based on the Financial Regulator's code of conduct for banks and building societies – see *Relate* special edition on mortgage problems, February 2010.

The Housing (Miscellaneous Provisions) Act 2009 provides that where you owe money to a local authority either for rent or loan repayments and the local authority is satisfied that you would otherwise suffer undue hardship, it may make an arrangement with you to repay by instalments. This section (Section 34) of the Act is not yet in force.

Over the five years 2005–2009, 66 houses were repossessed for non-payment of local authority loans; seven of these repossessions were voluntary. The repossession process is the same as the repossession process in the case of default on commercial mortgages.

Local authority rents

If you are renting a local authority house, the amount of your rent is related to your income. So, theoretically at least, you should not have a major difficulty in paying the rent. If your income changes you should notify the local authority to recalculate your rent. Nevertheless, people in local authority housing may have difficulties and may allow rent arrears to accumulate.

Local authority tenants generally have a tenancy agreement which sets out their obligations in relation to payment of rent and maintenance of the dwelling. In general, the local authority is responsible for structural repairs while you are responsible for redecoration and upkeep of the garden. The minimum standards for rented accommodation are now broadly the same for local authority rented accommodation as for the private rented sector (see page 7).

Amount of rent

Each local authority is responsible for drawing up a rent scheme. The Department of the Environment, Heritage and Local Government has set out the broad principles to apply to such schemes (circular letter HRT 3/2002). The Minister has said that it is not his intention to implement a national standardised differential rent scheme. He does intend to use the new provisions in the Housing (Miscellaneous Provisions) Act 2009 to make regulations later in 2010 which will "more clearly set out the matters that may be included in a local rents scheme". This Act gives the Minister the power to make regulations on the matters to be included in a rent scheme.

In general, rent schemes take account of all household income. In general, weekly social welfare payments are taken into account. Some social welfare payments, Child Benefit for example, are not likely to be considered but there are different practices in relation to, for example, whether or not Family Income Supplement is taken into account.

Rent schemes may allow for a rent reduction in cases of hardship. For example, the Dublin City Council scheme provides that where there are exceptional circumstances, the rent otherwise payable may be reduced by 50% for a six-month period.

The local authority may require new tenants to use the Household Budget Scheme for the payment of rent. This should help ensure that arrears do not build up.

Losing your local authority rented dwelling

It is not the practice of local authorities to seek to evict tenants. However, you may be evicted for breaching your tenancy agreement or for anti-social behaviour.

Repossession

Section 62 of the Housing Act 1966 provides for the repossession of local authority rented dwellings. It covers a range of situations, including where the property has been abandoned. In the case of a breach of the tenancy agreement, such as the non-payment of rent, the following procedure applies: the council serves a notice to quit and gives the tenant the statutory minimum notice of 28 days. Subsequently, a demand for possession is made and, if possession is not granted, the council applies to the District Court for a warrant for possession.

Consequences of failure to pay rent

The Housing (Miscellaneous Provisions) Act 2009 provides that a household is not eligible for social housing support if:

- At any time during the three years before the carrying out of the social housing assessment, the household or a member of the household was in arrears of rent for an accumulated period of 12 weeks or more in respect of any local authority rented dwelling or site and
- The local authority has not entered into an arrangement with the household or the member concerned for the payment of the arrears.

This section of the Act is not yet in force.

Anti-social behaviour

The Housing (Miscellaneous Provisions) Act 1997 as amended provides that you may be evicted from a rented local authority house for anti-social behaviour. This means being involved in drug dealing or any behaviour that might cause danger, injury, damage or fear to people living in the area, including violence, threats, intimidation, harassment or serious obstruction. It also includes behaviour which causes any significant or persistent impairment of people's use or enjoyment of their home, or damage to any property or defacement of it by writing or other marks. The Act provides for evidence of anti-social behaviour to be given to the court by the Gardaí, the local authority or the Health Service Executive (HSE) where other possible witnesses might be intimidated.

If you are the tenant, you may apply for an exclusion order against a member of your household who is engaging in anti-social behaviour.

The local authority or housing associations who provide social housing may apply to the District Court for an exclusion order against any member of a household who is engaging in anti-social behaviour.

The order may exclude you from a specific house or from an entire estate and it may forbid intimidation or other interference with a tenant or anyone else.

A local authority may refuse to let a dwelling or sell one under the Tenant Purchase Scheme on the grounds of anti-social behaviour.

The HSE may refuse or withdraw Rent Supplement for a private rented dwelling if you were evicted, excluded or removed from local authority housing on the grounds of anti-social behaviour.

By 1 December 2010, all local authorities must have drawn up an anti-social behaviour strategy for local authority estates. At present, many local authorities have policy statements on anti-social behaviour and these policies are usually implemented in conjunction with Housing Welfare Officers.

Rental Accommodation Scheme

The Rental Accommodation Scheme (RAS) gives local authorities responsibility for meeting the longer-term housing needs of people receiving Rent Supplement for 18 months or more. Between 2004 and November 2009, local authorities had transferred almost 9,000 recipients of Rent Supplement to private sector RAS accommodation and another 4,000 to voluntary sector RAS accommodation. Another 11,000 had been transferred to other social housing options. It is hoped to transfer a further 8,000 in 2010. Tenants in RAS accommodation pay rent on the same basis as local authority tenants.

The scheme has been put on a statutory basis by the Housing (Miscellaneous Provisions) Act 2009. It provides that the duties of tenants under the RAS are broadly the same as those of tenants in private rented dwellings – see page 4. It also provides for the ending of the tenancy if the rent is not paid and for anti-social behaviour.

Private rented tenancies

The law in relation to private rented tenancies is now mainly contained in the Residential Tenancies Act 2004. This has been amended by the Housing (Miscellaneous Provisions) Act 2009. These changes came into effect in July 2009. Further changes are expected to be introduced in 2010 – see page 7.

The Act applies to most dwellings which are rented in the private rented sector. The Housing (Miscellaneous Provisions) Act 2009 provides that it does not apply to a tenancy where the term is greater than 35 years. This was to clarify the situation of people buying apartments by means of long leases.

Renting a dwelling involves a contract between the landlord and the tenant. The terms of the contract may be agreed between the two but those terms may not exclude the rights which the tenant has under the Residential Tenancies Act 2004. In effect, the Act sets out the minimum legal obligations which the landlord and tenant have towards each other. These obligations apply whether or not there is a written tenancy agreement. They may agree other obligations as part of the tenancy.

If you are a landlord, you must:

- Allow the tenant enjoy peaceful and exclusive occupation of the dwelling.
- Maintain the structure of the rented dwelling to the standard required under the Housing (Miscellaneous Provisions) Act 1992 (see page 7) and maintain the interior at least to the standard which existed at the start of the tenancy.
- Insure the dwelling (including liability insurance of up to at least €250,000). This obligation does not apply if it is not possible to get insurance or to get it at a reasonable cost.
- Give the tenant information about any person who is authorised to deal on your behalf and make sure the tenant is able to contact you or your agent at reasonable times.
- Return or repay any deposit (unless the tenant has not paid the rent or has caused damage to the dwelling).
- Reimburse tenants for expenditure on repairs which you should have carried out.
- Make sure that the tenants fulfil their obligations – for example, to their neighbours or other third parties. Third parties may go to the Private Residential Tenancies Board to ensure that this is done.
- Not penalise a tenant for taking action to enforce his/her rights.
- Provide suitable receptacles for refuse.

If you are a tenant, you must:

- Pay the rent and any other charges which are specified in the letting agreement. The agreement may specify that you have to pay, for example, local authority service charges and/or management fees to the management company in an apartment complex. The arrangements for these charges are a matter for negotiation between you and the landlord.
- Ensure that anything you do or fail to do will not cause the landlord to be in breach of his or her obligations.
- Allow the landlord reasonable access to inspect the dwelling or carry out any necessary repairs.

- Notify the landlord of any repairs which are required.
- Do nothing to cause the dwelling to deteriorate beyond normal wear and tear and, if it does, to make good such damage.
- Not engage in or allow anti-social behaviour.
- Not act or allow others to act in violation of the terms of an insurance policy covering the dwelling. If you do something which causes the insurance premium to be increased, you may have to pay the extra costs involved.
- Not assign, sublet, alter, improve or change the dwelling without the written consent of the landlord. The landlord may not unreasonably refuse consent to changes or improvements which involve only repairing, painting or decorating.
- Not use the dwelling as anything other than a dwelling without the written consent of the landlord.
- Tell the landlord who is living in the dwelling.

Rent

The amount of the rent is to be negotiated between the landlord and tenant and the tenant is obliged to pay this. The Act provides that the rent may not be more than the open market rate. This is defined as "the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling".

The rent may not be reviewed more than once a year unless there is a substantial change in the nature of the accommodation. Either side may look for a rent review. Disputes about the amount of the rent or any arrears of rent may be referred to the Private Residential Tenancies Board (PRTB) for resolution. The landlord must give the tenant at least 28 days' notice of intention to increase the rent and the tenant may then refer the matter to the Board. The reference to the PRTB must be made before the date on which the new rent is stated to take effect or within 28 days of getting the notice, whichever is later.

Security of tenure

Basically, the Act provides that tenants may have security of tenure for four years provided they keep the terms of the contract. All tenancies are deemed to end after four years. The tenants may continue to occupy the premises but they are then considered to have a new tenancy. Landlords are able to end a tenancy during the first six months without giving any reason.

After that, tenants have the right to remain for a further three and a half years – you must give your landlord notice of your intention to stay on beyond the fixed term of your lease. These provisions are in Part 4 of the Act so a tenancy which is in existence for more than six months is known as a *part 4 tenancy*. If you continue to be the tenant at the end of the four years – by agreement with the landlord – you have a *further part 4 tenancy*.

This right to remain is subject to certain rights which the landlord continues to have. The landlord is entitled to reclaim the property for a number of reasons – if he or a member of his family wants to occupy it or if he wants to sell it or change its use or undertake a major refurbishment. The right to remain is also, of course, subject to the tenants keeping their obligations under the tenancy agreement. If the landlord ends the tenancy on grounds which subsequently prove to be false, the tenants may claim compensation from the PRTB of up to €20,000. The landlord may end your tenancy if:

- You have not complied with any of the terms of the agreement.
- The dwelling is no longer suitable for your accommodation needs.
- The landlord intends to sell the property within three months.
- The landlord needs the property for his/her own use or for the use of a member of his family. In this case, the landlord must give you a statement which specifies who is to occupy the dwelling and for how long and that he is obliged to offer you a tenancy in the dwelling if the person leaves it within six months.
- The landlord intends to substantially refurbish or renovate the dwelling. Again, you must be told about the landlord's plans and you must be told that you are entitled to be offered a tenancy if the dwelling becomes available for reletting.
- The landlord intends to change the use of the dwelling.

Tenants may end the tenancy at any time but must give the required notice.

Length of tenancy	Notice by tenant
Less than 6 months	4 weeks (28 days)
6 months to a year	5 weeks (35 days)
1–2 years	6 weeks (42 days)
2 or more years	9 weeks (56 days)

If a tenant sublets, then the sub-tenant's rights are the same as those of the original tenant – the sub-tenant has the right to remain for whatever part of the four-year period is left.

If the tenancy is assigned (transferred with the landlord's consent), then a new tenancy may be created. The Act has provisions dealing with multiple tenancies – for example, it provides that one tenant may be removed without interfering with the rights of the other tenants.

Tenants must be given notice of the ending of a tenancy regardless of the reason. The length of notice varies with the length of the tenancy.

Length of tenancy	Notice by landlord
Less than 6 months	4 weeks (28 days)
6 months to a year	5 weeks (35 days)
1–2 years	6 weeks (42 days)
2–3 years	9 weeks (56 days)
3–4 years	12 weeks (84 days)
4 years or more	16 weeks (112 days)

Shorter notice may be given if the tenants are not keeping their obligations (28 days) or if there is serious anti-social behaviour (7 days). Disputes about notice may be referred to the Private Residential Tenancies Board.

Private Residential Tenancies Board

The main function of the Private Residential Tenancies Board (PRTB) is to provide a statutory dispute resolution service. It is also responsible for tenancy registration, research, and the provision of information, policy advice and guidelines in relation to the private rented residential sector.

The PRTB *Annual Report 2008* shows that there were over 206,000 tenancies registered with the Board in 2008; this involved almost 101,000 landlords and over 350,000 tenants.

Dispute resolution

The PRTB has the power to deal with a wide range of disputes between landlords and tenants and issues involving third parties. It has detailed procedural rules for the dispute resolution procedure; the latest were issued in August 2009.

The Board has a two-stage dispute resolution system. Initially, if both parties agree to the use of a mediator, a mediator tries to resolve the issues. If mediation is not agreed or if it fails, an adjudicator investigates, hears both sides and makes a determination. Mediation and adjudication proceedings are conducted in private.

Mediation results are available only to the parties; the adjudicator's report is available only to the parties but determination orders issued following adjudication are published on the PRTB website; these orders deal with the outcome and do not set out the facts of the case.

The dispute can go to a Tenancy Tribunal if either side rejects the adjudicator's decision. The PRTB may refer a dispute directly to the tribunal if it considers other options not appropriate (there were six such cases in 2008). The tribunal is a panel composed of three people who must be members of the Board's dispute resolution committee, at least one of whom must be a member of the Board. The tribunal's hearings are held in public. You can be legally represented but there is limited provision for the award of costs and expenses. The landlord or tenant can be charged with the costs of the PRTB – this seems to happen if the party does not turn up to the arranged hearing.

The tribunal decision is binding on the parties and is enforceable through the Circuit Court. The tribunal has considerable scope about decisions; for example, it may decide to reinstate a tenant. However, if there is another tenant in place, it may decide to grant compensation instead. Its proceedings are in public and its decisions are published. These decisions set out the facts involved and are similar to court decisions.

The Board or the aggrieved party may apply to the Circuit Court for enforcement. Either side may appeal to the High Court on a point of law.

An application for dispute resolution costs €25. An application to the Tenancy Tribunal costs €40.

In 2008, there were over 1,600 applications for dispute resolution; nearly 70% of these were from tenants; 3% were from third parties, that is, neighbours looking for redress. The largest category related to retention of deposits (43%) with arrears of rent being the next largest. In 76% of the case involving retention of deposits, it was determined that the landlord should refund either all or part of the deposit.

Paying rent during the dispute process

You remain legally obliged to pay your rent while you are engaging in the dispute resolution process. However, a landlord cannot terminate a tenancy during the dispute process, even for non-payment of rent. This can result in situations where a tenant can remain in occupation without paying rent until the dispute resolution process is complete.

Registration

Landlords are required to register all tenancies with the PRTB. New tenancies must be registered within a month of being created. The PRTB has forms for registration. Formerly, registration forms had to be signed by the landlord or the landlord's agent and by the tenant; since July 2009, signatures are no longer required. Online registration is expected to become available in 2010.

The landlord and tenant are each given a registration number which must be used in any dealings with the Board.

The Board maintains a publicly available register but this does not show the identity of the landlord or the tenants nor the amount of the rent. The Board then gives the necessary details to the local authorities so that they may enforce the standards and rent book regulations. The Board may also exchange information with the Department of Social and Family Affairs and the Revenue Commissioners.

It costs €70 to register a tenancy or €300 if a landlord is registering a number of tenancies in the same building at the same time. If the registration is late, the cost is €140 for each tenancy. The PRTB gives some of this to the local authorities to fund their enforcement activities in respect of rent books and standards.

If the tenants remain after the four-year tenancy is over, a new tenancy must be registered. Landlords who fail to register may be fined up to €3,000 and face imprisonment for up to six months. A further penalty of €250 for each day of non-registration may be levied.

A tenancy must be registered with the PRTB before the landlord can avail of the Board's dispute resolution service. This restriction does not apply to tenants wishing to avail of the service.

Website: www.prtb.ie

Review of the legislation

The Residential Tenancies Act 2004 has been criticised by the courts. In one case (*Canty v PRTB [2007] IEHC 243 8 August 2007*), a High Court judge described the Act as "an extremely complex piece of legislation" and said that the rules governing the ending of a part 4 tenancy were very technical and confusing. When that same case went to the Supreme Court (30 April 2008), the drafting of part of the Act was criticised; the court said the meaning of one section was obscure.

The Act has been reviewed by the Department of the Environment, Heritage and Local Government and the Minister has said that he intends to introduce amending legislation during 2010. The Minister said that “the current legislation is complicated and does not always best support the PRTB in the speedy delivery of its services”. The amending legislation is expected to provide for, among other things:

- A statutory objective of six months for the issuing of determination orders
- The introduction of fixed fines where deposits are illegally retained by landlords
- Measures to address non-payment of rent by tenants during a dispute process, in particular to introduce scope for the legal ending of such a tenancy
- Measures to encourage the greater use of mediation as a means of settling disputes
- The simplification of procedures in general, including those for the registration and ending of tenancies
- The inclusion within the remit of the Act of those parts of the voluntary and co-operative housing sector that most closely parallel its current remit, that is, standard social housing but not, for example, sheltered housing

Rent Supplement

If you are living in private rented accommodation and you have difficulty in paying your rent, you may become eligible for Rent Supplement. This is payable by the Community Welfare Officer at your local health centre.

There are currently over 93,000 tenants receiving Rent Supplement. This is an increase of almost 26% since the end of 2008. Over 35,000 or 38% have been in payment for 18 months or more.

You may qualify if, within the previous 12 months, you have been assessed by a local authority as being in need of social housing support.

Alternatively you may get Rent Supplement if you have been living for at least six of the last twelve months in one, or a combination, of the following:

- Accommodation for homeless people
- Private rented accommodation (you must be able to show that you could afford the rent at the beginning of your tenancy and that you could have continued to pay rent but are unable to do so because of a change in your circumstances which occurred after you started renting)
- An institution, for example, a hospital, care home or place of detention

Rent Supplement is calculated to ensure that, after the payment of your rent, you have an income that is not below the weekly rate of SWA appropriate to your family circumstances less €24.

The accommodation for which you are claiming the supplement must be suitable for your needs and the rent must be below the maximum rent level set for your county or area.

The means test and other conditions are the same as for the Mortgage Interest Supplement – see *Relate* special issue on Mortgages, February 2010.

Standards in rented accommodation

The Housing (Miscellaneous Provisions) Act 1992 provides for the setting of minimum standards for rental accommodation. These standards are set out in the Housing (Standards for Rented Houses) Regulations 2008 (SI 534/2008) – they are described in the April 2009 issue of *Relate*. With very limited exemptions, these regulations apply to local authority and voluntary housing units, as well as private rented accommodation. The regulations specify requirements in relation to a range of matters, such as structural repair, absence of damp and rot, sanitary facilities, heating, ventilation, natural light and safety of gas and electrical supply.

Amendments to these regulations came into effect in December 2009 (SI 462/2009). They are mainly concerned with enforcement but they also provide for a new definition of a “proper state of structural repair” and for standards for external areas, including gardens. A proper state of structural repair is defined as sound, internally and externally, with the following maintained in good condition and repair and not defective due to dampness or otherwise: roof, roofing tiles and slates, windows, floors, ceilings, walls, stairs, doors, skirting boards, fascia, tiles on any floor, ceiling and wall, gutters, down pipes, fittings, furnishings, gardens and common areas.

Improvement notice

A local authority may serve an improvement notice on a landlord who has contravened or is contravening the legislation on standards. This notice identifies the problem and directs the landlord to remedy the contravention within a specified period. There are provisions for objections and appeals by the landlord.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

Head Office

Ground Floor t + 353 1 605 9000
George's Quay House f + 353 1 605 9099
43 Townsend Street e info@ciboard.ie
Dublin 2 w www.citizensinformationboard.ie

Prohibition notice

If the landlord fails to comply with an improvement notice, the local authority may serve a prohibition notice. This prohibits the landlord from re-letting the dwelling until the problem has been addressed. There are provisions for appeal by the landlord to the District Court. It is an offence to operate in contravention of these notices. The maximum penalty is a fine of up to €5,000 and/or six months' imprisonment and €400 a day for each day of a continuing offence. The landlord may also have to pay the local authority's costs.

Other housing developments

Long-term leasing

The social housing leasing initiative started in February 2009. Since then, nearly 2,000 dwellings have been approved for lease while nearly 500 are actually leased.

The initiative involves a number of different strands. One option is that local authorities lease vacant and unsold affordable housing units to approved housing bodies, for a fixed period of five years, with the units concerned being made available to households eligible for social housing support.

At the end of the five-year lease period, the local authority may:

- Sell the unit to the existing tenant under the incremental purchase arrangements
- Sell the home as an affordable unit
- Extend the leasing arrangement for a further period of up to five years, or
- Take the unit into its housing stock and continue to rent it to the household concerned

At the end of the lease period, if the unit is not sold to the tenant or taken into the social housing stock, it will be the responsibility of the housing authority to meet the ongoing social housing need of the household concerned.

The criteria and methodology for choosing properties for leasing purposes are set out in a number of circulars from the Department of the Environment, Heritage and Local Government. Lease payments are guaranteed for the term of the lease in question.

The 2008 housing needs assessment shows that there are over 56,000 households on waiting lists across the country.

Discussions have been taking place between a number of agencies on the question of the long-term leasing of unoccupied houses. The agencies involved include the voluntary and co-operative housing bodies, the banks and the National Asset Management Agency (NAMA). There does not seem to have been significant progress on this. The Department of the Environment, Heritage and Local Government is not directly involved but it did develop a set of principles to help the parties. These were agreed by the Irish Council for Social Housing, the City and County Managers' Association and the members of the Irish Banking Federation.

keepingyourhome.ie

keepingyourhome.ie is an online resource from the Citizens Information Board and the Money Advice and Budgeting Service (MABS). It provides more information on the services and entitlements available if you are having difficulties making your mortgage repayments or paying your rent.

Citizens Information

LOG ON
www.citizensinformation.ie

LO-CALL
1890 777 121 Open Mon to Fri, 9am to 9pm

DROP IN
For your local centre see [Golden Pages listing](#)