



Relate

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Residential tenancies legislation

The Residential Tenancies Acts 2004 to 2019 are the primary pieces of legislation which govern the relationship between residential landlords and tenants in Ireland. Many of the terms and conditions of any tenancy are set out in these pieces of legislation, as well as in the lease agreement between a landlord and a residential tenant. Where a lease and the legislation come into conflict, it is generally the case that the legislative provision prevails.

On 24 May 2019, the Residential Tenancies (Amendment) Act 2019 was enacted. It contains some significant reforms of the existing law in this area and builds on the changes introduced by the Residential Tenancies (Amendment) Act 2015 and the Planning and Development (Housing) and Residential Tenancies Act 2016. The 2016 Act included the introduction of rent pressure zones (RPZs), restrictions on rent increases in these RPZs, and the extension of Part 4 tenancies from four years to six years.

Although many of the new provisions in the 2019 Act have been commenced, some have not yet come into effect. Consolidated versions of the 2004, 2015 and 2016 Acts are available on the Law Reform Commission's website, lawreform.ie.

Related changes have also been introduced to planning legislation in the 2019 Act and supplemented by the Planning and Development Act 2000 (Exempted Development) (No. 2) Regulations 2019 to deal with the phenomenon of short-term lettings (where properties are let for periods of no longer than 14 days). These changes apply only to properties in RPZs and came into force on 1 July 2019.

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Residential Tenancies Act 2004

The Residential Tenancies Act 2004 reformed the rules governing private tenancies. It codified many of the rights and obligations of landlords and tenants. It included provisions for setting rents and carrying out rent reviews.

It also introduced the concept of *Part 4 tenancy*, which provides automatic security of tenure protection to tenants who have occupied certain dwellings under a tenancy for more than six months. Many significant changes have been made to the rules surrounding Part 4 tenancies in recent years, which are outlined below.

The 2004 Act also established the Private Residential Tenancies Board (PRTB) whose responsibilities include hearing and resolving disputes between landlords and tenants in the private rented sector and also operating a system of tenancy registration. In April 2016, the remit of the PRTB was extended to include approved housing bodies and it was renamed the Residential Tenancies Board (RTB).

In addition, the 2004 Act prohibited the practices of having rent reviews more than once every 12 months and setting rents above the market rate.

Residential Tenancies (Amendment) Act 2015

The Residential Tenancies (Amendment) Act 2015 introduced a number of changes, aimed generally at protecting tenants. These included:

- Limits on the frequency of rent reviews
 - Until December 2019, rent reviews could be conducted only once every 24 months unless there was a substantial change in the nature of the accommodation which affected market rent (such as a significant renovation)
 - On 4 June 2019, this 24-month limit was extended to the end of 2021 for properties outside RPZs (properties within RPZs can generally have rent reviews once every 12 months)
- Changes to notice periods for terminating Part 4 tenancies and a requirement that a landlord provide additional proof in certain circumstances when terminating a Part 4 tenancy
- Bringing approved housing bodies within the remit of the RTB for the first time
- Making available many, although not all, of the rights under the 2004 Act to tenants of approved housing bodies, including those related to Part 4 tenancies
- Allowing enforcement of RTB orders to take place in the District Court rather than the Circuit Court, thus reducing costs

The 2015 Act also sought to introduce a security deposit retention scheme which would oblige landlords to transfer tenants' security deposits to the RTB. This aspect of the 2015 Act has never come into force.

Planning and Development (Housing) and Residential Tenancies Act 2016

The Planning and Development (Housing) and Residential Tenancies Act 2016 provided for a number of additional changes. The provisions that were brought into force included:

- Measures to prevent landlords simultaneously serving termination notices on large numbers of residents in a single development, known as the 'Tyrrelstown' amendment
- Extending the tenancy cycle for Part 4 tenancies from four years to six years
- Creating rent pressure zones (RPZs). In these areas rent increases were capped until the end of 2019. RPZs are areas where rents are highest and rising quickly.
- Changes to the frequency of rent reviews in RPZs
- Simplified procedures for dispute resolution
- Requirement for a landlord to give a reason when terminating a Further Part 4 tenancy in the first six months (see page 3)

Residential Tenancies (Amendment) Act 2019

The Residential Tenancies (Amendment) Act 2019 makes further important changes affecting tenants' rights, including:

- New notice periods for landlords for the termination of tenancies
- Changes to notice procedures and obligations
- The extension of existing RPZs from the end of 2019 to the end of 2021
- Updated criteria for the designation of RPZs
- Providing a legal definition of 'substantial change' for the purpose of allowing a rent increase above the percentage allowed in an RPZ
- Enhanced investigation and sanctioning powers for the RTB
- Treating certain student accommodation in a similar way to tenancies that are covered by the Residential Tenancies Acts

It also made a proposal requiring landlords to register annually with the RTB and pay an annual registration fee.

Provisions of the Residential Tenancies Acts 2004 to 2019

Security of tenure

Residential tenancies generally begin as fixed-term tenancies (which are for a defined period, such as one year) or periodic tenancies (which run weekly or monthly and have no fixed end date).

However, due to changes initially brought into effect under the 2004 Act, many tenants have much greater security of tenure under what is known as a Part 4 tenancy. Most private rental arrangements can become a Part 4 tenancy.

However, if a tenancy relates to a self-contained apartment in the same property where your landlord lives, the landlord can opt out of the provisions of Part 4. Some accommodation cannot become a Part 4 tenancy. For example, if you rent a room in the same property that your landlord (or their family member) lives in, you are not entitled a Part 4 tenancy.

Certain types of accommodation provided by approved housing bodies (AHBs), such as hostels, fall outside the scope of Part 4 tenancies. AHBs are independent, not-for-profit organisations that provide rented accommodation to people who cannot afford to purchase a home or to pay rent in the private sector. AHBs are also known as 'housing associations' or 'housing cooperatives'. AHB accommodation may be designated for specific vulnerable groups such as older people or homeless people.

What is a Part 4 tenancy?

If you have been renting a property continuously for at least six months and have not been served with a valid written notice of termination during that period, in general you automatically acquire security of tenure and can stay in the property for a number of years.

- If your tenancy started on or before 24 December 2016, this period is four years.
- If your tenancy started after 24 December 2016, this period is six years.

If you have a fixed-term contract or lease and you wish to remain in the property under the rights acquired under Part 4, you should notify your landlord of your intention to stay in the property. You must do this between three months and one month before the expiry of your fixed-term tenancy or lease agreement.

If you do not notify your landlord, you cannot be refused coverage under Part 4. However, you may have to compensate the landlord for any financial loss that they incur because you did not notify them of your intention to remain in the tenancy.

At the end of the Part 4 period

After the first cycle (four years or six years, depending on when the tenancy began) your Part 4 tenancy ends. Then a new tenancy begins, unless your landlord has provided you with the necessary notice of termination before the end of this tenancy. You now have a Further Part 4 tenancy.

This Further Part 4 tenancy now runs for a period of six years. Previously, a landlord could end this Further Part 4 tenancy at any time in the first six months without having to provide a valid reason. However, a landlord can now end the Further Part 4 tenancy only in certain defined circumstances.

When the Further Part 4 tenancy ends, another Further Part 4 tenancy automatically comes into operation in an identical manner with identical rights.

Grounds for a landlord ending a Part 4 tenancy or a Further Part 4 tenancy

A landlord can terminate a Part 4 tenancy or a Further Part 4 tenancy only in one of the following six circumstances:

1. A breach of the lease by the tenant, which is capable of being remedied but which has not been remedied.
2. The property becomes unsuitable for the needs of the tenant(s).
3. The landlord wishes to sell the property within nine months of the termination date. (However, this reason may not apply if the landlord plans to sell 10 or more dwellings in a development within a six-month period.)
4. The landlord requires the property for personal use or for use by a family member. Family use is defined as use by a spouse, civil partner, child, step-child, foster child, grandchild, parent, grandparent, step-parent, parent-in-law, brother, sister, nephew, niece or person adopted by the landlord under the Adoption Acts.
5. Significant refurbishment of the property which requires the property to be vacated. If the landlord wishes to lease it again, the refurbished property must be first re-offered to the tenant, when the works are completed.
6. Changes to the use of the property (for example, from a residential to a commercial letting).

Where a tenancy is ended on the basis of letting to a family member, a substantial refurbishment or a change in use, a landlord must offer the property back to the tenant who left the property if the relevant ground ceases to apply within one year of the tenancy ending (or within six months for tenancies which ended before 4 June 2019).

Details of what must be contained in the written notice of termination for each particular ground are set out on the RTB's website: onestopshop.rtb.ie/ending-a-tenancy/how-a-landlord-can-end-a-tenancy/landlords-grounds-for-ending-a-tenancy.

In addition, a landlord is now obliged to provide a copy of the notice of termination which states one of the grounds for ending the tenancy to the RTB. This must be submitted within 28 days of the date that the tenancy ends.

There are also changes to the notice periods for the termination of a tenancy by a landlord.

Duration of tenancy	Old notice period	New notice period
Less than 6 months	28 days	28 days
6 or more months but less than 1 year	35 days	90 days
1 year or more but less than 2 years	42 days	120 days
2 years or more but less than 3 years	56 days	120 days
3 years or more but less than 4 years	84 days	180 days
4 years or more but less than 5 years	112 days	180 days
5 years or more but less than 6 years	140 days	180 days
6 years or more but less than 7 years	168 days	180 days
7 years or more but less than 8 years	196 days	196 days
8 or more years	224 days	224 days

There are no changes in the notice periods for termination by a tenant.

Remedial notices of termination of a tenancy

The 2019 Act introduced the concept of remedial notices of termination to deal with situations where there is an error in the notice of termination. For example, if a landlord or tenant provides incorrect dates in the notice to terminate the tenancy.

When an RTB Tenancy Tribunal determines that a mistake has been made, the landlord or tenant then has 28 days to serve the remedial notice, which corrects the error.

Rent pressure zones (RPZs)

RPZs are areas where rents are highest and rising quickly. An area must meet certain criteria to become an RPZ. This criteria was changed in the 2019 Act. You can find out more about the criteria used to designate an RPZ at onestopshop.rtb.ie/new-changes-to-rental-legislation/new-rent-pressure-zone-criteria. The 2019 Act also extended RPZ designations until 31 December 2021.

An estimated 65% of people renting residential property now live within RPZs. The following electoral areas are designated as RPZs:

Dublin	Limerick
• Dublin City	• Limerick City East
• South Dublin	• Limerick City North*
• Dún Laoghaire/Rathdown	• Limerick City West*
• Fingal County Council	Louth
Cork	• Ardee*
• Ballincollig-Carrigaline	• Drogheda
• Cobh	• Dundalk-Carlingford*
• Cork City Council	• Dundalk South*
• Fermoy*	Meath
• Midleton*	• Ashbourne
Galway	• Kells*
• Athenry-Oranmore*	• Laytown-Bettystown
• Galway City	• Navan
• Galway City East	• Ratoath
• Galway City West	• Trim*
• Gort-Kinvara*	Waterford
Kildare	• Waterford City South*
• Celbridge-Leixlip	• Waterford City East*
• Maynooth	Westmeath
• Naas	• Athlone*
• Newbridge	Wexford
Kilkenny	• Gorey*
• Kilkenny*	Wicklow
Laois	• Arklow*
• Graiguecullen-Portarlinton*	• Bray
• Portlaoise*	• Greystones
	• Wicklow

* These areas were designated RPZs on 2 July 2019 using the amended criteria.

Setting new rents

Rent reviews of private properties outside RPZs

If you live outside an RPZ, the rent for a property can be reviewed only once every 24 months. This rent certainty measure is in place until 31 December 2021. Any attempt by a landlord to increase rent before the 24 months have passed is invalid. Previously, rents could be reviewed once every 12 months – and this may become the case again after 31 December 2021, if no further extension is included in legislation.

Before the rent can be increased, a landlord must provide at least 90 days' notice of the new rent. This notice must state the amount of the new rent and the date the new rent will take effect. New Notice of Rent Review prescribed forms have been in effect since 1 July 2019 and are available to download on the RTB's website, rtb.ie.

A landlord cannot charge more than the 'market rent', which is the going rate for similar accommodation in the area.

Rent reviews of private properties in RPZs

New tenancies in an RPZ

For a new tenancy in an RPZ (starting on or after 24 December 2016), the landlord can review the rent once every 12 months. The maximum rent increase is 4% per year. This means that if more than one year has passed since the last rent review, a total rent increase of more than 4% is permitted.

For example, if a new tenancy began on 1 January 2018 with rent fixed at €1,000 and a rent review proposed increasing it from 1 July 2019 (18 months after the rent was fixed), the rent could increase by a maximum of 6%. The new rent rate could be a maximum of €1,060 (provided the landlord had served a valid notice of a rent review). The RTB provides a rent increase calculator on its website, rtb.ie/calculator/rpz.

The landlord must give the tenant the following information, in writing, at the start of the tenancy:

- The amount of rent that was last set for the property under a tenancy
- The date the rent was last set for the property
- A statement as to how the rent set for the property has been calculated, having regard to the RPZ formula

The rent being set should not be more than market rents for similar properties in the area. To demonstrate this, the landlord must provide three comparable examples for similar properties in the locality or in similar areas.

Existing tenancies in an RPZ

In existing tenancies (starting before 24 December 2016) in an RPZ, the first rent review can take place after 24 months from the start of the tenancy or 24 months from the date you were notified in writing of your last review. The maximum rent increase is 2% per year since the previous rent was set.

For example, if the rent is reviewed after the minimum 24-month period, the maximum rent increase is 4%. If more time has passed since the previous rent was set, the maximum rent increase is higher (2% per additional year up until 2016). Subsequent rent reviews can take place after 12 months and must adhere to the RPZ rules set out above for new tenancies.

Exemptions to the RPZ regulations

Rent can only be increased above the maximum annual percentages for:

- Tenancies in protected structures or proposed protected structures that have not been let in the previous year
- Other properties that have not been let at any time in the previous two years
- Properties that have been substantially changed

The 2019 Act introduces a definition of what amounts to a substantial change. A substantial change is any of the following:

- A permanent extension which increases the floor area of the dwelling by at least 25%
- An improvement which increases the energy rating of the dwelling by at least seven building energy ratings
- An improvement which is not required by existing legislation and consists of at least three of the following:
 - The internal layout of the dwelling is permanently altered.
 - The dwelling is adapted to provide for access and use by a person with a disability.
 - The number of rooms is permanently increased.
 - The BER rating is improved by at least three levels on the BER (building energy ratings) scale, in a dwelling that has a BER of D1 or lower.
 - The BER rating is improved by at least two levels on the BER scale, in a dwelling that has a BER of C3 or higher.

Need to notify the RTB of exemption

Since 1 July 2019, landlords must inform the RTB if they are relying on an exemption which means that they do not have to adhere to the RPZ formula. Landlords must complete an RPZ Exemption Form available on the RTB website, rtb.ie and send it to the RTB within one month of the new rent amount being set.

Under the Residential Tenancies (Amendment) Act 2019, there are sanctions for landlords who do not follow rent increase limits in RPZs, provide false information about an exemption in an RPZ area or fail to notify the RTB about availing of an exemption.

Investigations, sanctions and new criminal offences

The 2019 Act significantly enhances the investigation and sanctioning powers of the RTB and introduces new criminal offences for failure to comply with residential tenancies legislation.

Investigations

The 2019 Act introduces new powers of investigation and sanctions. These powers give the RTB a more active and direct regulatory role in the rental sector and will allow the RTB to support landlords in complying with the legislation.

The RTB can conduct investigations into potential breaches of law by landlords, with or without a formal complaint. The landlord will be afforded the opportunity to acknowledge

their breach and bring the investigation to an end at an early stage.

The RTB has established a new investigations and sanctions unit with a dedicated information helpline on 0818 776297 or 01 6753724. Where the RTB receives a complaint alleging improper conduct by a landlord, it will have the power to commence an investigation into that complaint. Improper conduct includes:

- Breaching the RPZ rent restrictions
- Failing to notify the RTB that they are relying on an exemption from the RPZ rent restrictions
- Failing to register a tenancy
- Failing to notify the RTB of an alteration in the rent set under a tenancy
- Attempting to rely on an exemption from the RPZ rent restrictions where an exemption does not apply
- Citing a reason for termination that the landlord knows to be materially false or misleading
- Failing to re-offer a dwelling for letting to a former tenant, where required under legislation

A landlord will be notified of the investigation and provided with the relevant documents.

In relation to investigations, the Act allows the RTB to appoint two categories of people:

- Authorised officers
- Decision-makers

Many of these will be staff members of the RTB.

Authorised officers are given wide-ranging powers in relation to investigations of possible breaches of residential tenancies legislation. These powers include to:

- Enter, inspect, examine and search any premises connected with a residential tenancy at a reasonable time (although a warrant may be necessary if the premises is a private dwelling and the occupier withholds consent, as explained below)
- Remove or take copies of relevant records held at the premises
- Request the owner of the property or any person there to assist them and, if necessary, to produce copies of records that are held digitally
- Require anyone who has relevant information or records to provide the necessary information or records
- Require an explanation from a landlord in relation to any decision or practice

The authorised officer may be accompanied by a member of An Garda Síochána.

If a person fails to comply with any of the requirements, the authorised officer can apply to the District Court for an

order requiring compliance. Alternatively, the District Court may grant a warrant to allow the authorised officer to enter a premises (including a private dwelling where the occupier withholds consent).

An authorised officer may also conduct an oral hearing in relation to any aspect of the investigation.

Failure to comply with any of the above requirements and destroying or concealing relevant records are criminal offences. The maximum penalties are:

- Class A fine and/or imprisonment for up to 12 months, if prosecuted in the District Court
- Fine of €50,000 and/or imprisonment for up to five years, if prosecuted in the Circuit Court

When an investigation is concluded, a draft of the investigation report must be provided to the landlord, who has 21 days to make submissions in respect of the draft report. A final report will then be prepared and provided to a decision-maker.

The decision-maker will then consider the report and any attached submissions, and may conduct an oral hearing. If they decide that improper conduct has occurred, they can impose a sanction on the landlord.

A person cannot be an authorised officer and a decision-maker at the same time.

Sanctions

RTB sanctions for improper conduct by a landlord may include any one or all of the following:

- Payment of a financial penalty of up to €15,000 to the RTB
- Payment of the costs of the RTB of up to €15,000
- A written caution to the landlord

Sanctions must be confirmed by the Circuit Court. However, sanctions will be confirmed as a matter of course unless the landlord appeals, or if the Circuit Court considers there is good reason not to confirm them.

New criminal offences

The 2019 Act also introduces a range of new criminal offences. These include:

- Failing to comply with the RPZ rent restrictions
- Knowingly or recklessly providing materially false or misleading information to the RTB in connection with a notice relating to an exemption from the RPZ rent restrictions
- Failing to comply with a notice from the RTB to update rent information on the RTB register after a rent alteration

Prohibition against double punishment for the same wrongful act

If a landlord has been sanctioned by the RTB for something which is also a criminal offence, they cannot be prosecuted for that criminal offence. So, if a landlord is sanctioned by the RTB for failing to comply with RPZ rent restrictions, they cannot also be the subject of a criminal prosecution for the same failure to comply with RPZ rent restrictions.

Similarly, if a landlord has been criminally prosecuted for something which is also sanctionable by the RTB, a sanction cannot then be imposed by the RTB.

Student accommodation

Traditionally, student-specific accommodation has fallen outside the remit of residential tenancies legislation, particularly where the accommodation was subject to a licence rather than a lease.

However, a student whose residential licence in student accommodation is created on or after 15 August 2019 (such as on-campus accommodation or purpose-built student accommodation) will have many, but not all, of the same rights as tenants in privately rented accommodation.

Certain properties will remain outside the scope of the relevant provisions. Most notably, properties where the landlord also lives, such as digs, will continue to be exempted.

The 2019 Act also takes into account the fact that student accommodation generally involves some form of communal living, where only the bedroom is let. However, even in these situations, the following protections still apply:

- The inability to set rent above the market rate
- The benefit of RPZ rent increase restrictions
- The requirement to register the tenancy with the RTB
- Access to the RTB's dispute resolution procedures

However, students will not gain Part 4 tenancies and their entitlements despite living in the accommodation for a continuous period of six months.

These enhanced protections only apply to student accommodation arrangements entered into after 15 August 2019. Tenants in student accommodation which already came under the Residential Tenancies Acts are not affected by the changes.

Annual registration of tenancies

The 2019 Act also seeks to introduce a new requirement that landlords register tenancies annually with the RTB. Annual registration is expected to cost €40 for private rented tenancies and €20 for approved housing body tenancies. It is expected that the new registration regime will begin in early 2020.

Until this new regime comes into effect, a landlord has to register a tenancy at the start of a tenancy or when a Further Part 4 tenancy comes into operation.

Changes to the planning permission requirements of short-term lettings in RPZs

Since 1 July 2019, the 2019 Act imposes additional obligations on people who rent out their property on a short-term basis in an RPZ (with some exceptions, see below). A short-term letting is defined as the letting of a dwelling or part of a dwelling for any period not exceeding 14 days.

Use of a property for short-term lettings in an RPZ can amount to a material change of use. This means that you must make a formal application for planning permission if the property is not your principal private residence, or if you rent your property for more than 90 days in a calendar year.

Whether permission is granted is at the discretion of the local planning authority. It has been indicated that planning applications may be refused in areas of high housing demand. Failure to have the correct planning permission is a criminal offence.

Properties located outside RPZs are not affected by the new rules.

Exemptions to the requirement for planning permission

The Planning and Development Act 2000 (Exempted Development) (No. 2) Regulations 2019 provide two exemptions to the above requirement to apply for planning permission for properties in an RPZ if the notification requirements below are met:

1. Home-sharing (where a person lets one or more bedrooms in their own home for less than 14 days at a time) will continue to be exempted in an RPZ, provided:
 - No more than four bedrooms are let
 - Each bedroom is let to no more than four people
 - There is no prohibition on such letting in the property's current planning permission
2. Letting your whole home will also continue to be exempted in an RPZ, provided:
 - It is rented for no more than 14 days at a time
 - It is rented for no more than 90 days in a calendar year
 - There is no prohibition on such letting in the property's planning permission

If the 90-day cap is exceeded, formal planning permission will be required.

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.

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Notifications regarding exemptions

To avail of an exemption, the local planning authority must be notified in writing of the intention to let the property on a short-term basis at least two weeks before the first letting. That notification must include:

- Proof that the property is the place where you normally reside
- The owner's consent, if the person providing the notification is not the owner
- A specification of which of the two exemptions the letting falls into
- Any other information which the local authority may require

In addition, the relevant statutory declaration must be provided to the local authority.

Where the short-term letting relates to the whole property, an additional form and statutory declaration must be provided to the local authority at the beginning of each year and before the letting begins. At the end of the year, and if the 90-day limit was exceeded, a further form and statutory declaration must be provided to the local authority, specifying the details of the letting during the period.

Land and Conveyancing Law Reform (Amendment) Act 2019

Under the Land and Conveyancing Law Reform Act 2013, a court which is considering whether to grant a repossession order to a lender in respect of a borrower's home may adjourn the proceedings to allow the possibility of a personal insolvency arrangement (PIA) to be explored. If a PIA is granted, the borrower will be able to remain in their home.

The Land and Conveyancing Law Reform (Amendment) Act 2019 came into effect on 29 July 2019. It applies to situations where a PIA is not granted or where a borrower has positively engaged in a mortgage arrears scheme but it has not been successful. It broadens the matters that a court must take into account when a lender applies for a repossession order in respect of a borrower's home.

Many of these matters are already considered by a court, but it now has an obligation to consider each of the following:

- Whether the possession order would be proportionate, having regard to all the circumstances of the case

- The borrower's circumstances (and those of any dependants)
- Whether the lender has informed the borrower of terms on which it would be prepared to settle the case and would allow the borrower (and any dependants) to remain in their home
- Any proposal by the borrower to:
 - Enable them, and any dependants, to remain in their home (for example, by participating in a designated scheme that helps people in mortgage arrears to remain in their home)
 - Secure alternative accommodation
- Any response from the lender to the borrower's proposal to remain in their primary residence
- How the lender and the borrower have conducted themselves when trying to resolve the borrower's mortgage arrears (such as whether either party refused, or was slow, to engage)

The court may also take the following into account when deciding whether it would be proportionate to grant a possession order:

- The amount of secured debt outstanding on the property
- The outstanding arrears under the mortgage
- The market value of the property on the date the proceedings were commenced
- Any other matter it considers appropriate

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