



Relate

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

Residential tenancies legislation

The Residential Tenancies Acts 2004 to 2015 govern the relationship between residential landlords and tenants in Ireland. On 4 December 2015, the Residential Tenancies (Amendment) Act 2015 was enacted. It contains some significant reforms of the existing law in this area. Most of the 2015 Act has been commenced. Some sections of the Act came into force immediately on the date of enactment while other provisions were commenced by Ministerial Order in subsequent months. Some provisions have yet to be commenced.

The 2015 Act amends some of the provisions of the Residential Tenancies Act 2004 and brings approved housing bodies under the scope of the legislation for the first time.

Residential Tenancies Act 2004

The Residential Tenancies Act 2004 reformed the rules governing private tenancies. It established the Private Residential Tenancies Board (PRTB) whose responsibilities include hearing and resolving disputes arising between landlords and tenants in the private rented sector and operating a system of tenancy registration. In April 2016, the remit of the PRTB was extended and it was renamed the Residential Tenancies Board (RTB).

In 2014, the PRTB received 3,374 separate applications for dispute resolution involving a total of 6,071 separate complaints. Of these complaints, 830 related to invalid notices of termination of tenancy and 819 complaints related to rent arrears. The PRTB also registered 112,873 new tenancies in 2014 bringing the number of live tenancies registered with it to 303,574 at the end of that year.

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The 2004 Act set out the rights and obligations of landlords and tenants. It also included provisions for setting rent and carrying out rent reviews. It introduced the concept of “Part 4 rights” which provide automatic security of tenure protections to tenants who have occupied a dwelling under a tenancy for between six months and four years. At the end of the four-year period, security of tenure no longer applies.

If the dwelling continues to be let to the same tenant(s), the new tenancy is known as a “further Part 4 tenancy” and security of tenure applies again after six months. For the first six months of the new tenancy, the landlord can end the tenancy without giving a reason. The tenancy may only be terminated during the following three years and six months where one of the valid grounds for termination by a landlord applies as set out in the 2004 Act. It also detailed the required notice periods and the form a notice of termination must take. For periodic (such as monthly or weekly) tenancies, the tenant can end the tenancy at any time without giving a reason, but must give the required notice. If the tenant wishes to end a fixed-term tenancy, they can only do this in accordance with the tenancy agreement or in certain specified circumstances, which include breach of the landlord’s obligations.

Residential Tenancies (Amendment) Act 2015

The Residential Tenancies (Amendment) Act 2015 provides for a number of changes to the rules governing residential tenancies. It aims to provide rent certainty by changing the rules on rent reviews. It also amends the notice periods for the termination of a Part 4 tenancy and requires the landlord to provide additional proof in certain circumstances when terminating a Part 4 tenancy. Since 7 April 2016, approved housing bodies’ come under the remit of the RTB and tenants and landlords of approved housing bodies are able to access the dispute resolution services of the RTB. However, approved housing bodies’ rent reviews still come under the terms of the tenancy agreement (see page 4) so these rent review changes described below only apply to private landlords.

Rent review

A rent review describes the process where a landlord or tenant seeks to change the amount of rent being charged to rent a property. Under the 2004 Act, a rent review could only be carried out once every 12 months. This meant that once a tenant moved into a property, the rent could not be changed until 12 months of the tenancy had elapsed. After that period, the landlord or the tenant could seek to amend

the rent amount based on the average or “market rent” for a similar property in a similar location. The landlord had to serve the tenant with notice of a rent review 28 days before the new rent would come into effect. Once the new rent had been agreed, this amount could not be changed by either party for a further 12-month period.

The 2015 Act changed this rent review procedure for private tenancies and since 4 December 2015, a rent review may only be carried out once every 24 months. This change to the rent review procedure is only effective during the “relevant period” which is four years from the commencement of this section of the 2015 Act. So, on 3 December 2019, the original 12-month rent review period will apply again.

The 2004 Act provides an exception to this 12-month rule for situations where a substantial change has been made to the nature of the dwelling that results in the market rent charged after such a change being different to the rent charged beforehand. One example would be if a rental property was substantially refurbished or renovated. This provision remains in effect under the 2015 Act and in such circumstances allows the rent to be reviewed prior to the 24-month rent review period.

The 2015 Act also changes the notice period for a rent review and a private tenant must now receive notice 90 days before the new rent is applied.

Where a change is made to the rent payable in a registered tenancy, the landlord must notify the RTB within one month of the alteration.

Evidence of market rent

Private landlords are legally prohibited from setting a rent that is in excess of market rent and any increase must be in line with market rent. The 2015 Act provides that from 9 May 2016 a valid written notice of a rent increase must include a statement indicating the amount of rent sought for three comparable dwellings of a similar size, type and character situated in a comparable area. There is now a specific form of notice which private landlords must use when giving notice of a rent review available at: prtb.ie/dispute-resolution/dispute-resolution/the-three-stages-of-a-tenancy/rent-reviews

Evidence of the rent charged for comparable properties can be in the form of advertisements for such properties published within the previous four weeks. If a tenant considers that they are being asked to pay more than the market rent, they can take a dispute case to the RTB within 28 days of receipt of receiving notice of the increase.

New notice periods for the termination of a tenancy

Duration of tenancy	Notice period for termination of tenancy by landlord	Notice period for termination of tenancy by tenant
Less than 6 months	28 days	28 days
6 or more months but less than 1 year	35 days	35 days
1 year or more but less than 2 years	42 days	42 days
2 years or more but less than 3 years	56 days	56 days
3 years or more but less than 4 years	84 days	56 days
4 years or more but less than 5 years	112 days	84 days
5 years or more but less than 6 years	140 days	84 days
6 years or more but less than 7 years	168 days	84 days
7 years or more but less than 8 years	196 days	84 days
8 or more years	224 days	112 days

Notice periods for termination of tenancy

The 2015 Act introduced some new notice periods for terminations of a tenancy by a tenant or landlord. Notice periods for tenancies of four years or less remain the same but the 2015 Act has extended notice periods where there has been continuous occupation of a dwelling for between four and eight years. These new notice periods came into effect on 4 December 2015.

Exceptions to required notice periods

Under the 2004 Act, a landlord could reduce the notice period for termination of tenancy to seven days on the grounds of anti-social behaviour or damage to the property by the tenant. This was the case regardless of the duration of the tenancy.

However, since 4 December 2015, if the tenant has Part 4 rights, they must get 28 days' notice of termination of tenancy instead of seven days. The original seven days' notice period will continue to apply where the tenant does not have Part 4 rights, for example, where it is less than six months since the commencement of the tenancy.

Where the landlord wishes to terminate the tenancy on the grounds that the tenant is in breach of their obligations, other than anti-social behaviour or damage to the property (and in the case of rent arrears, after a 14-day warning letter has already been issued), the term of such notice is 28 days regardless of the duration of the tenancy.

Requirements for a notice for termination of tenancy

Part 5 of the 2004 Act deals with what is required for a valid notice of termination. A notice of termination by a landlord must:

- Be in writing
- Be signed by the landlord
- Specify the date of service of the notice. However, the first day of a period of notice is the day *after* service.
- State the reason for the termination
- Specify the date the tenancy will terminate and that the tenant has the full 24 hours of the termination date to vacate the property
- State the right of the tenant to refer the notice to the Residential Tenancies Board (RTB) within 28 days if they feel the notice is invalid

Additional proof of reason for termination

Under the 2015 Act, since 9 May 2016, landlords are required to provide additional proof to the tenant for the reason given for the termination of a Part 4 tenancy. For example, if the reason given is that the property is no longer suitable to the accommodation needs of the tenant, the notice must be accompanied by a statement which includes the number of bed spaces in the dwelling and the grounds of unsuitability based on the number of occupants compared to bed spaces.

A statutory declaration is required as additional proof if the landlord intends to sell the property within three months, or if it is intended that the landlord or a family member of the landlord will occupy the dwelling.

If the landlord intends to refurbish the property or change the use of the property, the notice must be accompanied by a statement specifying the nature of the works and that the tenant may resume letting the property once works are complete, where this is appropriate. If the works require planning permission, a copy of the permission must also accompany the notice. If planning permission is not required the landlord must still furnish the name of the contractor, if any, and the date the work will start with the estimated duration.

The RTB publishes sample notices of termination on its website for use by landlords and tenants available at: prtb.ie/dispute-resolution/dispute-resolution/sample-notices-of-termination

Notices of termination: the slip rule

The 2015 Act provides for a “slip” or “omission” rule which came into effect from 8 January 2016 in respect of notices of termination. Now a notice of termination may be found to be valid where there is a slip or omission which is contained in, or occurred during the service of, a notice of termination. This will only apply where the adjudicator or the Tribunal hearing the dispute is of the opinion that the slip or omission does not change the notice in a material way and the notice is otherwise in compliance with the Acts.

Approved housing bodies

Part 2 of the 2015 Act extends the remit of the RTB to include certain dwellings let by approved housing bodies to tenant households approved for social housing.

Approved housing bodies 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. Approved housing bodies (AHBs) are also known as “housing associations” or “voluntary housing associations”. AHB accommodation may be designated for specific vulnerable groups such as older or homeless people. The register of housing bodies with approved status is available to the public at:

portal.prtb.ie/public_registrations.aspx

A dwelling let by an AHB to a “household” which qualifies for social housing is now subject to the Residential Tenancies Acts 2004 to 2015. This means that tenants and landlords of approved housing bodies are now able to access the dispute

resolution service of the RTB. This has been in effect since 7 April 2016 and subsequently references throughout the 2004 Act to the “private rented sector” have been amended to refer simply to the “rented sector”.

The definition of a household for the purposes of social housing has also been changed by the 2015 Act. A household now includes households of just one member where it was previously two or more members.

The AHB is deemed to be the landlord for the purposes of the 2015 Act. The tenant is the member(s) of the household, who has been granted occupation of the property under the tenancy agreement.

However, there are some significant differences in how the Residential Tenancies Acts 2004 to 2015 are now applied to standard tenancies (private) and those involving AHBs. These include:

- AHB tenants are not permitted to sub-let or transfer their interest in the property and any agreement to do so will be void
- AHB tenancies will now be able to avail of Part 4 rights which will automatically build up after six months of occupancy. For pre-existing tenancies, the necessary period of occupancy will run from 7 April 2016 (the commencement of Part 2 of the 2015 Act) and for all subsequent tenancies from the date of the start of the tenancy.
- An AHB landlord cannot terminate a tenancy in circumstances where the landlord requires the dwelling for themselves or their family, as applies to private lettings
- Rights and procedures that apply for rent reviews in standard private lettings do not apply to tenancies involving AHBs. Where the rent is to be reviewed, it must be done in accordance with the contract or lease (if applicable). Such reviews may only be carried out once every 12 months. If the rent is altered, the landlord must give notice of the alteration to the tenant in accordance with the contract or lease (where applicable) or otherwise as soon as practicable.
- The obligation on landlords to update the RTB register within one month of any alteration to the rent does not apply to AHB tenancies
- Part 4 tenancy rights do not apply to tenants of dwellings designated by the AHB for use as “transitional dwellings”. Transitional dwellings are defined as dwellings let for periods of less than 18 months, for example, a hostel.

- Where an AHB tenant has acquired Part 4 rights and subsequently dies, a member of the same household which has been assessed for social housing support may elect in writing to become a tenant and continue under the protection of the deceased's Part 4 rights. That person must also be a spouse, a child of the deceased aged 18 years or more, a parent of the deceased tenant, or have lived with the deceased for at least six months immediately prior to the death "as husband and wife".

Transfer of the Rent Tribunal remit to the RTB

The Rent Tribunal was established in August 1983 with responsibility for matters concerning what were formerly known as "controlled dwellings" within the meaning of the Rent Restrictions Acts 1960 to 1982. Controlled dwellings were rented properties where the tenancy benefited from a specific security of tenure together with protections regarding the rent payable. From 1982, controlled dwelling status no longer applied and the terms of the tenancy regarding such former controlled dwellings, including the rent payable, were ultimately set by the Rent Tribunal. This was based on the respective situations of the landlord and tenant in question, for example, income of the tenants, and condition of the dwelling.

The Rent Tribunal was dissolved on 8 January 2016 by the 2015 Act and its functions were transferred to the RTB. References to the Rent Tribunal in previous legislation are now understood to refer to the RTB, and all property and rights and liabilities belonging to the Tribunal are now transferred to the RTB. All decisions and determinations made by the Rent Tribunal remain valid and any matters not concluded by the Rent Tribunal have been transferred to the RTB for conclusion.

Residential tenancies register

The RTB is responsible for maintaining the residential tenancies register. In May 2016 the RTB had 324,000 tenancies registered representing 172,000 landlords and 705,000 occupants. All registered landlords and all tenants (regardless of whether the tenancy is registered or not), and third parties affected by a landlord's failure to enforce their tenant's obligations, can use the RTB's dispute resolution service (see page 6).

In general, landlords are required to register tenancies with the RTB within one month of the commencement of a tenancy. They are also required to update the registration within one month where there is any change to the rent payable. From 7 April 2016, approved housing bodies have a transitional period of 12 months to register their tenancies.

A landlord may notify the RTB in writing of any changes to the particulars of a registered tenancy (even when not changing the rent) and the RTB will update the register. These particulars include information such as the name, address or Personal Public Service Number (PPS number) of the landlord and the details about the tenancy such as whether it is a fixed-term or a periodic (open-ended) tenancy.

New tenancy registration forms have been introduced this year to reflect the changed registration requirements. Landlords must now complete these prescribed forms when registering a tenancy.

Where a landlord fails to register a tenancy, the RTB will serve a notice on the person it believes to be the landlord, giving them time to register the property. If the landlord still does not register the property, this failure is a criminal offence. A landlord may face a fine of up to €4,000 and/or six months' imprisonment, along with a daily fine of €250 for a continuing offence, that is, where the tenancy continues to remain unregistered after the court hearing.

Additional requirements for tenancy registration confirmation

Since 9 May 2016, there are additional requirements for the RTB in the confirmation of the registration of a tenancy to both the applicant and the tenant. The tenancy registration confirmation letter must:

- Acknowledge receipt of the application
- Acknowledge receipt of the registration fee
- Specify the registered tenancy number

It must also include a statement setting out:

- The rights and obligations of landlords and tenants including:
 - The setting of the rent, a review of the rent, and the notice of new rent
 - Security of tenure under Part 4, and
 - The termination of tenancies
- The matters which may be referred to the RTB for dispute resolution
- Redress that may be granted by the RTB to be paid to a party in respect of the matter(s) in dispute
- The function of the RTB to disclose particulars of the registration to the Revenue Commissioners

The residential tenancies register is an important part of the regulation of the rental sector. The register is provided to the Revenue Commissioners for the purpose of facilitating tax compliance in rental income and the Department of Social Protection for fraud detection.

Rent index

The RTB publishes a quarterly rent index report on the private rented accommodation sector. It is compiled by the Economic and Social Research Institute on behalf of the RTB and uses data from the RTB's register of tenancies. This contains the details of the actual rents being paid for rented properties, as distinct from the asking or advertised rent. To provide the most accurate report possible the data underpinning the rent index is extracted five weeks after the end of each quarter because landlords have up to one month to register a new tenancy after its commencement.

Dispute resolution

The RTB is responsible for dealing with disputes arising between tenants and landlords where the tenancy in question comes under the Residential Tenancies Acts 2004 to 2015. Neighbours may also initiate complaints (see page 7).

The dispute resolution process consists of two stages:

1. Either mediation or adjudication as chosen by the parties - both processes are confidential
2. A public hearing by a three-person Tenancy Tribunal

Mediation

The mediation process provided by the RTB involves an independent mediator to help both sides of a dispute about a tenancy to reach a mutually satisfactory solution to the matter. Mediation is now also available by telephone. Both sides to the dispute are contacted individually by telephone and following a series of calls, emails and text messages, the mediator facilitates the parties in coming to an agreed resolution. This can be speedier than adjudication and neither party has to speak or meet with the other party to the dispute, nor do they have to travel to avail of the service.

Since 8 January 2016, any matters referred for mediation are no longer subject to fees. The move to make this avenue of dispute resolution more accessible is aimed at encouraging more parties to opt for mediation rather than adjudication when referring a dispute to the RTB.

The 2015 Act also introduces a cooling-off period in respect of any signed agreement reached during mediation. Since 1 March 2016, if an agreement is signed during the course of mediation resolving the dispute, either party has 10 days from the completion of the mediation to notify the mediator and the RTB in writing that they no longer wish to be bound by the agreement. The matter will then proceed to be heard by a Tenancy Tribunal on the basis that the parties did not reach an agreement (see page 7).

After mediation, the mediator must prepare a report stating what happened and what was agreed or not agreed. This is given to the RTB and the parties involved. If 10 days pass from the agreement being made with no notification from either party that they no longer want to be bound by the agreement, the RTB will prepare a determination order. A determination order is the official notification from the RTB to parties of the final outcome of a dispute resolution case. A determination order sets out the terms to be complied with, including any payments owing, and the length of time given to comply (compliance period). Where there is no agreement or only a partial agreement at mediation, the RTB will refer the dispute to the Tenancy Tribunal (see page 7).

Adjudication

The adjudication process involves a hearing with an independent adjudicator who will consider the testimony and evidence provided by both parties in the dispute. Both parties are invited to attend or either may send a representative or make a written statement. If the respondent chooses not to attend the hearing, the case can proceed in their absence and the adjudicator's decision in relation to the dispute is binding on them if the applicant's claim is upheld.

The adjudicator will prepare a report for the RTB following the hearing which will contain details of the facts of the dispute agreed by the two parties, a summary of the matters agreed to by the parties, and the terms of the determination made by the adjudicator. This report is sent to the parties involved.

The cooling-off period in respect of an agreement reached between parties during adjudication proceedings has been reduced from 21 days to 10 days since 1 March 2016. If the report is not appealed, the adjudication decision forms the basis for a legally-binding determination order by the RTB which is published on the RTB website,

rtb.ie.

Tenancy Tribunal

The Tenancy Tribunal is the second stage of the RTB's dispute resolution service following either mediation or adjudication. A dispute can be referred to the Tribunal for any of the following reasons:

- If an agreement cannot be reached using mediation
- If either party wants to appeal an adjudicator's decision within 10 days
- If any of the parties request a Tribunal hearing
- If the RTB refers the dispute directly to the Tribunal, for example, where there appears to be imminent risk of damage to the property or danger to the parties involved

A Tribunal hearing is a public hearing. The case is heard by three Tribunal members who are part of the RTB Dispute Resolution Committee. The decision of the Tenancy Tribunal is issued to all parties as a determination order of the RTB and is legally binding. Tribunal decisions can only be appealed to the High Court on a point of law and the appeal must be lodged within 21 days.

Any party who refers a matter to the RTB for dispute resolution may at any time withdraw the matter by written notice or oral notice. Where this happens, the mediator, adjudicator or the Tribunal will ask the other side if they object to the matter being withdrawn. Under the 2004 Act, if they did, the party withdrawing would pay the objecting party the costs and expenses incurred by that other party. The 2015 Act has amended this provision and, since 1 March 2016, these costs and expenses are capped at €1,000. Legal fees are excluded from forming part of the costs.

Neighbours' right of complaint

A landlord has a responsibility to enforce the obligations of the tenants renting their property. If a third party is affected by any tenant's non-compliance with those obligations, that third party may make a complaint against the landlord to the RTB. The obligations in question refer to anti-social behaviour on the part of the tenant or on the part of visitors to the dwelling both within, and in the vicinity of, the property. The third party should try to resolve the issue by taking steps to communicate with the landlord and tenant before making a complaint.

Since 9 May 2016, the third party has the option to request the residents' association, owners' management company or other body responsible for the maintenance of the dwellings in question, to either communicate with the landlord and tenant, or to refer the dispute to the RTB on their behalf.

Future changes under the 2015 Act

Some provisions under the 2015 Act have not yet been commenced. They include the deposit retention scheme and the replacement of the Circuit Court by the District Court in the enforcement of determination orders.

Deposit retention scheme

The security deposit paid by the tenant at the commencement of a tenancy is considered the lawful property of the tenant, until the landlord establishes a right to it. Tenants are entitled to a refund of the deposit paid where there is no rent owing or other charges or taxes, for example, utility bills, in respect of the tenancy and there is no damage to the dwelling beyond normal wear and tear at the end of the tenancy.

Landlords are required to refund the deposit promptly less any deductions in respect of outstanding rent or other charges or taxes and damage in excess of normal wear and tear. If the rent, charges or taxes or the damage amounts to below the value of the deposit, then the landlord should return the excess. The onus is on a landlord to show why a deposit should be retained.

If there is a dispute about a deposit, it can be referred to the RTB. In 2014, there were 801 deposit retention related disputes referred to the RTB. In order to reduce the number of disputes being referred to the RTB, the 2015 Act requires the RTB to establish and maintain a deposit retention scheme.

Once the scheme is established, when a landlord applies to register a new tenancy they must send the RTB any deposit paid by the tenant. In situations where no deposit has been paid by the tenant (in agreement with the landlord), the landlord must supply the RTB with a statement declaring that a deposit has not been paid.

Where an application to register a tenancy is made to the RTB and no deposit or statement is included with the application, the RTB will notify the landlord and the tenant of the omission and allow 14 days for either the deposit or a statement of no deposit to be lodged. After this 14-day period, if neither item has been lodged, the landlord will have committed an offence.

The RTB will return deposits that it holds to the tenant:

- Where there is agreement between the landlord and tenant as to how the deposit should be returned and an application is made to the RTB on this basis

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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- Where a determination order is made, or following an appeal, a final determination order is made and is accepted by both parties
- Where a written notification of agreement or disagreement is made by one or both parties setting out how they believe the deposit should be returned and a decision is reached by the RTB which is then accepted by both parties

Once the deposit scheme provisions are commenced, landlords of existing tenancies will have six months from the commencement date to forward deposits or a statement of no deposit to the RTB. The landlord must then notify the tenant in writing that they have complied with this obligation. If a landlord has not fulfilled these obligations, the RTB will notify both the landlord and the tenant of the situation and allow the landlord 14 days from the date of the notice to comply. If the landlord refuses to comply, a further notice shall be sent and if the landlord has still not complied, they shall be guilty of an offence.

The RTB will not be required to return any interest accrued on the deposits it holds.

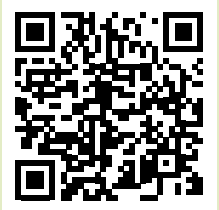
Enforcement of determination orders

The District Court will replace the Circuit Court in relation to the enforcement of determination orders. In situations where a determination order has been made, and the RTB or either party to the dispute believes that the order has not been complied with, the RTB or the party will be able to apply to the District Court to have the order enforced.

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