

Residential Rental Sector Strategy Consultation

A Submission by the Citizens Information Board (November 2016)

Introduction

The Citizens Information Board (CIB) welcomes the opportunity to make a submission on the Residential Rental Sector Strategy. Such a Strategy is urgently required because of the growing number of people who cannot access suitable housing without recourse to the private rented sector. In various reports and submissions over the years, the CIB has regularly highlighted issues relating to the private rented sector¹ which have been identified by our delivery services – the national network of Citizens Information Services (CIS), the Citizens Information Phone Service (CIPS), the Money Advice and Budgeting Service and the National Advocacy Service for People with Disabilities (NAS). The CIB also provides the website www.keepingyourhome.ie as a public information resource and funds and supports *Abhaile* (the Mortgage Arrears Resolution Service) and the MABS Dedicated Mortgage Arrears Service.

CISs and CIPS deal with a significant range of housing related queries overall, including queries in relation to the private rented sector. There were almost 60,000 specific housing related queries to CISs in 2015 with 12,870 concerned with renting a home in the private sector. Combined with Rent Supplement (24,685) and Housing Assistance Payment (3,850) queries, housing related enquiries overall reached almost 88,000 in 2015.² The precarious position of some tenants in some areas as a result of the fluid nature of the private rented sector is highlighted regularly in these queries.

Clearly, there are a growing number of people who rely on help and support from CISs and Threshold³ to maintain their tenancies in the face of rising rents, to ensure that their right to decent quality accommodation is upheld and to negotiate the tightrope between finding accommodation within existing rent caps and homelessness.

¹ See, for example, Pre-budget Submissions (various); Submission on the Social Housing Strategy, <http://www.citizensinformationboard.ie/services/social/>; <http://www.citizensinformationboard.ie/services/social/>

Submission to the Department of Social Protection with regard to Rent Supplement (CIB 2012)

<http://www.citizensinformationboard.ie/services/social/>;

The Right Living Space (Comhairle/DFI 2007);

Rent Supplement (Comhairle/Threshold 2002)

² In the first half of this year services dealt with 37,596 housing queries - up 26% from the same period last year. Over 8,000 of these related to renting a home which is an increase of 24% on last year's mid-year figures.

³ CIB funds Threshold to provide a second tier specialist support to the CIS network in dealing with complex housing queries in the private rented sector.

Overall Context

As is widely acknowledged, since the 1990s, Ireland's housing system has undergone significant transformation arising from increased demand, the contraction of the Local Authority social housing sector and the expansion of the private rented sector, and a parallel and consequential increased reliance on this sector for social housing. The private rented sector is now over twice as big as the local authority and voluntary sector combined. The traditional divide between state supplied social housing and the private rented sector is becoming blurred in the context of market-led solutions with the private and voluntary sectors becoming the main providers of rental accommodation in Ireland.

At the core of the Residential Rental Sector Strategy should be the need for the State to recognise the right to adequate housing and to implement appropriate legislation and policies in this regard. This issue has come very much to the fore in recent decades due to the influence of various UN and EU Directives and Charters. The Draft International Convention on Housing Rights states that adequate housing is essential to freedom, dignity, equality and security. While the private rented sector has been playing an increasingly important role in Ireland, policy relating to the sector has not to date kept pace with the rapid growth in the size of the sector, its increasing role in social housing provision and the need to ensure that the basic needs of tenants are addressed and that the rights of both tenants and landlords are protected. The private rented sector has clearly assumed equal importance with other housing tenures, especially owner-occupation. Its role in social housing will almost certainly continue to grow until the increased supply of housing to be provided under the Government's Social Housing Strategy fully comes on stream.

The four key areas identified by the Department for inclusion in the Strategy are all clearly important:

- *Security* (bringing greater certainty to tenants and landlords)
- *Supply* (maintaining existing levels of rental stock and promoting additional supply)
- *Standards* (improving the quality and management of rental accommodation); and
- *Services* (broadening and strengthening the role and powers of the Residential Tenancies Board (RTB))

The Residential Rental Sector Strategy must address the core issues relating to the private rented sector that have emerged in recent years. Many of these issues have been highlighted by CIB delivery services, including, in particular:

- The general shortage of private rental accommodation in some urban areas and related spiralling market-driven rents;
- Low *and average* income households are finding it increasingly difficult to access and maintain housing tenure in the rented sector which for many is the only option available;

- The loss of tenures due to rent increases and the cost of renting, coupled with an extreme scarcity of rental properties results in people either becoming homeless or having to ‘couchsurf’ – this leads, among other things, to a range of issues relating to social welfare payments, e.g., difficulties proving residential address;
- Poor quality housing in the rented sector and difficulty in implementing standards set out in legislation presents difficulties for many tenants who have to rent at the lower end of the scale, including HAP and RS tenants;
- The ongoing availability of accommodation within Rent Supplement (RS) or Housing Assistance payment (HAP) rates is a significant issue and this, coupled with landlords being reluctant to lease properties under HAP scheme, is a matter of serious concern;
- Some landlords (who accepted Rent Supplement tenants) are reluctant to sign up for HAP – this causes major difficulties and disruption for people who had been on long-term RS, were settled in an area but are being required to transfer to HAP;
- Despite the changes introduced in the [Residential Tenancies \(Amendment\) Act 2015](#), many CIS clients report trying to find new accommodation rather than trying to enforce their rights under the amended Act;
- People in receipt of Rent Supplement are regularly reported as being forced to ‘top up’ rents out of their own resources to get or retain accommodation;
- The inclusion of approved housing bodies in the RTB and the Residential Tenancies Act may have led to a worsening of conditions for some tenants in that they can now be served with notice to quit -- while this is entirely valid and legal, it is a new factor in tenancies in that it was not included in many prior contracts with housing associations;
- Some people who have been awarded damages in cases taken to the RTB experience difficulties in enforcing these decisions and have to have recourse to the courts.

Focus of Submission

This Submission deals with four main areas:

- 1) High rents and absence of rent security
- 2) Difficulties in integrating social housing supports with private sector tenancy
- 3) Housing Standards
- 4) Breaches of tenancy agreements

High rents and absence of rent security

The CIB has consistently taken the view that rent certainty measures are an essential component of a well-regulated housing market, and benefit both landlords and tenants by ensuring that rent increases (and decreases) are both predictable and reasonable.

Appropriate rent certainty measures would link future rent increases to an objective measure such as the consumer price index.

Many arguments have been made against the idea of introducing a rent certainty model, particularly about its constitutionality. The argument has also been made that rent controls might drive landlords out of the market but this is probably unlikely in a market where in the short to medium term at least, demand is almost certain to outstrip supply.⁴ These are clearly matters which need to be addressed in the Strategy.

The measures introduced in 2015 to limit rent reviews to every two years, while providing tenants with a longer period of predictable rent, did not change the fundamental mechanism for determining rents under the legislation, which is by reference to market rent. Also, it is not at all clear to what extent adherence to this new regulation is being monitored.

Further consideration should be given to introducing a tighter form of rent control in the private housing rented sector for a defined period during the present supply crisis as well as facilitating the introduction of rental mechanisms that increase security of tenure.

Difficulties in integrating social housing supports with private sector tenancy

For households with *both* below and on average incomes, there is clearly an affordability issue in the main cities, most notably Dublin, as competition from medium and high income households is squeezing them out of the market. This issue applies to both people reliant on state support and others whose incomes are above qualifying thresholds for state support.

Feedback to CIB points to the difficulties experienced by people who find accommodation but are refused a tenancy once it becomes clear they are Rent Supplement (RS) or Housing Assistance Payment (HAP) recipients. In some instances, people are already renting a property but when their financial circumstances change and they cannot meet the cost of rent from their own income, the landlord will not accept Rent Supplement.

Despite changes and adjustments in recent years and the application of a discretionary approach, the Rent Supplement rental limits applied to private rented accommodation are in many instances too low to keep pace with increasing rents in the geographical area they apply to. CISs continue to see individuals and families who have difficulty in finding and retaining suitable accommodation within the current rent limits. The current approach which addresses the matter by applying flexibility on a case by case basis, while beneficial, creates major uncertainty for low and in some cases average income households reliant on the private rented sector.

⁴ See, *Rent Stability in the Private Rented Sector*, DKM Economic Consultants, <http://dkm.ie/en/publications/reports>

While HAP has many good innovations, essentially it relies on provision of accommodation by private landlords for rent supplement-level payments which vary by area and family composition. Difficulties accessing property within rent levels is a problem that affects HAP tenants in the same way as it affects RS tenants.

Case Example: Landlord not willing to take HAP tenants

A CIS client has been living in private rented accommodation. The rent has been increased and he is now looking for housing support payments. The landlord has indicated that he will accept RS but in long-term he will not sign up to HAP as he states there is too much paperwork involved. Client is left in a position of possibly having to look for alternative accommodation in the long run. "The volume of documentation involved for HAP is a disincentive for landlords to take on a HAP tenant. The landlord also claims he will incur extra costs for HAP that do not occur with RS" (CIS).

The particular problem facing HAP tenants is illustrated by the following case example:

Case Example: Refusal of tenancy on family status grounds and HAP

A CIS client has had five occasions where she has viewed housing and agreed with agencies to accept the property. When she told the agency that she wanted to apply for HAP, she was given her deposit back and refused tenancy in houses. When she queried this with one agency, they said it was not because of HAP but because the landlord did not accept children (she has an 8 year old child).⁵

'Topping up Rent'

Tenants faced with the prospect of losing their home due to rent increases above Rent Supplement limits are often forced to make 'top-up' payments to landlords. Top-up payments will typically be drawn from a tenant's social welfare payment but already out of that payment the tenant is making a means related contribution towards the cost of their rent. The additional expenditure on rent in the form of a top-up means that resources for food, clothing and utilities will be reduced to unsustainable levels, and so the tenant faces a high risk of increased poverty, indebtedness, and rent arrears. Feedback to CIB is that the practice of topping up rent by Rent Supplement recipients who find it difficult to find accommodation within the current rent limits for their family size⁶ is continuing.

Housing Standards

Housing standards and repairs continue to feature strongly in queries to CISs and CIPS. Local authorities (in their role as housing authorities) are responsible for enforcing minimum standards. However, inspection regimes vary widely, with the massive growth in the rental market far exceeding capacity of most local authorities to monitor it. While Local Authorities are also legally the first port of call for private tenants with complaints about standards, feedback from CIB service partners suggests that this is not working and tenants regularly have to have recourse to assistance and advocacy support to have the issues resolved.

⁵ Recent amendments to equality legislation are intended to prevent discrimination against social housing recipients and family status is one of the grounds included in equal status provisions.

⁶ The experience of CIS and CIPS clients is also found elsewhere. A Threshold survey of 133 clients in receipt of Rent Supplement, conducted in June 2014, found that 44% (58 people) were making top-up payments to their landlords. All of those paying top-ups said it affected their spending in other areas, including food, heating and clothing. 34% of respondents who were paying a top-up said that it had resulted in them falling into rent arrears. See http://www.threshold.ie/download/pdf/threshold_advisory_report_on_rent_supplement.pdf

Anecdotal evidence also suggests that tenants are very afraid that if they raise an issue, they will be perceived by landlords as troublesome and will be given notice to quit.

The experience of CIB services of some private rented housing falling short of the standards set out in legislation⁷ is referenced elsewhere. For example, there were 285,025 private tenancies registered in 2014 but just 13,913 dwellings underwent routine inspections that year.⁸ Half of them were found to breach the minimum standards with damp, mould, cold, and fire safety the main violations.

The low level of inspections carried out⁹ raises serious concerns. In addition, there are significant anomalies in the number of inspections carried out by individual local authorities.

This data suggests that the Local Authority inspection system is not functioning effectively or, indeed, as envisaged in the legislation, which is clearly a cause for concern in the context of the growing reliance on the rented sector. The fact that the Local Authority inspection system was set up at a time when there was a very small private rented sector is an important consideration.

It is also the case that sanctions do not differentiate on the basis of the seriousness of a contravention and the question of the introduction of a hierarchy of sanctions which rise in accordance with both the incidence of repeat infringement and the seriousness of a given contravention should be considered.

Case Example: Poor housing standards

A client is paying €120 per week for a studio flat (with the help of Rent Supplement). He says the room is damp and generally in a very poor condition. He has asked his landlord numerous times to improve the accommodation, to no avail. The client says he is afraid to make a formal complaint about minimum standards, as he is worried he would have to leave and then end up homeless. This client's situation is a fairly frequent query in our service and highlights the difficulties in regulating standards in the private rental market against the high demand for accommodation (Dublin City Centre CIS).

Threshold has been making the case for a licencing or certification system under the aegis of an independent body and has suggested that the responsibility should be on the landlord to prove that their property meets the required standards prior to letting. The CIB supports this proposal and notes that the Department of Housing, Planning, Community and Local Government, and the National Oversight and Audit Commission¹⁰ have been looking at options for driving improvement in standards and related enforcement. It is noted that the

⁷ in [Housing \(Standards for Rented Houses\) Regulations 2008](#) as amended by the [Housing \(Standards for Rented Houses\) \(Amendment\) Regulations 2009](#)

⁸ <http://www.housing.gov.ie/housing/statistics/house-building-and-private-rented/private-housing-market-statistics>
<http://www.irishexaminer.com/ireland/plan-to-target-shoddy-rental-housing-amid-fears-of-crisis-in-standards-404550.html>

⁹ <http://www.rte.ie/news/2015/0626/710715-rental-inspections/>

¹⁰ <http://noac.ie/wp-content/uploads/2016/10/NOAC-Private-Rented-Sector-Review.pdf>

Residential Landlords Association is against a certification scheme - which it says would create another layer of bureaucracy for landlords.¹¹

The issue of standards and inspections has been stated succinctly by one CIS Development Manager:

“The Local Authority is supposed to inspect the HAP accommodation within 8 months of the first HAP payment to the landlord, to ensure that it meets the required standards. In our experience many tenants accept properties under HAP and then find that there is dampness or other problems. The inspections are not taking place as the local authority does not have enough staff to carry out the inspections, despite requests from the tenant for this to be carried out. In the meantime tenants are living in sub-standard accommodation and cannot move as they would lose HAP and therefore their entitlement to Local Authority housing” (CIS Development Manager).

Security of tenure and breaches of tenancy agreements

The following two case examples illustrate the type of difficulties experienced by tenants. The first refers to an invalid Notice to Quit and the second to a Notice to Quit from a lending institution.

While in both of the cases the matter was resolved through support from a CIS and intervention by Threshold¹², the reality is that there are almost certainly instances where such issues are not resolved and people are left without accommodation.

Case Example: Rent arrears and invalid Notice to Quit

A family of five were renting a 3-bedroom house in Dublin and struggling to pay rent of €1,400 per month. The husband was working part-time and accessing some additional social welfare support but the family were not in receipt of Rent Supplement and were intermittently falling into rent arrears. The landlord had served a notice of termination which was not valid.

A possible compromise had been discussed which involved the landlord withdrawing the notice but also increasing the rent which would cause further financial difficulties for the family. The landlord was also unsure if he was willing to accept Rent Supplement as a form of payment.

The CIS referred case to Threshold who met with the client and took her tenancy history, copied all relevant documents and obtained consent to act on the family's behalf and to negotiate with the landlord. Threshold advised that notice issued was invalid and negotiated a resolution where the invalid notice was withdrawn and the landlord agreed to accept Rent Supplement and to follow the appropriate rent review procedure (90 days written notification). As the existing rent level was above the Rent Supplement cap, a submission to the Department of Social Protection seeking

¹¹ Landlord certification of compliance with standards exists to an extent in the context of the HAP scheme. As part of a tenant's application, a landlord must self-certify that the property meets the required standards. http://www.housing.gov.ie/sites/default/files/publications/files/hap_landlord_information_booklet_eng_v3_2016.pdf

¹² Threshold supported by CIB to provide specialist support to the CIS network in dealing with complex housing queries in the private rented sector.

discretion and Rent Supplement was subsequently approved and is now in place. The tenancy now continues without difficulty.

Case Example: Notice to Quit from a lending institution

A family renting a property in Dublin contacted their local CIS in early 2015 as they had received a letter from a solicitor stating that the family had to leave their rented house. The landlord of the property had fallen into financial difficulty and the lending institution had applied to the Court for an Order for Possession. The tenant was not updated or informed of these proceedings at any stage and the solicitor's letter arrived unexpectedly and caused the tenants great distress. The case was referred to Threshold by the CIS. Threshold assisted the tenant in negotiations with the solicitor acting on behalf of the lending institution to seek an informal compromise and, simultaneously assisted the family in making a dispute application to the RTB against their original landlord in relation to the deposit and breach of landlord obligations (they had recently signed a new 1 year fixed term tenancy agreement without knowledge of the pending repossession). Threshold also liaised with the Office of the Dublin County Sheriff as they sought to execute an Ejectment Order against the tenants. A positive outcome to the tenant's RTB dispute was achieved and they were awarded the return of their deposit and financial damages as the landlord was deemed to have breached his obligations in failing to ensure peaceful occupation of the tenancy and in breaching a fixed term tenancy agreement. Additional time in the property was also secured through negotiation with the County Sheriff's Office.

What the Residential Rented Strategy should do

The challenge is to deal realistically with the twin issues of rapidly rising rents and insufficient supply of housing to rent which is compliant with minimum standards in all areas of the country. Provision should, therefore, be included in the Strategy for the following:

- Provide for a level of supply and related rents that are realistic and affordable by all household types in all locations¹³ whether or not tenants are availing of housing support from the State;
- Apply the public/private partnership concept to the provision of rental accommodation – the potential for some joint financing of housing in the private rental sector should be explored further;
- Provide for rent regulation and rent certainty to combat the obvious difficulties arising from a free market approach;
- Extend the period for rent reviews and link these with the Consumer Price Index;
- Build on the experience of other jurisdictions where there is greater regulation of the private rented sector and where there are rent controls;

¹³ See National Statement of Housing Supply and Demand 2014 and Outlook for 2015-2017, Housing Agency, <https://static.rasset.ie/documents/news/housing-agency-housing-supply-demand-report-v4.pdf>

- Ensure that accommodation offered meets minimum standards requirements and make provision for required certification in this regard before state support is provided;
- Provide for a more planned, integrated and systematic response to threats to homelessness arising from a breakdown of tenure in the rented sector;
- Make provision for legal protection of tenancy for tenants in situations where properties are acquired by lending institutions or receivers;
- Include reference in standards to greater energy conservation and efficiency (e.g. insulation, etc.);
- Increase resources to Local Authorities to ensure a strategic and nationwide standardised approach to inspections;
- Develop stronger linkages between the RTB and Local Authorities in relation to standards, registration, inspections and sanctions.

Overview

The private rented sector needs substantial reform if it is to be a long-term housing option in terms of security of tenure, certainty around rent and absolute guarantees of appropriate standards of accommodation. There is somewhat of a contradiction between the reliance on the private rented sector to meet social housing needs and the rent limits that are set by Government for that sector which by its very nature operates on the basis of market rents. This matter must be addressed in the Strategy. A critical question that must also be addressed in the Strategy is how to cater for households whose income is just above levels for state supplementation of rental costs but who are finding it increasingly difficult to access and maintain housing tenure in the private rented sector which for many is the only option available.