



Relate

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

Renting accommodation

Increasing numbers of people are living in rented accommodation. The proportion of households living in the private rented sector almost doubled in the period 2006–2011. At present, tenants in this sector are facing a range of problems including decreasing supply and increasing rents. Tenants who are dependent on Rent Supplement face particular difficulties in getting rented accommodation and then in paying for it. Various options for dealing with the problems in the sector are being examined. The Private Residential Tenancies Board (PRTB) is conducting a study of options to address the difficulties being experienced in segments of the private rented sector. This is examining a range of issues including:

- The current tax treatment of the rented sector
- Possible incentives for landlords to rent to recipients of Rent Supplement
- Regulation of rent increases

Here we look at the rights and responsibilities of tenants and landlords in private rented accommodation; proposed changes to the residential tenancies legislation; proposals for change in housing supports, and some issues affecting the tenants of local authority dwellings.

Private rented accommodation

Types of tenancies

There are a number of different types of tenancies in the private rented sector. Most residential tenants have either a fixed-term tenancy or a periodic tenancy. A fixed-term tenancy is, as its name suggests, a tenancy arrangement for a fixed term – usually a year, but it may be shorter or longer. The tenancy agreement or lease is usually in writing but this is not essential.

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A periodic tenancy is not for a fixed term. It may be weekly, monthly or yearly – the period depends on how the rent is calculated. Such arrangements are often oral but they may be in writing. You may initially have a fixed-term tenancy which is continued without formal agreement – this then becomes a periodic tenancy.

Refusal to grant a tenancy

The Equal Status Acts 2000–2012 apply to the letting of premises. In general, it is unlawful to discriminate in the letting of accommodation on grounds of gender, civil status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community. Complaints about discrimination should be made to the Equality Tribunal. Landlords frequently refuse to grant tenancies to people who are receiving Rent Supplement. This is not covered by the equality legislation.

Terms of the tenancy

The terms of the tenancy are agreed between the landlord and the tenant. As a tenant, you have a contract with the landlord. This may be oral or it may be in writing. It is preferable to have a written contract (a lease) so there can be fewer disputes about the terms. The contract usually specifies how much rent you have to pay and how often you have to pay it. It may include a range of other provisions about your responsibilities and your landlord's responsibilities. It should specify, for example, who is responsible for paying for utilities such as electricity, gas, water, waste disposal and, if relevant, who is responsible for maintaining the garden. In general, you are bound by the express terms of the contract. However, there are also implied terms in contracts. These are mainly the result of legislation and they supersede any express terms which are less beneficial to you.

The main legislation governing the relationship of landlords and tenants is the Residential Tenancies Act 2004 but there is also a range of other legislation, some of which dates back to the 19th century. There are some proposed changes to the 2004 Act which are expected to come into effect later this year. The PRTB is mainly responsible for ensuring compliance with the Act.

The Act applies to most dwellings which are rented in the private rented sector. It does not apply to certain kinds of rented properties:

- Business lettings
- Dwellings which are let only for holiday periods
- Employment-related lettings – these are sometimes called “tied” houses in that they are tied to the job and you must leave the dwelling when the job ends
- Formerly rent-controlled dwellings or long-occupation lease tenancies – separate legislation applies to them
- Tenancies with leases for more than 35 years
- Dwellings rented from public authorities – you are not covered by this legislation if you are renting from a public authority or an approved social housing organisation. This means that if you are renting a local authority house or student accommodation let by a recognised educational institution, this legislation does not apply to you. If you are renting from an approved social housing organisation, you are not covered by this legislation at present but it is proposed to change this in the near future – see page 5. It is also intended to apply this legislation to local authority tenancies but this is not expected to happen for some time.
- Dwellings in which the landlord lives: if you rent a room in a house where the landlord lives, this arrangement is not covered
- Dwellings in which the spouse, parent or child of the landlord lives and where no person living there has a tenancy agreement in writing. In effect, informal family arrangements are not covered but they may be if they are formalised and a lease is agreed.

Obligations of landlords and tenants

As already stated, the landlord and tenant may agree the terms on which the accommodation is rented 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.

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 (Standards for Rented Houses) Regulations 2008 and maintain the interior at least to the standard which existed at the start of the tenancy
- Insure the dwelling; 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 PRTB to ensure that this is done.
- Not penalise a tenant for taking action to enforce his/her rights

Apartment complexes

If the rented dwelling is part of an apartment complex and the tenant makes a written complaint about something for which the management company is responsible, you must send that complaint to the management company. The management company is obliged to reply in writing to you and you must give this to the tenant.

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, waste collection 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 don't do, will not cause the landlord to be in breach of his/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, sub-let, 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 negotiated between the landlord and tenant and the tenant is obliged to pay this. The 2004 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 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 PRTB. 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.

The tenant is always obliged to pay the rent. This is the case even if the tenant is in dispute with the landlord on the issue of rent or on any other issue.

Rent index

The PRTB publishes a rent index on its website every three months. This shows the rent being paid in respect of the rented dwellings registered with the PRTB. The index for the first quarter of 2014 has the rent details of over 302,000 tenancies. The PRTB registers about 100,000 new tenancies each year. You can use this index to find out the average rent being paid in different areas and for different categories of dwelling.

Deposit

Paying a deposit is usually the first evidence of entering into a tenancy agreement although a deposit is not essential. The deposit is effectively security for the landlord in the event of you leaving without giving adequate notice, not paying the rent or damaging the property (other than normal wear and tear). If these circumstances occur, the landlord may be entitled to hold onto the deposit when the tenancy ends. There are no rules about the amount of the deposit.

Sometimes tenants use the deposit to pay the last rent due. If the landlord agrees then this is fine. Strictly speaking, however, this is in breach of your obligation to pay rent. A tenant is not legally entitled to withhold rent for any reason.

Other charges and payments

As a tenant, whether or not you have to pay for services such as heating, electricity, gas, water or TV connections depends on the terms of your agreement with your landlord. In practice, if you are renting a house, you are likely to be liable for all these charges. The situation varies greatly in the case of apartments. For example, in some apartment complexes, the heating may be operated centrally and the tenant may not have to pay separately for it. The legislation on standards requires that the tenant be able to control the heating. This applies no matter who pays directly for it. In some apartment complexes, cable TV may be supplied. In most apartment complexes, bin

collection is organised by the management company and the tenant may not have to pay charges for this.

If you, as the tenant, are responsible for paying for the various services, then, in general, you must enter into an agreement with the service providers. You are then liable to the service provider for payment for the services.

Local Property Tax

The owner (landlord) is responsible for paying the Local Property Tax to the Revenue Commissioners. The landlord may agree with the tenant that the tenant will pay this amount but, if this happens, the tenant's liability is to the landlord and not to the Revenue Commissioners.

Multi-unit development charges

Under the Multi-Unit Developments Act 2011 (see *Relate*, April 2011), the owners' management company in multi-unit developments is obliged to establish a scheme for annual service charges to pay for the maintenance, insurance and repair of common areas within its control and for the provision of common services (for example, security) to unit owners. The payment of this charge is the responsibility of the owner, that is, the landlord. The landlord may pass this charge on to the tenant if this is agreed between the two parties. The owners' management company may pursue the owner for the charge, not the tenant. The same applies to contributions to the sinking fund which owners' management companies must have to pay for non-routine refurbishment and maintenance expenses for the complex.

Security of tenure

In general, the Residential Tenancies Act 2004 provides that tenants may have security of tenure for four years. Landlords may 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 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 will be considered to have a new tenancy. These provisions are in Part 4 of the Act so a tenancy which is in existence for more than 6 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/she or a member of his/her family wants to occupy it, or if he/she 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.

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/her family. In this case, the landlord must give you a statement which specifies who is to occupy the dwelling and for how long, and the landlord is obliged to offer you a tenancy in the dwelling if the person leaves it within 6 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 re-letting
- The landlord intends to change the use of the dwelling

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

If a tenant sub-lets, 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, then a new tenancy may be created. The Act also 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.

Notice periods

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	28 days
6 months to a year	35 days
1–2 years	42 days
2–3 years	56 days
3–4 years	84 days
4 years or more	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).

If the landlord wants to end the tenancy because the tenant is not paying the rent, the landlord must give notice telling the tenant of the breach of contract and giving a reasonable time to remedy it. This initial notice need not be in writing. The landlord must also serve a 14-day written warning notice stating the amount of rent due and stating that failure to pay will result in the ending of the tenancy. If the rent is not paid at the end of this period, the landlord can then give 28 days' notice ending the tenancy. Disputes about notice may be referred to the PRTB.

Tenants are also obliged to give notice about the ending of a tenancy.

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

Standards

Landlords are obliged to ensure that rented dwellings meet certain minimum physical standards. These standards are set out in the Housing (Standards for Rented Houses) Regulations 2008 which came fully into effect on 1 February 2013. The local authorities (not the PRTB) are responsible for implementing the legislation on standards.

These regulations cover matters such as structural repair, heating, ventilation, natural light, safety of gas and electrical supply, facilities for cooking, storage and laundry. All rented accommodation must have its own bathroom facilities with hot and cold water.

Registration of rented properties

Landlords are obliged to register all residential rented property with the PRTB. This can be done online. The registration process requires that the following information be given:

- The address of the dwelling
- The name, address and Personal Public Service Number (PPSN) of the landlord
- The name and PPSN of each tenant
- The number of people in the dwelling
- A description of the dwelling including the number of bed spaces (for example, a two-reception, three-bedroom house with five bed spaces)
- The date the tenancy started
- The rent and how often it is payable
- The name of any authorised agent and management company
- The Building Energy Rating (BER): some dwellings are exempt from having a BER. The BER system is operated by the Sustainable Energy Authority of Ireland. Website: seai.ie

The PRTB 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 PRTB gives the necessary details to the local authorities so that they may enforce the standards regulations. The PRTB may also exchange information with the Department of Social Protection and the Revenue Commissioners.

The PRTB provides a dispute resolution service which is available to landlords and tenants of registered rental dwellings. Landlords may not use the PRTB's services unless they are registered but this does not apply to tenants. Landlords may not end a tenancy while the PRTB is dealing with the dispute. Website: prtb.ie

Proposed changes to residential tenancies legislation

The Residential Tenancies (Amendment) (No. 2) Bill 2012 has passed the Dáil but has yet to be discussed in the Seanad. It provides for a number of changes to the rules governing residential tenancies. It also provides for a change in the name from the Private Residential Tenancies Board (PRTB), to the Residential Tenancies Board (RTB). The following are the main changes proposed.

Tenants of voluntary housing bodies

The Bill proposes to regulate tenancies provided by approved bodies in the voluntary and cooperative housing sector in broadly the same way as private rented tenancies. The general duties and rights of landlords (the approved housing bodies) and tenants will apply as described earlier but there will be some differences.

The rules in relation to the calculation of rent and the timing of rent increases will be different. Rent is paid in the voluntary and cooperative housing sector in accordance with the local authority differential rent schemes so the amount of rent changes when the tenant's circumstances change. The landlord will not be obliged to update the PRTB's register every time there is a change in rent.

Approved bodies will have the same rights in relation to the ending of Part 4 tenancies as private landlords have. They will also have the right to end a tenancy if the accommodation is no longer suitable for the needs of the household because a household member needs care support services which are not available in the current accommodation.

Ending a tenancy for non-payment of rent

The Bill changes the rules for ending a tenancy when the rent has not been paid. It provides that the landlord will no longer have to serve a notice of the breach of contract and give the tenant a reasonable time to remedy it. Instead, the landlord will be able to serve a 14-day warning notice and, if the rent remains unpaid, the landlord can then serve a notice ending the tenancy.

Failure to pay rent during a dispute

The Bill also provides powers for the PRTB to deal with cases where tenants do not pay rent during a dispute. As already stated, tenants are obliged to continue to pay rent while a dispute is being dealt with by the PRTB. If the tenant withholds rent during this time, the Bill provides that the landlord may complain to the PRTB. The PRTB can fast-track this complaint and, having investigated it, can order the tenant to pay the rent. If the tenant does not comply within 14 days, the PRTB will have the power to end the tenancy whether or not a notice to this effect has been served.

Illegal retention of deposits

The Bill does not deal with the issue of the illegal retention of deposits but it is intended to introduce amendments on this issue in the Seanad.

Anti-social behaviour

It is also intended to introduce amendments to improve the mechanisms for dealing with anti-social behaviour by tenants. It is intended to make it easier for neighbours and residents' associations to complain to the PRTB about such behaviour.

Rent Supplement and Housing Assistance Payment

Tenants in private rented accommodation may qualify for Rent Supplement if they meet certain conditions – these were described in *Relate*, February 2013.

The Rent Supplement scheme has been allocated €344 million for 2014. There are about 76,000 recipients, of whom over 50,000 have been recipients for more than 18 months. Maximum rent levels were last changed in June 2013. A new rent limit review has started in the Department of Social Protection as part of the Budget process.

Risk of homelessness

Department of Social Protection staff dealing with Rent Supplement have discretionary powers to award a supplement for rental purposes in exceptional cases where it appears that the circumstances of the case so warrant, for example, when dealing with applicants who are homeless or who are at risk of losing their tenancy. Such cases are examined on a case-by-case basis having regard to the situation presented.

The Dublin Region Homeless Executive and the relevant voluntary organisations have agreed a protocol with the Department of Social Protection which aims to ensure that families at risk of losing their existing private rented

accommodation can have more timely and appropriate interventions made on their behalf. The protocol came into effect in June 2014. Each case will be assessed on its merits and families may get additional support, including financial support.

Housing Assistance Payment

The Government plans to introduce a Housing Assistance Payment (HAP) scheme to replace the Rent Supplement scheme for long-term tenants in need of social housing support. The HAP is to be implemented by the local authorities rather than the Department of Social Protection. The scheme is being tested in 2014. Limerick is the lead local authority for the test phase and the other local authorities involved are South Dublin, Louth, Kilkenny, Waterford, Cork and Monaghan. It is expected that the scheme will be implemented throughout the State in 2015.

The Housing (Miscellaneous Provisions) Bill 2014 provides the legal basis for the scheme. The Bill is currently before the Oireachtas.

The Bill proposes that the HAP will operate as follows:

- You will find accommodation and agree terms with the landlord in the normal way
- The local authority will pay the full rent directly to the landlord. This will be subject to maximum rent limits. The accommodation must meet the minimum standards for rented accommodation and the landlord must be tax-compliant and must, among other things, produce a tax clearance certificate.
- You will then be required to pay a contribution to the local authority based on your income. This will be calculated on the same basis as the amounts paid by people renting local authority accommodation. Each local authority has its own differential rent scheme. Plans have been announced for a uniform scheme but that is not provided for in this Bill.

It should be noted that the contribution you make towards the rent is based on your means so you do not need to be unemployed to qualify for the scheme.

The Bill sets out a number of conditions attached to the payment of the HAP including, for example, that if a household member engages in anti-social behaviour, the local authority may refuse to pay or stop paying the HAP. You must pay any other payments which you owe the landlord, for example, payments for utilities.

Maximum rent levels will be set by the Minister for the Environment, Community and Local Government.

The Bill also provides for mandatory deduction of rent from social welfare payments in the case of people receiving HAP – see page 8.

Local authority tenancies

As well as providing for the HAP, the Housing (Miscellaneous Provisions) Bill 2014 provides for a number of other changes to the rules governing tenancies of local authority houses, and for a tenant purchase scheme.

Local authority housing repossessions

In 2012, there were 83 repossessions of local authority rented houses; there were 44 in 2010 and 70 in 2011. The main reason for these repossessions was arrears of rent (28 in 2010, 45 in 2011 and 35 in 2012). Anti-social behaviour was the cause of 35 repossessions over the three years.

The legal basis for repossession of local authority rented accommodation is currently Section 62 of the Housing Act 1966. The Supreme Court has held that this section is not compatible with the European Convention on Human Rights because it does not have appropriate procedural safeguards. In particular, where the facts are in dispute, it does not provide for an independent hearing. (*Donegan v Dublin City Council and others*; judgment of 27 February 2012. Website: courts.ie)

The Housing (Miscellaneous Provisions) Bill 2014 proposes to replace it with a new procedure.

The new procedure will apply where local authorities want to repossess houses because:

- There has been a serious or repeated breach of a condition of the tenancy agreement, for example, non-payment of rent or anti-social behaviour
- The dwelling has been abandoned by the tenant
- There is no tenancy in the dwelling and the dwelling is occupied by a person without lawful authority

The new procedure provides that a local authority may issue a tenancy warning if there is an alleged breach of the tenancy conditions, for example, non-payment of rent or anti-social behaviour. Such a warning may not be necessary in the case of very serious breaches. This warning must specify the breach, what needs to be done and the possibility that the local authority may look for a possession order against the tenant. The tenant is then entitled to an internal review of this warning. The internal review must be carried out by a local authority official not involved in the initial warning.

If the tenant does not deal with the breach, the local authority may then apply to the District Court for a possession order. The court hearing may be held in camera in some cases. The court may order the ending of the tenancy or, in the case of anti-social behaviour, may order the exclusion of a member of the household from the tenancy. In cases where the local authority gets a possession order on the basis that a tenancy has been abandoned, the former tenant may apply to the District Court for that order to be reconsidered.

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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All decisions in the District Court may be appealed to the Circuit Court and a further appeal on a point of law may be made to the High Court.

The Bill also makes a number of changes in the rules governing the exclusion of tenants for anti-social behaviour.

Tenant purchase scheme

The Housing (Miscellaneous Provisions) Bill 2014 provides for a new tenant purchase scheme which is broadly similar to the current schemes for newly built local authority houses and local authority apartments. The new scheme will apply to local authority houses other than newly built or newly acquired houses and apartments (for which the existing schemes cater). The last such scheme ended in 2012. The full details of the conditions attached will be in regulations. In general, tenants may be able to buy their local authority rented dwellings at a discounted price. The discounts take account of the tenant's income and may also take account of the length of the tenancy.

Deduction of rent from social welfare payments

The 2014 Bill provides for a system of mandatory deduction of rent and arrears of rent from social welfare payments. This will apply to local authority tenants and to recipients of the HAP. The Department of Social Protection may deduct the amount from the social welfare payment and transmit it to the local authority. The total that may be deducted in respect of rent arrears cannot be more than 15% of the social welfare payment unless the recipient agrees to more being deducted.

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