

Residential Tenancies Act 2004

A Quick Guide



AN ROINN COMHSHAOIL, ODHREACHTA AGUS RIALTAIS ÁITIÚIL

**DEPARTMENT OF THE ENVIRONMENT, HERITAGE
AND LOCAL GOVERNMENT**



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This document does not purport to be a legal interpretation
of the legislation.

Summary of main provisions of new landlord and tenant legislation

Foreword by Minister for Housing and Urban Renewal

1st September 2004 is “commencement day” for the Residential Tenancies Act. This will herald a new era for landlords and tenants in Ireland. The full Act will be implemented in phases over the next few months. The Act provides for reform of residential landlord and tenant law, based on the recommendations of the Commission on the Private Rented Residential Sector. This Guide provides a short summary of some of the main elements of the new legislation. It does not cover all the provisions of the Act, but it should be helpful in giving tenants, landlords and their representatives a broad picture of the new legal code. I would urge all concerned to inform themselves as fully as possible of the new provisions and contact details for further information are given below. The new legislation will govern the operation of residential tenancies in the future and will, of course, also need to be reflected in leases and tenancy agreements. I believe that these reforms will greatly enhance the operation of the private rented sector and enable it to play an increasingly vibrant role in meeting a wide range of housing needs.

Noel Ahern, T.D., Minister for Housing and Urban Renewal

Further information

The Act is available online at:

www.oireachtas.ie * Legislation * Acts: 1997 – 2004 * 2004 * 27 of 2004 (Residential Tenancies Act 2004 – PDF document)

Copies of the Act can be purchased directly from:

Government Publications Sales Office, Sun Alliance House, Molesworth Street, Dublin 2

Or by mail order from

Government Publications, Trade Section, 51 St. Stephen's Green, Dublin 2 Tel: 01 6476834

Further information can be obtained from:

Private Residential Tenancies Board Tel: 01 8882960

Canal House, Canal Road, Ranelagh, Dublin 6.

Email: Tenancies_Board@environ.ie (case sensitive)

Scope (Part 1)

The Act applies to the mainstream private rented sector so it does not apply to:

- owner-occupied accommodation
- social housing
- the formerly rent-controlled sector
- long occupation equity tenancies
- business lettings
- holiday lettings
- “rent a room” or other arrangements whereby the landlord also resides in the dwelling

However, it will apply to rented dwellings where the landlord’s spouse, child or parent is a resident and a lease or written tenancy agreement has been signed. The security of tenure provisions do not apply to employment-related and ‘section 50’ student accommodation.

Tenancy Obligations (Part 2)

Tenants must:

- pay the rent and any other specified charges,
- avoid causing or make good any damage beyond normal wear and tear,
- notify the landlord of any repair requirements,
- allow access for repairs to be carried out and by appointment for routine inspections,
- keep the landlord informed of the identity of the occupants
- not engage in or allow anti-social behaviour
- not act, or allow visitors to act in a way that would invalidate the landlord’s insurance,
- not cause the landlord to be in breach of statutory obligations,
- not alter, improve, assign, sub-let or change the use of the dwelling without written consent from the landlord.

Landlords must:

- allow the tenant to enjoy peaceful and exclusive occupation,
- carry out repairs, subject to tenant liability for damage beyond normal wear and tear
- insure the dwelling, subject to the insurance being available at a reasonable cost
- provide a point of contact,

- promptly refund deposits unless rent is owing or there is damage beyond normal wear and tear
- reimburse tenants for expenditure on repairs that were appropriate to the landlord
- enforce tenant obligations
- not penalise tenants for making complaints or taking action to enforce their rights.

These respective obligations must be adhered to whether or not there is a lease or written agreement - landlords and tenants cannot contract out of them. Additional obligations, however, can be included in a lease.

If the landlord does not enforce the tenant's obligations, any other person who is adversely affected as a result can bring a complaint to the Private Residential Tenancies Board (PTRB) about the failure. Prohibited anti-social behaviour includes behaviour that interferes with other people's peaceful occupation as well as more serious behaviour that causes fear, danger, injury, damage or loss.

Rents (Part 3)

Rent may not be greater than the open market rate and may be reviewed (upward or downward) once a year only unless there has been a substantial change in the nature of the accommodation that warrants a review. Tenants are to be given 28 days notice of new rents.

Tenant may ask their landlord to review the rent if they feel it exceeds the market rate for the property - if more than a year has elapsed since the last rent review, tenants may seek a review. Disputes about any aspect of rent may be referred to the PTRB.

Security of Tenure (Part 4)

Security of tenure is based on 4-year cycles from the date Part 4 of the Act comes into force (i.e. 1st September 2004).

The landlord can terminate without specifying grounds during the first 6 months, but once a tenancy has lasted 6 months, the landlord will be able to terminate that tenancy (known as a "Part 4 tenancy") during the following 3 1/2 years only if any of the following apply;



- the tenant does not comply with the obligations of the tenancy
- the dwelling is no longer suited to the occupants accommodation needs (e.g. overcrowded)
- the landlord intends to sell the dwelling in the next 3 months
- the landlord requires the dwelling for own or family member occupation
- the landlord intends to refurbish the dwelling
- the landlord intends to change the business use of the dwelling.

The grounds for recovery of possession listed above are subject to certain procedures to prevent their abuse.

At the end of the 4 years, a new tenancy will commence and the cycle begins again on the same basis as outlined above. The following are other key features of Part 4 tenancies:

- Tenants may opt to **continue in occupation** after a fixed term tenancy that has lasted 6 months or more expires, but they must notify the landlord of an intention to remain, between one and three months before the fixed term lease is due to expire.
- Where a tenancy is **assigned** to a new tenant (i.e. transferred with the landlord's consent), a new tenancy cycle will commence.
- Where a tenancy is **sub-let** (i.e. tenant moves out and becomes landlord to a new sub-tenant with the landlord's consent), the sub-tenancy will be deemed to have commenced on the same date as the head-tenancy out of which it was created, and the cycle will continue. Further detail relating to sub-tenants is contained in the Schedule to the Act.
- In the case of **multiple occupants**, the cycle will run with the earliest tenant and Part 4 protection will, therefore, last less than 4 years for those who join in at a later stage. Multiple occupant tenancies will continue for the full four years so long as there is at least one person who is a

tenant of the Part 4 tenancy in occupation (not necessarily one of the original tenants).

- **Licensees** (i.e. additional occupants brought in by a resident tenant who are not tenants themselves) may request the landlord to become tenant and the landlord may not unreasonably withhold written consent.
- The tenant will be free to terminate the tenancy at any time, subject to any fixed term lease or agreement.

Tenancy Terminations (Part 5)

Tenancies will be terminated by means of a **notice** of termination, regardless of why the termination is happening. If the termination is by the landlord and the tenancy has lasted more than 6 months, one of the 6 reasons on the previous page must be cited. Tenants do not need to give a reason for terminating.

The notice period to be given depends on the length of the tenancy as follows:

| Duration of Tenancy | Notice by Landlord | Notice 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 or more years | 112 days | 56 days |

Shorter notice periods apply where termination is for non-compliance with tenancy obligations (7 days for serious anti-social behaviour, 28 days for other breaches) and the parties may also agree a shorter notice period at the time of termination (but not earlier). Longer notice may be given, but not more than 70 days where the tenancy has lasted less than 6 months.

Where a landlord refuses consent to assign or sub-let a fixed term tenancy, the tenant may terminate the tenancy before the expiry of the fixed term.

Dispute Resolution (Part 6)

Disputes arising between landlords and tenants are generally to be referred to the PRTB instead of the courts. Examples of disputes that will be dealt with by the Board include issues relating to; deposit refunds, breaches of tenancy obligations, lease terms, termination of tenancies, market rent, rent arrears, complaints by neighbours regarding tenant behaviour, etc.

Either the landlord or tenant can initiate the process. The person who initiated the process will have to pay a fee (to be decided by the PRTB) which will not be expensive. Legal representation should not be necessary as the dispute resolution process will operate informally and is intended to minimise expense and stress for all parties concerned. Cost of legal or other professional representation at PRTB proceedings will not be awarded except in exceptional circumstances as determined by the Board.

The dispute resolution process consists of two stages:

- Stage 1:
Either mediation or adjudication as chosen by the parties and is confidential
- Stage 2:
A public hearing by a three-person Tenancy Tribunal.

A mediated agreement or the decision of an adjudicator or of a Tribunal will result in a determination order of the Board. A Tribunal decision may be appealed to the High Court on a point of law only. The enforcement of determination orders of the Board that are not complied with will be through the Circuit Court.

The Board may award damages of up to €20,000 and arrears of rent of up to €20,000 or twice the annual rent, whichever is greater (but a maximum of €60,000 applies to rent arrears awards). Cases involving amounts greater than these will have to be taken through the courts. The Board will have power to apply to the courts for injunctive type relief in the case of very serious emergency cases coming before it, e.g. illegal evictions, threat to life, etc.

Registration of Tenancies (Part 7)

Landlords will have to register details of all their tenancies with the PRTB but from the commencement of the new registration system will no longer have to register with local authorities. The Board will use the registration data for its information provision function and for resolving certain types of disputes.

Registration Procedures

- In future new tenancies will have to be registered within a month, existing tenancies will have to be registered within 3 months of Part 7 of the Act coming into force (i.e. by the 1st of December 2004).
- Landlords currently registered with local authorities must re-register with the PRTB giving details required by the Act but will not have to pay a fee.
- The requirement to register arises only where a new tenancy is created.
- While a revised rent must be updated in the register within a month of taking, that notification will not require to be accompanied by a fee. Other relevant changes that occur in the details of the registered tenancy need only be notified as part of a rent review update.
- Tenants must supply landlords with the information they need to complete the registration form, including their Personal Public Service Number.
- The registration fee is €70 per unit and a composite fee of €300 is available where a number of units in the one property are being registered at the same time.
- There are exceptions in certain limited circumstances i.e. 2 fees already paid in respect of the dwelling within the previous year.
- A double fee applies for late registrations.
- In a case where a tenancy lasts for 4 years, a new registration application and fee will apply where a further Part 4 tenancy commences immediately afterwards.
- The fees will keep pace with inflation.

Other Registration Functions of the PTRB

- The PTRB will exchange data on tenancies with local authorities and the Department of Social and Family Affairs and will provide particulars to the Revenue Commissioners as requested.

- The PTRB will rigorously pursue compliance by landlords with the registration requirement. Failure to do so is an offence and the penalty on conviction is a fine of up to €3,000 or up to 6 months imprisonment or both.
- Landlords must be registered in order to avail of the PRTB dispute resolution service.
- Tenants will have access to the service irrespective of whether or no the tenancy is registered.
- When registered, the PTRB will issue the landlord and tenants with a registration number.
- An extract from the register will be available to the public. It will not contain information that would disclose the identity of the landlord or tenant or the rent.

Private Residential Tenancies Board (Part 8)

The Private Residential Tenancies Board will be established as a statutory body. As well as its dispute resolution and tenancy registration functions, the Board will review the operation of the legislation and provide policy advice, research and information on the sector. Queries regarding these functions or in relation to the legislation generally can be addressed to the Private Residential Tenancies Board (see contact details end of page 1 of guide).

Other Provisions

Long occupation equity leases

The Act provides for the abolition, 5 years after the commencement of Part 4 (i.e. on 1 September 2009) of the entitlement to apply, for the first time, for a long occupation equity lease under the 1980 Landlord and Tenant Act. It allows a voluntary renunciation option in relation to the entitlement during those 5 years. An information note containing further details regarding the changes in relation to long occupation equity leases is available on request from the PRTB or from the Department of the Environment, Heritage and Local Government, Custom House, Dublin 1.

Management of apartment complexes

The Act gives tenants certain rights in relation to management companies of apartment complexes. Management companies will be identified in tenancy registration details. Landlords are required to convey tenants' complaints to the management company, which must have regard to the complaint and furnish the landlord with a

written statement, which must be forwarded to the tenant, of steps taken to deal with the complaint. Tenants may request the management company to supply written particulars of service charges and how they were calculated and the company must comply to the extent that it would be obliged to comply with such a request from apartment owners.

Anti-social behaviour - local authority powers

Local authority powers under the Housing (Miscellaneous Provisions) Act 1997 to deal with anti-social behaviour in their estates have been strengthened. Excluding order powers, whereby the District Court can exclude individuals engaging in anti-social behaviour from social housing dwellings or areas, have been extended to occupants of tenant-purchased homes (other than the owner). Existing powers to refuse sale of local authority housing on grounds of anti-social behaviour have also been applied to sales under affordable housing and shared ownership schemes.

Penalties

The penalty applicable on conviction for an offence under the Act is a fine of up to €3,000 or 6 months imprisonment or both and up to €250 per day where the offence continues after conviction. The fines for conviction of an offence under the Housing Acts relating to standards or rent books have also been increased to these levels.

Technical provisions and miscellaneous amendments

Part 9 of the Act contains a number of other ancillary technical provisions and consequential amendments to specific provisions in housing and landlord and tenant legislation.

Implications for leases and tenancy agreements generally

The provisions of the legislation will need to be reflected, as appropriate, in any future tenancy agreements, leases, etc. Tenancy agreements or leases can provide for matters not dealt with in the Act. However, in relation to matters that are covered in the Act, a tenancy agreement or lease cannot take away from rights and obligations provided for in the Act and if it purports to do so, that provision is rendered void. The landlord or tenant cannot contract, or be contracted, out of the rights or obligations of the Act.

- The Act allows for leases to provide greater security of tenure for tenants, and allows leases to specify longer notice-periods. However a lease cannot detract from the security of tenure measure specified in the Act. A landlord and a tenant can agree shorter notice periods, but only at the time the tenancy is being terminated.
- The PRTB's function in dealing with disputes relating to tenant or landlord tenancy obligations also includes obligations of a tenancy agreement or lease not specified in the Act.
- A tenant's right to request a rent review annually cannot be contracted out in a lease.
- Notwithstanding the existence of a fixed term tenancy and despite anything to the contrary in a lease or tenancy agreement, where a landlord withholds consent to assignment or sub-letting, the tenant may terminate the tenancy.

Accommodation Standards and Rent Books

Local Authorities continue to have responsibility for the enforcement of the Regulations under the Housing Acts relating to rent books and standards of private rental accommodation.

Commencement Schedule

The Act will come into operation on a phased basis, as follows:

| | |
|-------------------------|---------------------------------------|
| 1st September 2004: | Parts 1, 4, *5, 7, *8 & *9. |
| November/December 2004: | Parts 2, 3 & 6 and remaining sections |

* Other than sections 71, 72, 151(1), 182, 189, 190, 193(a) and (d), and 195 (4) and (5)



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