



## Irish Council for Social Housing

### Guidance note: 5

#### **Residential Tenancies (Amendment) Act 2015 and the Impact on Housing Associations – Rent**

##### **1. What does the Act say about Rent?**

Rent in a housing association tenancy is set according to the following two scenarios depending on the nature of the accommodation provided:

- Where a housing association leases properties from a public authority for the purpose of providing social housing the rent shall be set according to the *lease or contract* agreed between the AHB and housing authority.
- For all other tenancies the rent shall be set according to the *terms of the assistance provided* to the housing association for providing the properties given under Section 6 of the Housing (Miscellaneous Provisions) Act 1992 (for example under the Capital Assistance Scheme, Capital Loan and Subsidy Scheme, CALF). The requirements for the setting of rent under these schemes are set out by the Department of Housing, Planning and Local Government. For example, if you provide accommodation under the Capital Assistance Scheme then you would set the rent in accordance with Memorandum:2/02 Capital Funding Schemes for the Provision of Rental Accommodation by Approved Housing Bodies. If you provide accommodation under a Payment and Availability Agreement, then the rent you would charge would be listed in your agreement with the Local Authority (usually the differential rent of the Local Authority concerned).

##### **2. When can a housing association conduct a rent review?**

The Act provides that a review of the rent will be carried out in accordance with the contract or lease signed for properties leased from a Local Authority or in the case of other properties (e.g. Capital Assistance Scheme) in accordance with the assistance provided to the housing association for providing those properties.

Therefore, the Act provides that a review of the rent shall be carried out in accordance with the tenancy agreement relating to the tenancy of the dwelling. For example, if you provide accommodation using the differential rent system of the Local authority which was agreed with the local authority then you adhere to the process stated under that rent policy.

If there is no mention of a rent review in the tenancy agreement, then the Act provides that either landlord or tenant may request a review and this may only occur once every 12 months. The landlord is obliged to notify the tenant of a revised rent in line with the terms of the tenancy agreement, or if there is no such provision in the agreement, as soon as practicable.

**3. Does a Housing Association need to notify the RTB of rent reviews?**

Housing Associations are relieved of the obligation of updating details relating to rent in tenancy registrations maintained by the RTB, unlike in the private sector where changes in the rent payable must be notified to the Board.

**4. How should a Housing Association communicate with their tenants in relation to rent?**

Due to the complex nature of rents in the sector and in the interests of clarity, it is considered best practice to write to tenants on an annual basis to outline how their rent will be calculated for the coming year.

**5. Do the Rent Predictability Measures and Rent Pressure Zones apply to housing associations?**

No, these measures do not apply to housing associations – they only apply to private landlords.

**6. Is rent in advance (e.g. 2 weeks rent in advance) considered a deposit?**

No. A deposit must be a separate payment to a rent payment.

**RENT ARREARS**

**7. What should a housing association do in the event of rent arrears?**

Once a tenant misses a payment of rent, they are in breach of their obligation to pay rent on time and in full. When this occurs, the landlord is obliged to inform the tenant of the breach and give them an opportunity to remedy it before serving a notice of termination. If a remedy is not reached and the landlord wishes to use the RTB dispute services to resolve the issue without serving a NOT, they may apply for mediation (including telephone mediation) or adjudication, *after* step 1 below i.e. after they have given the tenant time to resolve the issue.

The housing association should follow the steps below in order to remedy a rent arrears issue:

1. They must issue a written warning providing reasonable notice to the tenant of the amount of rent due and giving them **at least 14** (calendar) days in which to pay. Please note that 14 days is the minimum reasonable amount of days that can be given and the landlord can decide to allow more days to remedy the issue within a reasonable timeframe e.g. if there is a large amount of arrears due. (If the tenant does not remedy the issue at this stage, the landlord can apply for a dispute resolution service to the RTB to resolve the issue without/before serving a NOT).
2. Where the rent has not been paid up to date within the 14 days (or designated number of days), the landlord can issue a 28-day notice of termination for rent arrears. Please note that the 14 days or designated time period in step 1 **must have expired** before issuing the notice of termination.

**8. If a housing association is serving a NOT for rent arrears in the first 6 months of a tenancy, does the 2 step process still need to be followed?**

Yes, if the landlord has included a reason of rent arrears on the notice of termination then the 2 step process outlined above still needs to be followed even if it is in the first 6 months of a tenancy in order for the housing association to be in line with legislative requirements. However, it is important to note that the landlord is not obliged to provide a reason on the notice of termination if serving it within the first six months of the tenancy. In this regard, if the landlord does not provide a reason in the first 6 months, but the underlying reason is rent arrears, it is important to note that if a case is lodged with the RTB, it is within the adjudicators' independent powers and discretion to examine all aspects of the case, including whether the tenant was allowed due time to remedy the

arrears. Therefore, it is advisable to always follow the 2 step process for rent arrears in order to demonstrate that the correct process was followed.

**9. If a tenant has moved out of the dwelling and there are rent arrears owed, can the housing association still lodge a dispute to the RTB?**

The definition of a tenancy includes a tenancy that has been terminated so rent arrears may be sought after the tenancy has ended. Arrears of rent may be subject to the statute of limitations which is currently 6 years in respect of contractual matters i.e. arrears from over 6 years ago may not be considered. Please also note that, if registering a former tenant online, the housing association should enter the tenancy commencement date as 7<sup>th</sup> April 2016, as the online portal may not recognise tenancy commencement dates over four years old.

**10. What should be included in a Tenancy Agreement?**

**Rent, service charges, utility charges and taxes**

A tenancy agreement should include details of the rent to be paid for a property and that the tenant is responsible for paying the rent. It should also clearly state the tenant is responsible for paying services charges, utility charges and any other taxes that may apply.

**Rent assessment**

For rent assessment purposes where the rent is set according to the tenant's income or the income of their household, the tenancy agreement should state the tenant shall promptly provide full details of such income as requested by the landlord. These details include bank statements, pay cheques and all other statements of income. Where a tenant fails to provide full details of their income and the income of all members of their household, the tenant shall pay the maximum rent of €[blank] or a penalty charge of €[blank] in addition to the set rent, until such time as they comply with this obligation. Failure to provide bank statements, pay cheques and other statements of income represents a breach of the tenancy agreement and could lead to the termination of the tenancy. Please also ensure that the details of rent assessment and rent calculation are up to date in the Housing Association's Tenant Handbook and/or Rent Policy, as these are accompanying documents referred to in the Tenancy Agreement.

**Rent review**

In relation to rent review the tenancy agreement should state the procedures to be followed. The landlord shall notify the tenant of the amount of rent set following a review of rent. The review of the rent will be in accordance with the contract or lease where the dwelling is owned by a public authority and provided to the landlord under lease or contract pursuant to paragraph (ea) of the Housing (Miscellaneous Provisions) Act, 2009. Where the tenancy is owned and provided by an approved housing body to whom assistance is given pursuant to section 6(2) of the Housing (Miscellaneous Provisions) Act, 2009 and where the dwelling is let to a household assessed as qualifying for social housing support then the review will be in accordance with the terms and conditions associated with that assistance.

**Disclaimer note:** The content in this guidance note is provided for general information purposes only. If you are unsure about any of the information contained in the Act, please seek legal advice.

*Last Updated: 2<sup>nd</sup> August 2017*