



Irish Council for Social Housing

Guidance note: 6

Residential Tenancies (Amendment) Act 2015 and the Impact on Housing Associations Fixed Term Leases

1. What is a Fixed Term Lease?

A fixed term lease is a lease / tenancy between a landlord and tenant set for a fixed period of time e.g. from 1st July 2016 to 1st July 2018.

2. Do tenants on fixed term leases come under the remit of the RTB?

Yes, the Act defines “tenancy” to include a periodic tenancy and a tenancy for a fixed term, whether oral or in writing or implied. (A periodic tenancy, which is a rolling tenancy with no set end date, is the norm in the social housing sector - the ICSH tenancy agreement template sets out details for a periodic tenancy).

3. Can tenants on a Fixed Term Lease acquire Part four security of tenure?

Yes, all existing tenants acquire Part four rights 6 months after April 7th 2016 (commencement date of the Act). New fixed term tenancies which begin after the Act commenced will start the new cycle and will be awarded Part four rights after 6 months has passed from the date the tenancy begins. Once 6 months has passed a tenant acquires Part four rights regardless of whether they are in a periodic or a fixed term tenancy and can stay for the duration of the part four tenancy if they wish.

4. How long is the cycle of a Part 4 tenancy?

For tenancies that commenced *before* 24th December 2016, a part four tenancy runs for 4 years. For tenancies that commenced *after* 24th December 2016 (including a further Part four tenancy that came into existence after 24th December 2016), the tenancy runs for 6 years.

5. What are the requirements for landlords serving a Notice of Termination to a tenant on a fixed term lease?

The requirements for the termination of a fixed term lease are as follows:

Prior to expiry of the lease: A fixed term lease may only be terminated prior to the expiry date of the fixed term if:

- there is a provision in the tenancy agreement which provides for this (this provision cannot be less favourable than what is prescribed in the Act);
- If Section 34 grounds are included in the lease;
- One of the parties has breached their obligations;
- Where there is no provision in the agreement the landlord must wait until the fixed term expires and then he can rely on the grounds in Section 34 of the Act (see Q.8 below) to terminate the lease.

After expiry of the lease: If a tenancy is more than six months in duration (i.e. 6 months after the tenancy commenced) and has continued beyond the expiry of the fixed term lease, a landlord can only terminate the tenancy using the section 34 grounds in the Act (see Q. 8 below).

6. Can a landlord include the Section 34 grounds in a fixed term lease as a 'provision' for termination of the lease (i.e. prior to the expiry of the lease)?

Yes, if the Section 34 grounds are included in the lease agreement as a provision for termination, then the landlord may use those grounds as a reason for terminating the lease. (see Q. 8 below for S.34 grounds applicable to housing associations).

7. Can a landlord terminate a fixed term lease based purely on the fact that the lease has expired i.e. the lease has reached the date of expiry?

No, the landlord must follow the appropriate steps as outlined at Q. 5 above.

8. Does the landlord need to give a reason for terminating a fixed term lease in the first 6 months of the lease?

Yes, unlike periodic tenancies, fixed term tenancies cannot be ended for no reason. A landlord is always required to provide a reason when ending a fixed term tenancy (see Q. 5 above). Periodic tenancies cannot be ended for no reason unless it is within the first 6 months of the tenancy.

9. What are the section 34 grounds of the Act?

If a tenancy is more than six months in duration (i.e. 6 months after the tenancy commenced), and has continued beyond the expiry of the fixed term lease, a landlord can only terminate the tenancy using the section 34 grounds in the Act.

The Section 34 grounds applicable to housing associations are as follows:

- The tenant has failed to comply with the obligations of the tenancy/under the Act (having first been notified of the failure and given an opportunity to remedy it).
- The landlord intends to sell the dwelling within the next 3 months. NB- the notice must be accompanied by a statutory declaration stating the landlords' intention to sell.
- The dwelling is no longer suited to the needs of the occupying household. NB – the notice must be accompanied by a statement outlining why the dwelling is no longer suitable for the needs of the tenant. (Specifically, in relation to size of the dwelling and bed spaces)
- Vacant possession is required for substantial refurbishment of the dwelling. NB - The notice *must* include or be accompanied by a written statement specifying the nature of the intended works to be carried out and planning permission, if relevant. Where planning permission is not required, the notice must include a written statement confirming the name of the contractor employed to carry out the refurbishment, and the dates and proposed duration of the works*
- The landlord intends to change the use of the dwelling. NB – The notice *must* include or be accompanied by a written statement specifying the nature of the intended use and a copy of any planning permission obtained, if relevant. This written statement must specify any works to be carried out in respect of the change of use and specify the details of those works, the name of the contractor employed to carry out the works, and the dates and proposed duration of the works*

**For the last three grounds, the termination notice must contain certain additional details as specified in the Act relating to the tenant being given first refusal to resume the tenancy should the dwelling become available for re-letting.*

Please refer to the RTB website for sample NOTs: <http://www.rtb.ie/dispute-resolution/dispute-resolution/sample-notices-of-termination>

10. What are the termination notice periods for fixed term tenancies?

Where the tenancy is being terminated by the landlord by reason of the failure of the tenant to comply with any of the obligations of the tenancy, the period of notice to be given by the landlord shall be:

- ✓ **7 days***, if the tenancy is being terminated by reason of behaviour of the tenant, or any occupant in the tenancy that is behaviour that constitutes the commission of an offence, being an offence the commission of which is reasonably likely to affect directly the well-being or welfare of others, **or**, behaviour that causes or could cause fear, danger, injury, damage or loss to any person living, working or otherwise lawfully in the dwelling concerned or its vicinity and, without prejudice to the generality of the foregoing, includes violence, intimidation, coercion, harassment or obstruction of, or threats to, any such person, **or**, behaviour that is threatening to the fabric of the dwelling or the property containing the dwelling,

*(*Please note that due to the serious nature of the above reasons for terminating a tenancy, there is a high burden or proof/evidence to show that there has been a threat to life or threat to the fabric of the dwelling)*

- ✓ **28 days**, if the tenancy is being terminated, for any other reason (but not a failure to pay an amount of rent due), **or**, if it is for the reason of a failure to pay an amount of rent, service charge, charge or tax due and the tenant has been notified in writing by the landlord that an amount of rent due has not been paid and 14 days elapse from the receipt of that notice without the amount concerned having been paid to the landlord.

Please refer to the RTB website for sample NOTs and guidance: <http://www.rtb.ie/dispute-resolution/dispute-resolution/sample-notices-of-termination>

Where the tenancy is being terminated under the Section 34 grounds of the Act, the notice periods are the same as for periodic tenancies, as follows:

Termination of a Tenancy by a Tenant	
Duration of Tenancy	Tenant Notice Period
Less than 6 months	28 days
6 months or more, but less than 1 year	35 days
1 year or more but less than 2 years	42 days
2 years or more but less than 4 years	56 days
4 years or more but less than 8 years	84 days
8 or more years	112 days

Termination of a Tenancy by a Landlord	
Duration of Tenancy	Landlord Notice Period
Less than 6 months	28 days
6 months or more, but less than 1 year	35 days
1 year or more but less than 2 years	42 days
2 years or more but less than 3 years	56 days
3 years or more but less than 4 years	84 days
4 years or more but less than 5 years	112 days
5 years or more but less than 6 years	140 days
6 years or more but less than 7 years	168 days
7 years or more but less than 8 years	196 days
8 or more years	224 days

11. When does a fixed term lease expire (i.e. when the landlord can use section 34 grounds to terminate)?

A fixed term lease expires at midnight on the expiry date stated in lease. After this, the landlord is required to use section 34 grounds to terminate the lease.

12. If a tenant wants to stay on beyond the expiry date of the fixed term lease, what should they do?

The Act states that where a tenant in a fixed term tenancy wishes to stay on after the expiry of the fixed term they should inform the landlord no later than 1 month before the end of the fixed term and no sooner than 3 months before the end of the fixed term. If the landlord wants the tenant to leave after the expiry of the fixed term (and if the fixed term tenancy is over 6 months) then he can only rely on the grounds in section 34 of the Act to terminate because the tenancy is a part 4 tenancy.

If the tenant does not inform the landlord and they stay on, it is open to the landlord to seek compensation from the tenant for any losses incurred (e.g. cost of advertising). If the tenant refuses to pay for the losses incurred, the landlord can take a case to the RTB.

13. Is a periodic tenancy agreement for a set period of time, e.g. a 12-month rolling contract, the same as a fixed term lease?

No, a fixed term lease is one where it has been agreed that the tenancy will last for a fixed period of time, with a start date and an end date. A periodic tenancy on the other hand has no set timeframe.

14. How does the Act affect fixed term leases that were in place before 7th April 2016?

Where there is a fixed term tenancy in place prior to 7th April 2016, e.g. a lease with a start date of 1st November 2015, the agreement still stands i.e. the expiry date of that fixed term lease remains the same. However, for the purposes of the provisions of the Act and part four security of tenure, the start date of this tenancy is deemed to be 7th April 2016. Please also note that the Act will supersede any part of the original agreement that contravenes the Act.

15. What are the main differences between a fixed term lease and a periodic lease?

- ✓ A fixed term lease is a lease / tenancy set for a fixed period of time with a start date and an end date. A periodic tenancy is generally open ended or a 'rolling' tenancy.
- ✓ A reason must **always** be given in terminating a fixed term tenancy, even in the first 6 months of the tenancy, unlike in periodic tenancies where no reason needs to be given in the first 6 months.
- ✓ The Section 34 grounds for terminating a tenancy do not apply to a fixed term tenancy **before** its expiry date (see Q.5 above), unless they are set out as 'provisions' in the tenancy agreement for doing so. Only Section 34 grounds can be used to terminate a periodic tenancy after the first 6 months (or before if the landlord wishes to give a reason).

If you have any additional queries can contact Keelin McCarthy, ICSH Tenancies Registration Support Officer at keelin@icsh.ie or on 01-6618334.

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: 28th July 2017