



## Irish Council for Social Housing

### Guidance note: 1

#### Guidance Note on Tenancy Agreements and the Residential Tenancies (Amendment) Act 2015

This information note provides guidance on the use of the ICSH Model Tenancy Agreement as it pertains to the *Residential Tenancies (Amendment) Act 2015*.

#### General Questions

##### 1. Introduction

On 7<sup>th</sup> April 2016, the sections of the Residential Tenancies (Amendment) Act 2015 relevant to housing associations will commence, and this will mean associations will have 12 months to register each of their tenancies with the Residential Tenancies Board, at a reduced fee for this period only. This will allow housing associations and their tenants access to the dispute resolution services, such as mediation and adjudication, which are currently only open to private sector tenancies.

##### 2. What tenancies should be registered under the *Residential Tenancies (Amendment) Act 2015*?

The Act relates to all tenancies within the non-profit housing sector. However, the Act does not apply to cases where the individual does not have exclusive occupation of the dwelling (for example license agreements such as in hostel accommodation). Therefore, hostel and emergency type accommodation does not come under the Act. A legitimate tenancy needs to be registered with the RTB. A legitimate tenancy situation is also a requirement and necessary for housing association tenants to receive rent supplement.

##### 3. Does the Act mean that I no longer need a tenancy agreement?

A tenancy agreement is a useful communication tool and any house rules approved for a development form part of a tenancy agreement. However, if any part of an existing tenancy agreement is in conflict with the provisions of the Act then the Act will take precedence.

##### 4. Are housing associations required to issue new tenancy agreements to all tenants?

This is not a requirement of the Act but the ICSH would consider it good practice to do so not only for all new tenants but also to existing tenants. The amendment Act changes some of the existing terms and conditions that would be contained in current tenancy agreements and provides a mechanism for landlord/tenant dispute resolution. Issuing a new tenancy agreement will be an important opportunity to inform tenants of these changes to their rights. The ICSH standard tenancy agreement that is aligned to the Act is available to members in the members' section of the ICSH website or see contact details below.

##### 5. Will a letter to tenants advising them of the new Act suffice?

As stated above a tenancy agreement is not obligatory. From commencement, the new Act will apply to all tenancies of housing associations regardless of whether there is a tenancy

agreement in place. A letter outlining the provisions of the new Act will update tenants as to the new provisions that apply to them regarding security of tenure, notice periods etc. However, it is advisable that all new tenants be issued with a tenancy agreement (such as the **ICSH model tenancy agreement**) as good practice.

**6. When should a housing association not issue a new Tenancy Agreement?**

If you have served a Notice of Termination to your tenant to end the tenancy, then you should not issue a new Tenancy Agreement in this circumstance.

**7. Will issuing a new Tenancy Agreement invalidate outstanding rent arrears?**

No, if rent is owed to the landlord then entering into a new tenancy agreement would not generally invalidate outstanding arrears.

**8. What happens if an existing tenant refuses to sign the new Tenancy Agreement?**

The Act does not oblige landlords and tenants to enter into a new tenancy agreement. If an agreement is in place when the Act comes into force, then the Act does not change that agreement unless a provision of that agreement conflicts with the Act. If a tenant refuses to sign a new tenancy agreement, the old tenancy can continue but the Act will apply to it.

**9. What if the tenants are elderly or vulnerable and are likely to be concerned or confused if asked to sign a new tenancy agreement?**

Where possible, the ICSH recommends that all tenants should be issued with new tenancy agreements which reflect the new provisions contained in the Act. In communications with your tenants you can outline that the Act applies to all tenancies regardless of whether there is a tenancy agreement in place.

**10. If a person lacks capacity to sign a tenancy agreement, what should a housing association do?**

The Assisted Decision Making (Capacity) Act 2015 has been signed into law and is expected to be commenced in the next few months. In advance of the establishment of the Decision Support Service and full commencement of the legislation, housing associations should link in with the prospective tenant, their advocates and / or family and their support provider, if they are unable to sign the tenancy agreement ensuring that a representative signs it on their behalf.

The new law is based on the principle that everyone is presumed to be able to make all decisions unless the contrary is shown. The ICSH will contact members when the Assisted Decision Making (Capacity) Act 2015 legislation is commenced.

**11. How can Rent policies e.g. rent assessment and calculation, be best communicated to tenants?**

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.

## Using the ICSH Model Tenancy Agreement

### **Designation of the dwelling as a transitional dwelling**

If the tenancy is a transitional tenancy, then include this in the tenancy agreement. If it is not, then exclude this section from the tenancy agreement. Please see our separate briefing note on transitional accommodation for more information.

## **Rent Assessment**

Please 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.

Please also ensure to fill in the '€[blanks]' in the template in relation to penalties for failure of the tenant/ household to provide full details of income.

## **Review of Rent and service charges**

The rent for the dwelling is set in accordance with the original funding scheme under which it was procured. For example a dwelling developed under the Capital Assistance Scheme will follow the rent setting requirements of that scheme (e.g. an economic rent). A dwelling procured through a leasing scheme with a local authority will apply the differential rent system in that area. As such the rent is determined in the same way as before.

The two-year rent reviews introduced by the Act **do not** apply to housing associations. Therefore, whatever agreement was made in the mortgage/tenancy agreement or the existing guidelines applies to housing association's wishing to conduct a rent review. 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.

Should you wish you could include a period of 28 days within the tenancy agreement.

## **Appendix 1 – List of repair obligations of the landlord and tenant.**

The model tenancy agreement contains a list of the items which it is the Landlord's responsibility to repair. It also notes the tenant's obligation not to cause damage and to report any repairs to the Landlord that need to be carried out.

## **Appendix 2 – Inventory**

- ▶ The Housing Association should complete this section.

## **Appendix 3 – Multi-unit development housing rules**

- ▶ The Housing Association should complete this section if the dwelling is part of a multi-unit development.

The ICSH Model Tenancy Agreement is available on request from Keelin McCarthy, Housing Management Development Officer at [keelin@icsh.ie](mailto:keelin@icsh.ie) or 01 661 8334.

**Disclaimer note: The content in this guidance note is provided for general information purposes only. It is recommended that you seek legal advice in relation to the use of tenancy agreements and the Application of the Act.**