



## Irish Council for Social Housing

### **Introduction to Residential Tenancies (Amendment) Act 2015 and The Impact on Housing Associations**

#### **Introduction**

- 1.1 The Residential Tenancies (Amendment) Act, 2015 is the long awaited amendment to the Residential Tenancies Act, signed into law by the President and enacted on the 4<sup>th</sup> December 2015. It extends the scope of the Residential Tenancies Act to tenancies of approved housing bodies. It also enhances the regulation of rent increases as well as amending provisions relating to terminating tenancies, including those who have *Part 4* security of tenure. The Act makes detailed statutory provision for a rental deposit scheme and a “fast-track” mechanism for terminating a tenancy in cases of rent arrears where there is a dispute before the Board. It abolishes the Rent Tribunal, transferring its functions to the Residential Tenancies Board.
- 1.2 The Act is made up of 87 sections and refers to seven other Acts, most significantly the Residential Tenancies Act, 2004 (referred to as the Principal Act). It provides that the Acts of 2004, 2009 and 2015 have the collective citation of the Residential Tenancies Act 2004 – 2015. In relation to commencement, the Act provides that the sections relating to rent reviews every two years, a 90-day notice of a new rent (except for notices served prior to the 4<sup>th</sup> December 2015), the extended notice periods for terminating a tenancy by both landlords and tenants all are immediately commenced. The remainder of the Act requires commencement by the Minister.
- 1.3 S.I. 631 of 2015 enacts from the 1<sup>st</sup> January 2016 provisions relating to the updating of details recorded on the register of tenancies. S.I. 4 of 2016 commences as and from the 8<sup>th</sup> January 2016 the provisions relating to free mediation, the allowance for minor errors or omission on a notice of termination as well as the Part relating to the transfer of functions of the Rent Tribunal to the Private Residential Tenancies Board.

### **Tenancies of approved housing bodies**

- 2.1 The 2015 Act amends section 3 of the Principal Act. It removes the exclusion of tenancies of approved housing bodies from the scope of the Principal Act. The amended section 3 provides that dwellings let by or to a public authority are excluded from the scope of Residential Tenancies Acts, including a letting between a public authority and an approved housing body.
- 2.2 The 2015 Act provides that tenancies created between approved housing bodies and tenants housed according to their housing need come within the scope of the Act and that this tenancy does not fall under the definition of sub-tenancy contained in the Residential Tenancies Acts. This prevents the public authority being treated as a head-landlord where it lets a dwelling to an approved housing body, who in turn lets it to a tenant.
- 2.3 The 2015 Act refers to two types of approved housing body tenancy: one where the dwelling is let by the approved housing body from a public authority (now defined to include a housing authority) pursuant to assistance provided under section 6(2)(ea) of the 2009 Act and subsequently let by the approved housing body to a tenant (Tenancy Type A). The second is a dwelling let by the approved housing body where it is the owner and where assistance is provided on some other mechanism (Tenancy Type B). The draft lease asks landlords to identify which category their tenancy falls under, as they are treated differently in the statutory rent review provision.
- 2.4 While tenancies of approved housing bodies now fall within the scope of the Residential Tenancies Acts, this is subject to restrictions. They relate to the ability of the tenant or tenants to sub-let or assign their tenancy. They can do neither. An approved housing body cannot terminate a Part 4 tenancy on the grounds that it wishes to occupy a dwelling. Licensees of tenants of approved housing bodies do not have the statutory right to request to become a tenant. The provisions relating to regulating rent increases do not apply to such tenancies (although the Act provides bespoke rent regulation for tenancies of approved housing bodies). Approved housing bodies are relieved of the obligation of updating details relating to rent in tenancy registrations maintained by the Board.
- 2.5 The definition of “approved housing body” incorporates bodies that are approved under section 6 of the Housing Act, 1992, to which assistance is provided under this section and where this assistance relates to the provision of dwellings. The Act of 2015 clarifies that the definition of “public authority” includes a housing authority as opposed to a local authority *simpliciter*.
- 2.6 The Act of 2015 provides that the setting of rent shall be determined by the contract or lease agreed with the approved housing body for Tenancy Type A, or determined in accordance with the assistance paid in respect of the tenancy for Tenancy Type B. 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. The draft lease provides a period of 28 days. The Act further provides that the setting of rent in an approved housing body tenancy can be subject to a referral to the Residential Tenancies Board. The draft lease keeps the tenant obligation to inform the approved housing body of up-to-date income information, as this is necessary for setting a differential rent. There is also the reference to service charge, but there is no reference to such charges in the Act.

- 2.7 The Amendment Act of 2015 excludes tenancies of approved housing bodies deemed to be transitional from the scope of *Part 4* of the Act, i.e. excluded from the statutory form of security of tenure. The exclusion requires that the approved housing body designate the dwelling as a transitional dwelling and the public authority gives its prior consent to the designation has been obtained by the approved housing body, where the public authority leases the dwelling to the approved housing body, or provides assistance. The draft lease provides that the prior consent be attached to the lease.
- 2.8 It should be noted that the Act of 2015 does not create bespoke grounds for approved housing bodies to terminate a *Part 4* tenancy; the only differences are the exclusion of the “own occupation” grounds for approved housing bodies to terminate a *Part 4* tenancy and the transitional exclusion. An earlier draft referred to two bespoke grounds (public authority requiring it back and care support needs). The draft lease continues to refer to a tenant obligation to comply with any care support programme.
- 2.9 “Transitional dwelling” refers to a dwelling let by an approved housing body for periods not exceeding 18 months. The Act of 2015 allows a 12-month period following the commencement of this provision to designate accommodation as “transitional” and the approved housing body shall notify the Minister of such notification within three months of the designation.
- 2.10 The Act of 2015 restricts the entitlement of occupants of a letting of an approved housing body to succeed on the death of tenants to members of the household included in the social housing assessment. This is included in the draft lease.
- 2.11 The Act further makes clear that occupants of approved housing body tenancies do not acquire the right to apply for the benefit of a *Part 4* tenancy (where they are not already tenants), a request in the rented sector that a landlord cannot unreasonably refuse.
- 2.12 The Act amends the name of the statutory body to the Residential Tenancies Board, as well as removing the reference to “private” from various points of the Act. It specifically includes lettings of approved housing bodies within the

definition of “rental sector” that grounds the functions of the Residential Tenancies Board.

- 2.13 In respect of tenancy registration, the Amendment Act provides that existing approved housing body tenancies shall be registered within 12 months of the commencement of the relevant section. For tenancies created in this first 12 months, the tenancy must be registered within this 12-month period or within one month of the tenancy’s creation, whichever is later. Tenancies created after the 12-month period comes to an end must be registered within one month. In respect of registration fees, the Act provides for two types of fee for approved housing body tenancies, and includes such tenancies where the registration is part of a multiple registration.
- 2.14 In provisions that apply generally, the Amendment Act provides that a fee does not apply to the registration of a Further Part 4 tenancy. The Amendment Act also restricts the number of tenancies included in a multiple registration to ten. There is a €20 monthly surcharge for late registration, up to a maximum of €240.
- 2.15 In registration provisions that apply to registration of approved housing body tenancies, the 2015 Act provides for a €45 fee for the initial 12-month period and then a €90 fee. For multiple registrations (of a maximum of ten tenancies), the fee is €187.50 and €375 thereafter. The Act provides for full fees and surcharges for late registrations, again up to the maximum of €240. After the expiry of a 24-month period following the commencement of the registration of approved housing body tenancies, the Board may amend the registration fees of €90 and €375, where they are satisfied of changes in the value of money generally in the State. The Act provides that the Residential Tenancies Board may charge fees for tenancy registrations not made electronically.
- 2.16 The approved housing body is also required to remit any deposit along with the tenancy registration (or the statement requiring the non-payment of a deposit).
- 2.17 The Act of 2015 implements amendments to the Housing (Miscellaneous Provisions) Act, 2009, an Act that introduced significant changes to that statutory framework relating to the assessment of housing need. The amendment changes the definition of household to include three categories: persons who live alone, two or more persons who live together and two or more persons who do not live together, but who, in the opinion of the local authority have a reasonable requirement to live together. The amendment spells out that the first two categories form part of the definition of household.

### **Part 3 Amendments to the Principal Act**

- 3.1 As outlined above, the Act provides for substantive amendments of the Residential Tenancies Act to accommodate tenancies of approved housing bodies (some of the amendments contained in Part 2 of the Act 2015 have general application). The great bulk of the general changes to the 2004 Act are made in Part 3 of the 2015 Act.
- 3.2 In relation to deposits, the Act provides that a landlord is obliged to transmit a deposit to the Board and to comply with notification provisions to the Board and tenant at the end of the tenancy. Similar notification obligations fall on the tenant and both parties are obliged to supply correspondence details. At the end of a tenancy, a landlord is obliged to respond to any notification issued by the Board regarding the deposit, notify the Board of any tenant default, notify the Board of any change in their correspondence address and provide to the Board notification in the prescribed form details of any default. The landlord must also serve the tenant with this same notification.
- 3.3 In respect of rent increases, the Act of 2015 provides that, for a period of four years from the 4<sup>th</sup> December 2015, reviews may only take place every 24 months. For existing tenancies, the Act provides that rent reviews may not be carried out for 24 months from the date of the commencement of the tenancy or the date of the most recent review. The Act also provides for a 90-day notice period and provides that notification be made in a prescribed form. This shall include a statement of the landlord to justify the increase in rent and to specify three comparators advertised for rent in the four weeks prior to the notification of the review. The prescribed form provides that the notification must be signed.
- 3.4 The Act of 2015 clarifies that a Part 4 tenancy must be terminated in accordance with Part 4 and Part 5 of the Act of Residential Tenancies Act. The grounds for terminating a Part 4 tenancy have been tidied up and strengthened. The first change is to the grounds of terminating a Part 4 tenancy on grounds of tenant breach; the notification preceding the notice of termination must be in writing. The second grounds – overcrowding – also requires additional notification to particularise the overcrowding. Provision is made for statutory declarations for terminations on the grounds of sale and occupation by landlord or her family. More detail is required where a tenancy is being terminated under grounds of refurbishment and akin to other provisions in this section, there is a six-month period in which the landlord must re-offer the tenancy to the tenant after the works are completed. The Act of 2015 requires additional particulars where the dwelling is to be subject to a change of use.
- 3.5 Addressing the issue of slip or omission in the notice of termination, the Amendment Act of 2015 permits a Tribunal or adjudicator to find a notice to be valid, where the slip or omission does not prejudice, in a material respect, the notice of termination and the notice is otherwise in compliance.

- 3.6 The Act of 2015 extends the notice periods for tenants beyond the current maximum of 112 days. Tenancies of between 4 to 5 years require 112 days' notice; 5 to 6 years, 140 days; 6 to 7 years, 168 days; 7 to 8 years, 196 days; 8 or more years, 224 days. The notice period required of tenants has also increased. A tenant in occupation for 4 or more years must give 84 days' notice and those in occupation for 8 or more years must give 112 days. The Act provides that a notice served prior to the commencement of this provision is permitted to rely on the preceding periods of notice.
- 3.7 The Amendment Act provides for a "fast-track" dispute resolution procedure where there is already a dispute before the Board and where the tenant fails to continue to pay rent. The failure to pay rent can be subject to separate adjudication and the section refers to interim directions. This section 76A reference is a complaint, as opposed to a dispute.
- 3.8 Where there is an allegation of tenant breach in relation to anti-social behaviour, the Act of 2015 permits neighbours directly and adversely affected to ask an intermediary to refer a case to the Board, for example a MUD company or a residents' association to communicate with the landlord or refer a complaint to the Board.
- 3.9 In respect of dispute resolution, the Act of 2015 lists additional categories of issue that may be subject to dispute resolution, capturing the extension of the Board's functions to accepting and refunding deposits. The categories include the failure of the landlord to remit a deposit and failures of both parties to abide by their notification obligations.
- 3.10 The Act of 2015 provides a limit of €1,000 for costs, e.g. for case preparation or travel, but not for legal costs, where the other party seeks to withdraw a dispute. The Act also allows the Board to dismiss dispute applications it considers frivolous. It provides for free mediation and facilitates telephone mediation by referring to "persons who participated" in a mediation, rather than the existing "persons who attended". The cooling-off period is reduced to 10 days and the internal process is simplified. The Act removes the requirement that documents be served on the parties to a mediation, again to facilitate telephone mediation.
- 3.11 In relation to adjudication, the Act of 2015 provides for a 10-day cooling off period for adjudications that have been subject to an agreement reached by the parties. In respect of Tribunals, the Amendment Act allows for short notice Tribunals on grounds of financial or other hardship. Where the case relates to the arrears of rent, the Amendment Act fixes at €1,000 the ceiling for recoverable costs.
- 3.12 The Act of 2015 provides that Determination Orders can be enforced in the District Court, with the monetary limit provided by the Act applying instead

of the maximum jurisdiction of the District Court. In cases where the return of part or all of a deposit has been ordered, the Board may cancel the return, with reference to the High Court rules regarding setting aside judgment.

- 3.13 The Act of 2015 requires the Board to notify parties of their tenancy obligations on the registration of a tenancy pursuant to section 134; those obligations appear to relate only to the rented sector generally.
- 3.14 The Amendment Act provides that deposit shall be remitted to the Board along with the tenancy registration. Where there is no deposit, the landlord shall provide a statement to this effect. In respect of the details recorded with a tenancy registration, the number of occupants, the estimated floor area and number of bed spaces are no longer required. The amount of a deposit is now required information.
- 3.15 With regard to the alteration of the registration information relating to rent, the Act of 2015 requires a notification signed by both parties of the amount of the new rent and that the tenant acknowledges that he has knowledge of Part 3 and the requirements of the setting of a new rent under section 19. The prescribed form must include the basis for the rent review, i.e. the comparators or the details of any material change. This does not apply to tenancies of approved housing bodies.
- 3.16 The statutory basis for the deposit retention scheme requires landlords to remit deposits to the Board, and requires the Board to refund deposits. A landlord may submit on his behalf and on behalf of the tenant a joint agreed application to the Board for the return of the deposit to one of the parties or a split between them. Where there is no agreement, either party may apply to the Board for the return of the deposit. The landlord is required to submit a notification of default. Once one party has sought the return of the deposit, the other party can submit a notice of agreement or a notice of disagreement; the applicant may also submit a revised application.
- 3.17 It is essential for landlords to comply with their notification requirements under the amended section 12, in order to ground their request to be paid part or all of a deposit. These includes section 12(1)(d)(ii)(IV) and 12(6).
- 3.18 The Act provides that for existing tenancies, deposits shall be remitted to the Board within six months of the commencement of sections 23 and 64 of the Act of 2015. Where there is no deposit, the landlord shall notify the Board of such. The landlord is required to notify the tenant of either step.
- 3.19 The Act provides a new power for local authorities to lease or contract accommodation to approved housing bodies, amending section 6 (2) of the Housing (Miscellaneous Provisions) Act, 1992. This is the section 6(2)(ea) assistance that is the basis of Tenancy Type A in the lease.

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