



## Irish Council for Social Housing

### Residential Tenancies (Amendment) Act 2015/2016 and the Impact on Housing Associations

#### THE ACT

#### 1. What is the Residential Tenancies (Amendment) Act 2015?

The Residential Tenancies (Amendment) Act 2015 amends the 2004 Residential Tenancies Act and brings tenancies of the non-profit housing association sector under the remit of the Residential Tenancies Board for the first time.

The Private Residential Tenancies Board was initially formed for the private rented sector in 2004 to provide a system of obligatory tenancy registration as well as independent dispute resolution for tenants, landlords and third parties in the private rented sector.

The move to bring all tenancies in the non-profit housing association sector under the remit of the Residential Tenancies Board (RTB) (as it is now known from 7<sup>th</sup> April 2016) is part of a wider move by the Department of Housing, Planning and Local Government around the regulation of the sector. The previous government announced the intention to include local authority tenancies under the remit of the RTB in the future, although there is no timescale for this yet and the intention of the new government is as yet unknown.

#### 2. What does this mean for the non-profit housing association sector?

On 7<sup>th</sup> April 2016, the sections of the Act relevant to housing associations commenced, meaning associations have 12 months to register each of their tenancies with the RTB, at a reduced fee for this period

only. This allows housing associations and their tenants access to the dispute resolution services, such as mediation and adjudication, which were previously only open to private sector tenancies.

#### 3. What are the benefits of the RTB for non-profit housing association landlords and their tenants?

<i>Non-profit Housing associations</i>	<i>Tenants</i>
-Provides a modern legislative basis for Housing association tenancies	-Aligns the rights of non-profit housing association tenants and private tenants
-Access to independent dispute resolution services (as well as an Associations' own procedures)	-Access to independent dispute resolution services and free mediation services
-Reduces necessity of substantial legal costs relating to Court proceedings	-Greater transparency in sector
-Amendments aimed specifically at the sector	

#### 4. Does the 2015 Act apply to Hostels / Refuges?

Hostels and Refuges commonly operate under license-type agreements so these do not come under the RTB remit. Housing associations who may be unsure should contact the ICSH for advice on this.

## FEES

### 5. What are the registration fees being allocated / spent on?

The registration fees support the dispute resolution services that are provided by the RTB to all registered Landlords and all Tenants. In addition to this, 20% of the registration fee goes to the Local Authorities who carry out minimum standard inspections to ensure that the rented dwelling is in compliance with "The Housing (Standards for Rented Houses) Regulations 2008 and the Housing (Standards for Rented Houses) (Amendment) Regulations 2009.

### 6. How much does tenancy registration cost?

Following extensive negotiation by the ICSH on behalf of its members, the Government agreed that housing associations will be given a period of 12 months for the initial registration of their tenancies at a reduced cost of €45 per tenancy. Housing associations will be charged **€45** for each tenancy registration, **for a period of 12 months only**, beginning from the commencement date of 7<sup>th</sup> April 2016. **This is a one-off fee for each tenancy and is not a recurring fee for the same tenancy.** When the property is re-let or there are any new tenancies after the 12-month period the regular €90 fee will apply. There is also a composite fee available.

### 7. What is a composite fee?

A composite fee is a special fee of €375 (**€187.50 for registration in the first 12 months**) which will apply for a maximum of ten tenancies being registered in the one building at the same time by the one landlord. It is important to note that in order to qualify for the composite fee, all tenancies in the one building must be registered at the same time using the unique AHB reference number.

#### **Example One: 18 units of apartments in the same block**

In this example the units can be divided into a block of 10 and a block of 8. As it is still

cheaper to pay a composite fee for the 8 units rather than pay for individual units the fees due in this case would be:

Registration fee due: €187.50 + €187.50

#### **Example Two: 23 units of apartments in the same block**

In this example the units can be divided into two blocks of 10 and a block of 3. In this case, it is cheapest to pay for the remaining 3 units by the individual fee as €135 (3 X €45) is less than €187.50.

Registration fee due: €187.50 + €187.50 + €45 + €45 +€45.

#### **Example Three: 12 units in neighbouring blocks distributed over three blocks in a ratio of 6/4/2.**

In this example as the units are spread over three blocks they will not qualify for the composite fee collectively. In this scenario, the fee will be €187.50 (for the 6 units in Block A) + €180 (4 X €45 for the four individual units in Block B) + €90 (2 X €45 for the two units in Block C).

### 8. What are the penalties for late registration?

There are currently 12 months to register (from 7<sup>th</sup> April 2016) in which there are no late penalty fees. From 6<sup>th</sup> April 2017, the penalty system will be a sliding scale late fee system at a cost of €20 per month (or part thereof) after the due date of the tenancy registration, up to a maximum of €240 in late fees. Therefore, if you register a tenancy after 6<sup>th</sup> April 2017 it will be as follows: a tenancy commences on 5 June 2017 – if received within 1 month of tenancy commencement date the fee will be €90. If received outside of this timeframe the fee will be €90 + €20 per month that it is late.

### 9. Can cheques be used to pay for online registrations?

No, only credit / debit cards can be used for online registrations. If you do not have access to a credit / debit card, a pre-paid MasterCard/visa could be purchased (available from most local convenience shops) – this can be topped up with a particular amount set by you and then can be used to make online payments.

### 10. Is the registration fee a yearly charge?

No, the registration fee is a once off charge for existing tenants. After the part four tenancy ends, the existing tenant's details will need to be updated with the RTB, but there will be no charge for this. Only registrations for new tenants will incur a registration fee.

## REGISTRATION

### 11. What registration information is required by the RTB? (See ICSH Guidance note no. 2 for a Registration Checklist)

The information that housing associations have to provide is:

- Address of the dwelling;
- AHB Number (as provided by RTB)
- AHB Name & address;
- CRO number of Landlord;
- Name & PPS number of tenant/s; (the housing association is expected to make a reasonable effort to obtain the PPSN, but if it not provided, this is acceptable),
- Dwelling Type & Property Type
- No. of Bedrooms
- Date Tenancy Commenced (this will be re-set to the commencement date of the Act – 7<sup>th</sup> April 2016);
- Rent Amount /Rent Frequency;
- Local Authority area in which the dwelling is located;
- Duration of fixed term lease (if applicable);
- Authorised agent or Management company (if applicable) – name, address, CRO no.

### 12. Is the provision of tenants' PPS numbers a mandatory requirement for registration with the RTB?

The provision of tenant's PPS numbers is mandatory in the registration process, however if a tenant refuses to give their PPS number, then the housing association can state that they made a reasonable effort to obtain it and the registration will be accepted. The provision of PPS numbers

assists in the dispute process as it is also a useful way of tracking down a tenant if they are no longer living in the dwelling.

### 13. Is the information provided to the RTB protected?

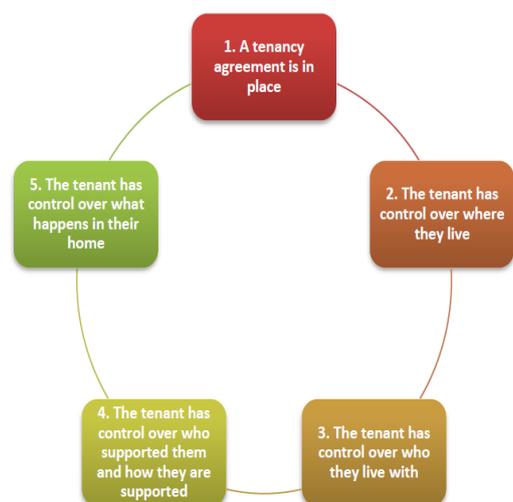
The RTB take data protection very seriously and all data submitted to them is protected in accordance with Data Protection legislation.

### 14. Are there any exemptions to registration?

There are no exemptions for legitimate tenancies. Therefore, all housing association tenancies must be registered. However, the Act does not apply to cases where there is not a tenancy i.e. the individual does not have exclusive occupation of the dwelling (for example license agreements such as in hostel accommodation). A full list of exemptions is listed under Part 3 of the Act.

A legitimate tenancy agreement needs to be registered (see diagram below) and is a requirement under the terms and conditions of the capital funding schemes (i.e. CAS and CLSS). A legitimate tenancy situation is also a requirement and necessary for housing association tenants to receive rent supplement.

#### Diagram: What constitutes a legitimate tenancy



Source: Wood et al (2010)

**15. What happens if a housing association decides not to register its tenancies?**

Registration is a requirement under the Act and if a housing association does not register it will be deemed non-compliant. A legal notice can be issued by the RTB which can result in a criminal prosecution. Late fee amounts and other penalties can also be applied for non-registration (see Q.8).

**16. After the 12-month reduced fee period ends (6<sup>th</sup> April 2017), how long do housing associations have to register a new tenancy?**

From 6<sup>th</sup> April 2017, a new tenancy has to be registered within **one calendar month** of its commencement.

**17. If a couple resides in one unit, is registration required for one property or for each tenant?**

Registration is required for the property. Recipients of social housing are referred to as the "household" under the Act. Where the household comprises one person then that person is deemed to be the tenant. Where the household comprises one or more persons then whichever of those persons are granted occupation of the dwelling are deemed to be tenants.

**18. Do housing associations need to register if they have never had any disputes with tenants?**

Yes, all housing association tenants must be registered. The ICSH understands that most of its members have never had any disputes in landlord-tenant relations, and those that do are usually resolved speedily and amicably to the satisfaction of all parties involved using existing complaints policies and procedures (See ICSH templates on Complaints Policies and Procedures).

The dispute resolution provisions contained in the Act provide additional support for both housing associations and tenants in the event of any difficulties arising, and should strengthen the confidence in the sector among all of its stakeholders.

Notwithstanding this new service, housing associations are encouraged to firstly deal with any disputes by using their own internal complaints procedure. If this process is unsuccessful and it continues to the RTB disputes process, they will have regard to any outcomes that arose in the internal process, if the housing association wishes to include this as evidence in its dispute application.

**19. If a housing association is providing an agency service to properties (i.e. managing/maintaining the property on behalf of a local authority and receiving the rent/management fee), should they register those properties that they are providing the service to?**

If the housing association is receiving the rent / management fee and is responsible for maintaining / managing the units but the tenancy agreement is between the tenant and the local authority, then the housing association is not required to register those tenancies with the RTB. In that scenario, the local authority is considered to be the landlord and therefore falls outside of the remit of the RTB. If unsure the RTB recommends legal advice on this.

**20. Do housing associations who do not have any units i.e. only provide an advice service etc. have to register?**

No, they do not have to register.

**21. Are people who are living in the dwelling and contributing to the rent e.g. a child under the age of 18, required to be registered?**

In relation to the position of persons residing in a dwelling who are contributing to the rent - the important distinction to be made in this scenario is between people who are **contributing** to the rent and the person actually **paying** the rent. A person who is **contributing** to the rent is considered an occupant of the dwelling and is not considered a tenant, and therefore does not need to be registered with the RTB; it is the person(s) who has been assessed that is actually **paying** the rent and is considered

the tenant(s) and, therefore only they need to be registered with the RTB.

## TENANCY AGREEMENTS

### **22. 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. 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, with discretion advised when communicating with vulnerable tenants (see Q.31 and Q.32). The ICSH standard tenancy agreement is now aligned to the Act and is available to members.

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

A written agreement is not legally required; however, a tenancy agreement is still a useful communication tool and any house rules approved for a housing scheme can be included as part of a tenancy agreement. It should be noted that if any part of an existing tenancy agreement is in conflict with the provisions of the Act then the Act will take precedence.

### **24. Who is the landlord?**

A landlord is the owner of a property who leases or rents it to someone and is entitled to receive the rent paid in respect of that property under a tenancy. The landlord may be an individual or an Approved Housing Body.

### **25. Who should witness the signing of a tenancy agreement?**

The tenant / landlord can act as witness for each other's signature, or alternatively an independent person can act as witness.

### **26. Are there any changes in the repair responsibilities of landlords?**

The landlord is obliged to maintain the dwelling to the standard it was in at the beginning of the tenancy. Any damage beyond normal wear and tear is normally the responsibility of the tenant. Repair responsibilities of the landlord and tenant should be clearly set out in the tenancy agreement.

See ICSH Guidance note no. 9 for details of repair obligations. The draft ICSH tenancy agreement also contains a list of repair obligations in Appendix One.

### **27. Can a tenant proceed to get repairs done without the consent of the landlord?**

No, prior to any expenditure, the tenant must notify the landlord of the necessary repairs to give them an opportunity to rectify the issue. If the issue is urgent, and the tenant cannot reach the landlord or the landlord does not act within a reasonable time, the tenant may carry out the repair at their reasonable and vouched expense and claim reimbursement from the landlord.

### **28. Are housing associations exempt from any minimum standards?**

Minimum standards for rented accommodation are set out in the Housing (Standards for Rented Houses) Regulations 2008 and the Housing (Standards for Rented Houses) (Amendment) Regulations 2009\*. Accommodation let by a housing authority or an approved housing body is exempt from the requirements for food preparation, storage and laundry purposes outlined in Article 8 of A Guide to Minimum Standards in Rented Accommodation. Housing Associations are **exempt** from the following requirements set out in Article 8:

- 4 ring hob with oven and grill
- Provision for the effective and safe removal of fumes to the external air by means of cooker hood or an extractor fan
- Fridge and freezer
- Microwave oven
- Sink with a draining area

- Adequate number of kitchen presses for food storage purposes
- Washing machine within the dwelling unit or access to a communal washing machine facility within the curtilage of the building
- In cases where the accommodation does not contain a garden or yard for the exclusive use of this accommodation, a dryer must be provided.

\*Please note that these Regulations are currently under review.

**29. Do existing tenants have security of tenure for the first 6-months from the commencement date of the Act (7<sup>th</sup> April 2016)?**

All existing tenants will automatically be on an initial 6-month duration tenancy until they acquire Part four rights 6 months from April 7<sup>th</sup> 2016. The ICSH is recommending that tenants who are already in situ and are abiding by the terms of the tenancy agreement be treated as long term tenants and accorded Part four rights during the first six months starting from 7<sup>th</sup> April 2016. New tenancies which begin after the Act commences will start the new cycle and will be awarded Part Four rights after 6 months' continuous occupation.

**30. Will a new tenancy agreement invalidate existing arrears for tenants?**

The commencement of the new Act will not invalidate existing issues between landlords and tenants. For example, where a tenant is in arrears before the commencement of the Act those arrears will still exist post-commencement. When the 2004 Act came in, it did not prevent disputes being taken that were ongoing before commencement.

**31. What about the tenant's capacity to sign a tenancy agreement, where an organisation signs on behalf of the individual?**

In order to receive rent supplement, the arrangement is with the individual and not a third party. If the tenant is unable to sign a tenancy agreement then a representative should do so on their behalf, for example an advocate. The Assisted (Decision Making) Capacity legislation will impact on this.

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's circle of support (whether this is their family, an independent advocate, friends, volunteers) provider to ensure any additional support is provided to the person should they need it. If they are physically unable to sign the tenancy agreement but have the capacity to enter into the agreement, a third party should witness the person's consent to enter the agreement. Where the person has a legal representative, they can sign on their behalf.

**32. 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 (see Q.22). ICSH have produced a guidance note to assist housing associations with issuing new tenancy agreements and this is available online. However, it is not a legal requirement and housing associations should use their judgement in relation to individuals and local circumstances.

**33. What are the succession rights of housing association tenants?**

The 2004 Principle Act provides that a Part 4 tenancy will terminate on the death of a tenant unless:

At the time of the death of the tenant the dwelling was occupied by: (1) A spouse or civil partner of the tenant; (2) A person, not a spouse of the tenant, but who cohabited with the tenants as husband or wife and lived with the tenant in the dwelling for at least 6 months ending on the date of the tenant's death, (3) a child, stepchild or foster child of the tenant, or a person adopted by the tenant under the Adoption Acts 1952 to 1998, being in each case 18 years or more, or (4) A parent of the tenant. **In addition to this:**

- ✓ One or more than one, of those listed above must elect in writing to become a tenant or tenants of the dwelling.
- ✓ The person(s) referred to above may only elect to become a tenant if they are deemed to be a member of the household within the meaning of section 20 of the Housing (Miscellaneous Provisions) Act 2009 which states *“shall be read as including a reference to 2 or more persons who, in the opinion of the housing authority concerned, have a reasonable requirement to live together”*.

This puts the onus on the housing authority i.e. the local authority, to decide if the person electing to become a tenant is deemed to be a member of the household.

## PART FOUR

### 34. What is a Part four tenancy?

Under Part four of the Residential Tenancies Act, if a tenant has been renting for 6 months continuous occupation and has not been given a written notice of termination by the landlord, they automatically acquire security of tenure. Any tenancy, therefore, that has lasted more than 6 months is a 'Part four tenancy'. As per the Residential Tenancies (Amendment) Act 2016, for tenancies that commenced **before 24<sup>th</sup> December 2016**, a part four tenancy lasts for **4 years**. For tenancies that commenced **after 24<sup>th</sup> December 2016** (including a further Part four tenancy that come into existence after 24<sup>th</sup> December 2016), the part four tenancy lasts for **6 years**.

Once a tenant has acquired a Part four tenancy the landlord can only terminate the tenancy in certain circumstances. If the tenant wants to leave during the Part four tenancy and there is no fixed-term tenancy agreement in place, they must give the correct period of notice in writing as required under the Act (See Q.47 for notice periods).

### 35. What is a 'further Part four' tenancy?

After the 4 / 6 years of the part four tenancy has passed, a new tenancy starts. The cycle

can begin again, leading to what is called a 'further Part Four tenancy'. There is an exception to this where a housing association is providing transitional accommodation that has been designated as such. (See Q.65-Q.71 for further details on transitional accommodation).

Once a tenant has acquired a 'further Part four' tenancy the landlord can only terminate the tenancy in certain circumstances.

### 36. Can a Part four tenancy be ended before a further part four tenancy comes into existence?

A landlord can stop a Further Part four tenancy coming into existence by serving a notice during the Part four tenancy with the correct notice period given to the tenant expiring on or after the end of the tenancy. A notice served in this way should provide a reason for termination but the reason does **not** need to be one of the Section 34 grounds for terminating a tenancy. To ensure the notice is valid it is best practice for the notice period given to end during the first six months of the Further Part four tenancy.

### 37. If the HSE is providing a support programme, how does this relate to termination of Part four?

Where a tenancy is accompanied by a tenancy support or care support programme, the tenant is obligated to participate in that programme. Not participating in such a tenancy support or care support programme when requested by the landlord can represent a breach of the tenancy agreement.

### 38. What is a fixed term tenancy?

A fixed-term tenancy is an agreement that covers a specific amount of time. It may be for any period, but can range from as little as 6 months up to a year or more. It is important to note that a landlord may not end the tenancy before the end of the fixed-term unless the tenant has breached their obligations under it. Please refer to ICSH Guidance note 6 on Fixed term leases for further information.

**39. Can a tenant in a fixed term lease acquire Part four security of tenure?**

Yes, a tenant in a fixed term lease acquires part four rights after the first 6 months of the tenancy. However, tenants under a fixed-term contract or lease who wish to remain in the property under the rights acquired under Part four, must notify the landlord of their intention to stay in the property, between 3 months and 1 month before the expiry of the fixed-term tenancy or lease agreement. If the tenant fails to do this, they do not lose their right to a Part four tenancy but they may have to compensate the landlord for any financial loss incurred because you did not notify them of your intention to remain in the tenancy. For example, if the landlord incurs any costs in advertising to re-lease the property and the existing tenant then decides to stay on without the adequate notice – the tenant could be liable for these costs.

**NOTICE OF TERMINATION**

**40. What is a Notice of Termination (NOT)?**

A NOT (previously referred to as a Notice to Quit) is a notice served by either the landlord or tenant in order to end the tenancy.

**41. What does a landlord need to include in order for a NOT to be valid?**

In order for a Notice of Termination to be valid, it must:

- ✓ Be in writing (an email will not suffice).
- ✓ Be signed by the landlord or his or her authorised agent or, as appropriate, the tenant.
- ✓ Specify the date of service.
- ✓ State the reason for termination (where the tenancy has lasted for more than 6 months or is a fixed term tenancy).
- ✓ Specify the termination date. Please ensure you give the adequate notice. The first day of a period of notice is the day after service. The notice periods depend on the length of the tenancy (See Q. 47). Whilst not a specific requirement under the Act, it may be prudent to give an additional couple of days' notice to ensure that the party receives the required notice periods

- ✓ State that the tenant has the whole of the 24 hours of the termination date to vacate possession.
- ✓ State that any issue as to the validity of the notice or the right of the landlord to serve it must be referred to the Residential Tenancies Board within 28 days from the receipt of the notice.
- ✓ Be accompanied by a statement/ statutory declaration where required.

**42. Is a reason required to be stated in a NOT in the first 6 months of a new (part four) tenancy?**

A reason is not required for terminating a tenancy in the first 6 months, unless it is a fixed term tenancy, or in the case of a NOT for rent arrears (even if you do not state this as the reason in the NOT), the 2-step process for issuing a NOT for rent arrears should be followed.

**43. Is a reason required to be stated in a NOT in the first 6 months of a further Part four tenancy?**

As per the Residential Tenancies (Amendment) Act 2016, where a landlord is seeking to terminate a Further Part four tenancy in the first six months, they will be required to rely upon one of the Section 34 grounds. (Prior to the commencement of this change a landlord could terminate a Further Part four in the first 6 months without providing a Section 34 ground).

**44. Is proof of service of a NOT required?**

The Act does not outline any specific requirement of proof of service. The onus is on the parties to ensure that it is received. If serving a NOT by registered post it is important to note that the tenant may refuse to sign for it. The RTB recommends using the An Post 'Express post' service as no signature is required but proof of postage and delivery can be obtained up to 3 months after posting. Other ways to prove service of NOT could be to take a witness when serving or taking a photograph of delivery of the notice.

**45. What are the Section 34 grounds applicable to housing associations for terminating a Part four and further part four tenancy?**

- The tenant has failed to comply with the obligations of the tenancy (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 include 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 include 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 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 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 these 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>

**46. Is there a time limit for referring a dispute to the RTB regarding the validity of a NOT?**

A tenant has a period of 28 days from the date the tenant receives the notice, to refer a case to the RTB regarding the NOT's validity (as per section 80 of Act).

**TERMINATION PERIODS**

**47. What are the termination periods under the new Act?**

The new minimum notice periods for termination after the Act commences (7<sup>th</sup> April 2016) are set out below:

**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

**48. Are the termination periods cumulative after the four-year cycle?**

Yes, if the tenant stays on after the first four years, then the notice periods are cumulative and depend on how long the tenant was there in total (including the previous four-year cycle(s)) e.g. if a tenant is there for an initial four-year lease and stays on for another 6 months, the notice period will be 112 days (for 4 years or more but less than 5 years) and so on depending on how long the tenant stays.

**49. When is Day 1 of a Notice of Termination period?**

Day 1 is the day *after* the notice is served e.g. if a notice is served on the 26<sup>th</sup> May 2016, then the notice period will start from 27<sup>th</sup> May 2016.

**DISPUTE RESOLUTION**

**50. What Dispute Resolution services will be available?**

Under the Amendment Act, the dispute resolution mechanisms currently afforded to private tenants will be extended to all housing association tenants. There are two main mechanisms for resolution of disputes: **Mediation** and **Adjudication**, one of which the housing association or tenant must choose in advance of the process commencing.

**Mediation (including telephone mediation)**

is a free process where an independent mediator will facilitate and encourage the landlord and tenant to come to their own agreement in respect of any issues under dispute. The mediator will have no decision-making or advisory role in resolving the matter. Both parties must consent to entering the mediation process in order for a mediation to take place.

**Adjudication** is a form of dispute resolution where an independent adjudicator appointed by the RTB will enquire fully into all matters relevant to the dispute raised by either party and will either facilitate agreement between the parties, or will make

their own determination based on the evidence before them, presented by the landlord and tenant. There is a fee charged for this process.

If either party is unhappy at the outcome of either of the above mechanisms, then a **Tribunal** is the RTB's appeal process to either the decision of an adjudicator, or where no agreement is reached at mediation, then either party can refer their case to tribunal. A tribunal is more formal than either adjudication or mediation, although it is not as formal as the court process. The cases are heard by a three-person panel and the hearings are open to the public.

**51. When can a Tribunal (appeal) be applied for?**

Any party can appeal the Adjudicator's decision within 10 working days of issue of the Adjudicator's report or in the case where an agreement was reached at Adjudication, within 10 calendar days (of the date of the agreement). In the event that mediation is unsuccessful, any of the parties can request a Tribunal hearing within 10 calendar days from the date of the agreement/the date the mediation was deemed unsuccessful.

**52. What discretion does an adjudicator have in determining a dispute case?**

Adjudicators are independent of the Residential Tenancies Board. Whilst the RTB do provide guidance and advice, it is within an adjudicator's independent powers to reach a determination on a dispute based on their interpretation of the Act.

**53. What are the fees for the Dispute Resolution Services?**

There is no fee for the Mediation service. The fee for dispute resolution by Adjudication is €15 to apply online and €25 to apply on paper.

**54. Are RTB Determination Orders enforceable by the Courts?**

Yes, if either party does not comply.

**55. Where are disputes heard?**

Disputes are heard in a venue closest to the rented dwelling. In addition to Dublin City

(RTB HQ); there are regional adjudication centres in Cork City, Galway City, Limerick City, Sligo Town, Athlone and Wexford Town. Recently telephone mediation has also been introduced.

**56. Should a tenant keep paying rent during a dispute process?**

The Act obliges the tenant to continue to pay rent until a dispute case has been resolved, so for example if the tenant wanted to dispute the validity of a NOT, they must continue to pay their rent during the course of the dispute. Once a notice of termination is found valid the tenants must vacate the property. If at any time the tenant stops paying rent, then it is open to the housing association to take a case to the RTB for rent arrears.

**57. If a tenant lodges a complaint before a housing association has registered with the RTB, does the new Act still apply?**

All housing associations have the 12-month grace period regardless of whether a tenant lodges a complaint in the first year. The dispute resolution service provided by the RTB will still be available to tenants even if the housing association is not registered, although the housing association will be requested to register at that time.

**58. Can a dispute be referred to the RTB regarding a guarantor on a lease?**

A guarantor is not included in the list of parties that can come under the remit of the RTB. This is because the cause of action against the guarantor does not come under the umbrella of the landlord/tenant relationship. A guarantor could only be pursued through the courts or an alternative forum.

**59. Can a housing association lodge a complaint against a tenant before registering with the RTB?**

No, the housing association must be registered with the RTB to avail of the dispute resolution services.

## RENT

**60. When can a housing association conduct a rent review?**

The two-year rent reviews (as introduced for the private rental sector) **do not** apply to housing associations. Therefore, whatever agreement was made in the mortgage/tenancy agreement or the existing guidelines applies to housing associations' 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.

**61. 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.

Please refer to ICSH Guidance note 5 on Rent for further information.

**62. Do the 'Rent Pressure Zones' and 4% cap on rents apply to housing associations?**

No, these provisions do not apply to housing associations.

## DEPOSITS

**63. Will the new deposit protection legislation impact on housing associations?**

The Deposit Protection Scheme is currently being reviewed and is **not** anticipated to commence in 2017. When the Scheme is introduced all landlords including housing associations will have to remit any deposits held on behalf of tenants to the RTB.

**64. 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.

**TRANSITIONAL ACCOMMODATION**

**65. What are the registration requirements for housing associations who provide transitional accommodation?**

In the case of transitional housing there is no specific registration form under the new Act – it is the same form as other registrations. However, the housing associations must also receive consent from the Local Authority and notify the Minister of this consent of designation as transitional accommodation before they register with the RTB. The ICSH has developed a template letter for the purposes of receiving consent and notifying the Minister. (These templates are available online).

**66. What are the fees required for transitional accommodation registrations?**

The fees are the same as other tenancy registrations, however, fees are only required for **two** registrations in a 12-month period for the same property i.e. €45\* x 2 = €90. So if a transitional accommodation unit takes in 6 tenants in a 12-month period, the fee is still only €90\* although all six tenancies will have to be registered. (\*€45 is the reduced fee for the first 12 months of the application of the Act to housing associations thereafter reverting to €90 per tenancy).

**67. Do the new notice periods apply to terminating a transitional tenancy?**

Yes. See Q.47 for details of notice periods.

**68. Do the new grounds to terminate a tenancy apply to transitional accommodation?**

No. The housing association should stipulate their own grounds of termination in their transitional tenancy agreement, specific to the purpose / service / programme that they provide. Therefore, whatever termination terms that were stipulated in the transitional tenancy agreement apply.

**69. Can a transitional tenancy acquire Part four rights?**

A transitional accommodation tenancy should be for no longer than 18 months. The housing association should serve a Notice of Termination at the required time (See Q.47 for notice periods) before the 18-month period elapses so that a tenant doesn't acquire Part four rights - this is essential where it looks like the tenant isn't leaving.

For example, if a tenant moves into transitional accommodation on 1<sup>st</sup> June 2016, the 18-month period will elapse on 30<sup>th</sup> November 2017. In this scenario, a notice of termination must be served by 19<sup>th</sup> October (42 days' notice as required by the Act) at the latest in order to avoid the 18-month period elapsing and the tenant gaining Part four rights. Please refer to the ICSH Guidance note 3 on Transitional Accommodation for further information.

**70. Can a housing association provide transitional accommodation for a fixed period?**

Accommodation that is designated as "transitional" is covered by the Act when there is a tenancy in place. However, once the units have been designated as transitional with the local authority and the Minister, then the Part four security of tenure provisions will not apply (unless the tenancy goes over 18 months).

**71. What is the requirement of registering a 3-month tenancy (accommodation designed as short-term transitional, tenancy agreement in place due to funding requirements and the cost implications for this)?**

All tenancies (where there is a legitimate tenancy in place) have to be registered with the RTB regardless of duration.

## 72. What supports are available from the ICSH in relation to the Act and registration process?

The ICSH has put a dedicated Tenancies Registration Support Officer in place, with the support of the RTB, to assist members with the registration process. We are also preparing Briefing Notes and Guidance documents on the Act which are available in the Members' Section of the ICSH website. This section will also contain advice and guidance on specific parts of the Act, including the registration process and ending a tenancy. The following documents are available:

### Guidance Notes:

1. Guidance note on Tenancy Agreements and template Tenancy Agreement;
2. Guidance note on the information required for the registration process;
3. Guidance note on Transitional Accommodation and designation of same (including Letter templates for the designation of Transitional Accommodation);
4. Guidance note on leasing arrangements;
5. Guidance note on rent and rent reviews;
6. Guidance note on fixed term leases;
7. Guidance note on Group homes (**pending**);
8. Guidance note on Tenancy and Licence agreements (**Pending**);
9. Guidance note on repair obligations;
10. Guidance note on succession

### Other Information:

- Frequently Asked Questions on the Act and its impact on housing associations;
- An Introduction to the Amendment Act (by Kevin Baneham, Barrister);
- Template notice to tenants

Members with any additional queries can contact Keelin McCarthy, ICSH Tenancies Registration Support Officer at [keelin@icsh.ie](mailto:keelin@icsh.ie) / 085-8596571 or Kevin Ryan, ICSH Compliance Coordinator at [kevin@icsh.ie](mailto:kevin@icsh.ie) or on 01 661 8334.

**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: 23<sup>rd</sup> February 2017*