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TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

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**Tenant's Rights Brochure for  
Republic of IRELAND**

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**Tenant’s Rights Brochure**

**IRELAND**

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**Table of Contents**

- 1. Introductory information ..... 3
- 2. Looking for a place to live ..... 5
  - 2.1. Rights of the prospective tenant ..... 5
  - 2.2. The rental agreement ..... 7
- 3. During the tenancy ..... 12
  - 3.1. Tenant’s rights ..... 12
  - 3.2. Landlord’s rights ..... 15
- 4. Ending the tenancy ..... 17
  - 4.1. Termination by the tenant ..... 17
  - 4.2. Termination by the landlord ..... 18
  - 4.3. Return of the deposit ..... 21
  - 4.4. Adjudicating a dispute ..... 22
- 5. Additional information ..... 23

## 1. Introductory information

- Give a very brief introduction on the national rental market
  - Current supply and demand situation

The housing market in Ireland is dominated by owner occupied dwellings (70%), slightly below the EU average 71%. Both the number and proportionate share of owner occupied dwellings increased steadily throughout the twentieth century and continuing until the 1990s. Since then the number has increased albeit at a weaker pace, as the number and proportionate share of private rented dwellings began to increase at a small but consistent pace. This trend accelerated sharply during the late 2000s when the private rented sector began to record rapid growth, increasing in size by about 50% from 2006 to 2011.

The rented sector falls into three components:

Renting without a public task		
Private renting	18.5%	(305,000)
‘Social’ renting/renting with a public task	9%	(143,000)
consisting of:		
Local authorities (public)	(7.8%)	(129,000)
Housing associations (social)	(1%)	(14,000)

The private rental sector caters for a diverse range of groups including students, young professionals, migrants and elderly persons. However, the sector also caters for many lower income households, with over a third of private renters relying on income support to pay their rent. Partly this may be attributed to the inadequate social housing stock which has resulted in long waiting lists for the allocation of public/social housing (with waiting times of over two year common).

During the 1990s and 2000s there was a general oversupply of housing and in the wake of the housing market collapse in 2007 there followed steep declines in rents. However since late 2013 and continuing into 2014, there have been increases in rents. This has been driven primarily by increases in urban areas, particularly in Dublin. With regard to regulation, the private rented sector is regulated by the Residential Tenancies Act 2004 while the social rented sector remains largely unregulated.

- Main current problems of the national rental market from the perspective of tenants
  - gross under supply of public/social housing and associated long waiting times;
  - strong demand for private rented accommodation;
  - rising rents;

- lack of social sector security
- poor condition of rental properties;
- rent arrears;
- anti-social behaviour; and
- disputes about the return of deposits.
- 
- Significance of different forms of rental tenure

The rights of both landlord and tenant vary according to whether the tenant is renting in the private rental market or is renting housing with a public task i.e. renting from a local authority or voluntary and co-operative body (e.g. housing association).

- Private renting

Private landlords operate in a regime of market rents and may grant fixed term or periodic (e.g. monthly) tenancies. However all tenancies are governed by the Residential Tenancies Act 2004, which implies a range of rights and duties into all tenancies which cannot be contracted out and which govern the fundamental matters of the tenancy including the setting of rent, the carrying out of repairs, termination, deposit protection and dispute resolution. Once a fixed term tenancy or periodic tenancy runs for six months then the tenant will automatically acquire a Part 4 tenancy and their security will be extended for a further three and half year period, during which time the landlord's powers of termination are reduced although not extinguished.

- "Housing with a public task" (e.g. dwellings offered by housing associations, public bodies etc)

Local authorities are the main providers of housing with a public task in the Ireland. This is rented accommodation provided to eligible households experiencing housing need by the council which is cheaper than in the private rented sector. Matching of landlord and tenant does not take place through a market, as is the case in the private rented sector. Instead, local authorities provide social housing supports to households based on need through a complex allocation system. In practice, after a tenant is allocated a dwelling in accordance with social housing legislation, the local authority specifies the terms and conditions of a letting agreement between itself and a tenant with weekly tenancies common.

Most local authority tenancy agreements contain a raft of provisions restricting the tenant's actions with regard to the dwelling. However in general minor restrictions are not vigorously enforced and often more substantial clauses such as provisions concerning sub-letting may be ignored in practice. However, legally the local authority may seek a court order for possession on foot of almost any breach of the tenancy agreement, and while in practice the local authority only employ such powers as a last resort, security of tenure for local authority tenants must be viewed, in light of this power, as being weak.

## **2. Looking for a place to live**

### **2.1. Rights of the prospective tenant**

- Finding a tenancy

Many properties for rent in the private rented sector are advertised online via sites such as daft.ie or via the classifieds on local and regional newspapers. Interested parties may contact the advertising party, usually the landlord or letting agent (the landlord's representative) and arrange a viewing of the property. Generally, this will entail a guided viewing of the property by the landlord or letting agent where the tenant may ask questions and inspect the property. It is important that the tenant makes sure that the property is in good working order e.g. that there is no damp or inadequate ventilation etc. The rent and other most important matters are often negotiable. Where the tenant is happy with the property they may make an offer to the landlord or letting agent. In the event of an agreement the landlord will often require a security deposit, generally one month's rent, be paid. Throughout each party has various legal rights and obligations which govern key aspects of the relationship. In the event of a dispute, then regard must be had to tenancy law.

- What is the role of estate agents in assisting the tenant in the search for housing?

Estate agents provide a number of services in the Irish residential sector ranging from providing basic advice and information through to agency and complete property management services. Amongst the main services provided are; a property appraisal service during which the letting agent will advise on the current rental value of the property as well as a range of insurance services for landlords. In addition, letting agents provide a means of marketing a rental property either through in store advertisement or via online mediums such as sherryfitzgerald.ie, daft.ie etc.

- What kinds of checks on the personal and financial status of the tenant are usual and legal (e.g. the landlord requiring an independent credit report)?

There are a number of checks which the landlord can perform on the personal and financial status of the tenant. Prior to letting a dwelling the landlord will often be concerned as to whether or not the tenant will be able to honour the tenancy agreement. In order to reduce some of the risk arising from this interaction the landlord or letting agency will often seek to carry out a range of checks on the tenant. These checks usually include credit referencing, bank referencing, employment referencing, and landlord referencing as well as personal referencing. There is nothing in law to prevent a landlord from asking for a salary statement but she cannot compel the prospective tenant to produce one. However, such a refusal may adversely affect the tenants standing. In addition to direct enquiries from the tenant the landlord may resort to a credit information agency, however such practice would not be usual. With regard to housing with a public task, housing is allocated after a

household satisfies an income requirement with documented proof of income required.

- What bases for discrimination in the selection of tenants are allowed/prohibited? What about, for example, status as a foreigner, student, unmarried partner, or person with a short-term work contract?

Anti-discrimination provisions apply to landlords in both the private and social rented sectors. When a landlord is letting accommodation he must ensure that no person or group of persons is treated less favourably than any other person or group of persons because of their gender, civil status, family status, religion, sexual orientation, age, disability, race (including colour, nationality, ethnic or national origins) or membership of the Traveller community. The landlord should not discriminate against a tenant or prospective tenant because of their entitlement to Housing or other Benefits and should not advertise vacant properties in a manner that could be described as discriminatory. When dealing with persons with a disability a landlord must not unreasonably withhold consent to the tenants to adapt the rented accommodation to meet the needs of the disabled occupants.

## 2.2. The rental agreement

- What are the requirements for a valid conclusion of a rental contract (is written form necessary? Is registration necessary Etc)

While it is possible to create a tenancy informally every landlord must provide the tenant with a rent book setting out basic information (rent, deposit etc) concerning the tenancy. In practice all tenancies are granted in writing, not least to ensure that the landlord is able to enforce terms that are clear.

- What is the mandatory content of a contract?

A tenancy agreement can only be concluded by an agreement to grant exclusive possession of self-contained accommodation for a rent. These matters can be agreed orally, but they should be recorded in writing. It is necessary that the object of the letting is for residential purposes, so that the tenancy is assigned to the private sector, but it is not necessary to state that the tenancy will be RTA 2004 tenancy as this is the default for a private sector letting.

- Which data and information should be contained in a contract?

The rent book must include the address of the rented dwelling, the name and address of the landlord and his agent, the name of the tenant, the terms of the tenancy, the amount of rent, when and how it is to be paid, (e.g. cash, cheque, standing order), details of other payments (e.g., telephone, TV) and the amount and purpose of any deposit paid and the conditions under which it will be returned to the tenant as well as a statement of information on basic rights and duties of landlords and tenants. If the landlord fails to provide a rent book, he will be guilty of an offence.

- Duration: open-ended vs. time limited contracts (if legal, under what conditions?)

In general practice the term of the lease should be stated however failure to state a term is not fatal. In the private rented sector the tenancy will usually either be a fixed term tenancy or a periodic tenancy. A fixed term tenancy may be created for any fixed term and there is no legal maximum or minimum duration. Periodic tenancies, on the other hand, run for successive periods and include yearly tenancies, i.e. tenancies which run from year to year and tenancies for lesser periods which run for successive periods i.e. monthly and weekly. The differences between the periodic and fixed term tenancy, have become less important in the private rented sector since the introduction of the Part 4 tenancy in 2004. All residential tenancies are RTA tenancies unless expressly excluded. Where a tenancy has been in existence for 6 months, and during this time the landlord has not served a valid notice of termination, a Part 4 tenancy will automatically come into operation with the result that the tenant will be allowed to remain in occupation for a further three and a half years which will renew every four years provided valid notice of termination has not been served.

- How are rents set?

The RTA 2004 provided that rents in the private rented sector must be at a market rate and any rent which deviated from the market rate would be illegal. The Act provided that once the rate was agreed upon, it was open to annual review with the result that it could be reviewed upward or downward once per annum in order to better reflect market rates. The Act defined rent review broadly and as such it left the method of reviewing the rent rate open to the parties who could decide their own rent review formula so long as the method chosen did not result in a rent which deviated from the market rate. Market rent is defined as the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling having regard to the other terms of the tenancy as well as the letting values of a similarly placed tenancies.

- Repairs, furnishings, and other usual content of importance to tenant
  - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

The landlord is primarily responsible for maintenance and repairs of the dwelling and cannot shift the costs for most kinds of repairs onto the tenant except where the tenant is responsible for damage done to the property which is beyond normal wear and tear.

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?

It is open to the landlord and tenant to agree whether or not the dwelling will be fully furnished or not. However, generally the landlord will provide furnishings and/or major appliances.

- Is the tenant advised to have an inventory made so as to avoid future liability for losses and deteriorations (especially in the case of a furnished dwelling)?

It is highly advisable that the tenant have an inventory made so as to avoid future liability for losses and deteriorations. Furthermore, where possible the tenant should take photos to record the condition of the dwelling upon moving in.

- Parties to the contract
  - Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?

In the private sector, this is a matter of contractual negotiation between landlord and tenant. Today it is generally assumed that a tenant may live with a spouse, civil partner or cohabitee (of whatever gender), but it is usual for a couple to take a tenancy as joint tenants to make occupation rights clear. It is usual also for children to live with their parents and for the tenant to share with other family members, but this should be negotiated with the landlord.

In the social sector this is again a matter for the tenancy agreement. However, family members will have been identified during the allocation process. Tenants should tell their landlord who is in occupation, and landlords may require tenants to disclose this information. Occupancy of the apartment will be limited to a certain number of people. The limit will usually be set by the overcrowding rules.

- Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?

This may be an express term of a tenancy agreement. In a RTA 2004 tenancy the landlord is under a duty to allow the tenant to enjoy peaceful and exclusive occupation of the dwelling. That is, the tenant, upon taking possession of the dwelling, has the right to be maintained in possession and the landlord must not do anything that would deprive or partially deprive him of this.

- Is a change of parties legal in the following cases?
  - divorce (and equivalents such as separation of non-married and same sex couples);

This depends, first, upon whether the couple are joint tenants or not.

If they are joint tenants, a notice to quit can be served by any one of the co-tenants and it will bring the tenancy to an end. The court has power to make an occupation order in all cases involving married or unmarried couples, with or without children, and this includes power to exclude one party from all rights of occupation.

If a property is vested in one party, the effects of relationship breakdown can be capricious. The correct thing to do here is to apply to the family court which can order a transfer of a tenancy on divorce (and its equivalents) and also under the jurisdiction over children..

- apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord)

A student moving out may be replaced by motion of the other students. Under the RTA 2004, tenants can take in licensees who then later may become a tenant.

- death of tenant;

Where a tenancy is held jointly, necessarily by joint tenants, death of one party will effect a survivorship, by which the estate is passed to the survivor who will continue as the tenant automatically after the death. However, the effect of the death of a tenant on a tenancy will vary according to the nature of the tenancy and the agreement between the parties.

A Part 4 tenancy will generally end on the death of a tenant. However, where the dwelling, at the time of the death of the tenant concerned, was occupied by the partner of the tenant, a child of the tenant or a parent of the tenant then that family

member may choose to become a tenant or tenants of the dwelling on the same terms of the original tenant (now deceased).

Practice about succession to tenancies varies from authority to authority. Where a person wishes to succeed to a tenancy they must apply for a transfer of tenancy, but the applicant has no automatic right to succeed to the tenancy. Instead, the tenancy may or may not be transferred to the tenant's spouse or to a member of the tenant's immediate family normally resident in the dwelling at the date of the tenant's death as the awarding of tenancies is at the discretion of the Council. In reaching a decision the council will usually have regard include the number of years which the relative lived in the house.

- bankruptcy of the landlord;

Payment of rent will be diverted to the trustee in bankruptcy. The trustee in bankruptcy is likely to want to sell the property and will be able to do so at a higher price if vacant possession is offered, so it is likely that the tenant will be asked to move.

- Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?

In order for the creation of a sub tenancy in the private rented or social rented sectors prior consent from the landlord is an essential requirement as is usually set out in the tenancy agreement. Under the RTA 2004 a tenant may not sublet without the written consent of the landlord. In the event that the landlord consents to the sub-letting then the tenant will become a landlord upon letting a sub-tenancy. As such they will be regulated with all of the obligations set out above which relate to the landlord under the RTA 2004.

- Does the contract bind the new owner in the case of sale of the premises?

As a tenancy is proprietary in character it will therefore bind a purchaser. However, where a landlord is likely to want to sell the property it is likely that the tenant will be asked to move as vacant possession will usually fetch a higher price. Under the RTA 2004 the landlord may bring a private tenancy to an end where he intends to sell the property within three months. When terminating a part 4 tenancy on this ground the landlord must intend to enter an enforceable agreement to transfer the whole of his interest in the dwelling for full consideration within three months.

- Costs and Utility Charges
  - What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities? Which utilities may be charged from the tenant by the landlord? What is the standard practice?

Parties are free to apportion responsibility for arranging for utilities in the tenancy agreement however generally speaking the landlord will usually assume responsibility for connecting certain utilities, particularly water supply, electricity, heating etc. However, generally the tenant will take over responsibility for making payments in respect of utilities encountered during the term of the tenancy. For instance with regard to electricity, common practice would be for the landlord to ensure that the property is connected to the national grid before letting and upon letting the tenant would take over responsibility for paying for the electricity for the duration of their lease.

- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

Payment of the local property tax is the responsibility of the property owner.

- Deposits and additional guarantees
  - What is the usual and lawful amount of a deposit?

The function of the deposit is to provide security for the landlord.

- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?

A security deposit is normally paid by a tenant to a landlord or agent at the commencement of a tenancy. The landlord or agent hold the deposit of the duration of the tenancy and at the end of a tenancy the landlord, or their agent, is under a duty to return the deposit within a reasonable timeframe.

### 3. During the tenancy

#### 3.1. Tenant's rights

- Defects and disturbances
  - Which defects and disturbances are legally relevant (e.g. mould and humidity in the dwelling; exposure to noise e.g. from a building site in front of the dwelling; noisy neighbours; occupation by third parties)?

Housing must be fit for human habitation. In 2008 the Irish Government introduced a new legal minimum standard for housing quality in the rented sector. The Housing (Standards for Rented Houses) Regulations 2008 set out a legal minimum standard for housing quality which the rented premises must not fall below. The regulations cover a range of areas including structural condition, sanitary facilities, heating facilities, food preparation and storage and laundry, ventilation, lighting, fire safety and refuse facilities. The regulations apply to all rented dwellings however some provisions apply only to private rented accommodation.

Traditionally a defect would be associated with the physical or structural condition of the dwelling. Noise from a building site or from noisy neighbours may constitute a nuisance<sup>1</sup> for which the appropriate remedy would be an order for an injunction.

- What are the tenant's remedies against the landlord and/or third parties in such situations (e.g. unilateral rent reduction vs. rent reduction to be allowed by court; damages; "right to cure" = the landlord's right to repair the defect; the tenant first repairs the defect and then claims the costs from the landlord)

As set out above the lease is a contract and therefore the usual contract law remedies are available. These include injunctions, court action for debt, rescission and damages. A number of additional remedies are available under general landlord and tenant law, for the tenant these include retention of rent and abatement. However, statute has intervened to alter the availability of these remedies. The landlord has a number of additional remedies arising under general landlord and tenant law.

#### RTA 2004 tenancies

The Private Residential Tenancies Board have a wide range of remedies at their disposal. These include the awarding of damages to provide compensation. With regard to a right of repair, the RTA 2004 does not provide an express right of repair rather where a landlord has failed to adhere to the repairing standard; the tenant must afford the landlord the opportunity to cure the failure in a reasonable time. Where the landlord fails to do so, the tenant may take an action to the Board who can order that the landlord carry out the repair.

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<sup>1</sup> Environmental Protection Agency Act 1992 s. 108; Environmental Protection Agency Act (Noise) Regulations 1994; SI No. 179/1994; as amended.

- Repairs of the dwelling
  - Which kinds of repairs is the landlord obliged to carry out?

The landlord is primarily responsible for repair and maintenance of the dwelling. In RTA tenancies a detailed framework of rights and obligations applying to both parties will dictate responsibility for maintenance works and repairs.

There is no obligation on an RTA tenant to carry out repairs or maintenance of the dwelling the subject of the tenancy. Instead the responsibility of the tenant is not to do any act 'that would cause a deterioration in the condition the dwelling was in at the commencement of the tenancy.' However, normal wear and tear due to everyday usage is expected and therefore the test is whether the deterioration in the condition of the dwelling is over and above that of normal wear and tear. In establishing this, there are a number of relevant factors which must be taken into account. Firstly, the time that has elapsed from the commencement of the tenancy, secondly, the extent of occupation of the dwelling the landlord must have reasonably foreseen would occur since the commencement of the tenancy; and finally, any other relevant matters. If the tenant causes damage in excess of normal wear and then this will amount to a breach of his tenancy obligations and he must take steps as the landlord may reasonable require to be taken for the purpose of restoring the dwelling to the condition it was at the commencement of the tenancy or to pay any costs incurred by the landlord in taking such steps 'as are reasonable' to restore the dwelling to the condition it was at the commencement of the tenancy. It is often the case that a dispute may arise as to what amounts to normal wear and tear and indeed it may be difficult to draw a line around normal wear and tear. It is quite clear that the landlord cannot expect the dwelling to be in a similar condition as it was at the commencement of the tenancy. The longer the term of the tenancy then the more likely it is that there will be a greater deterioration in the condition of the dwelling. The landlord is entitled to seek compensation for any damage caused which is over and above normal wear and tear however he must be able to substantiate the claim with sufficient evidence.

- Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?

The tenant is under no statutory obligation to carry out repairs and indeed the landlord is not allowed to impose any repairing obligations on the tenant, but if the landlord has failed to carry out pressing repairs in a reasonable time after notice to do so the tenant may carry out the repairs at their own expense and then seek payment from the landlord to reimburse them for their outlay.

- Alterations of the dwelling
  - Is the tenant allowed to make other changes to the dwelling?

The extent to which the tenant is allowed to make improvements or changes to the dwelling depends primarily on the lease agreement as parties are free to include

terms governing alterations of the dwelling and indeed the modern residential lease will usually contain a term restricting the tenant from carrying out improvements or alterations of the dwelling without the landlords prior consent.

However, the RTA 2004 has had a significant impact in this area by placing the tenant under a duty to not alter or improve the dwelling without the written consent of the landlord. Where the alteration or improvement consists only of repairing, painting and decorating, or any of those things, the landlord may not unreasonably withhold consent.

- In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)

When dealing with persons with a disability a landlord must not unreasonably withhold consent to the tenants to adapt the rented accommodation to meet the needs of the disabled occupants.

- Uses of the dwelling
  - Are the following uses allowed or prohibited?
    - keeping domestic animals
    - producing smells
    - receiving guests over-night
    - fixing pamphlets outside
    - small-scale commercial activity

The lease will generally contain a clause prohibiting use of the dwelling which could result in a nuisance; this could relate keeping animals, odours, receiving guests etc. It is illegal for landlords and letting agents to discriminate against a tenant if they are disabled. This means that the landlord must not treat the tenant less favourably than a non-disabled person because of their disability. With regard to keeping animals this means that the landlord is not allowed to refuse to let the tenant keep a guide dog or other assistance dog under a 'no pets' rule, Using or allowing the house to be used for immoral or illegal purposes is a ground for recovery of possession. Also the Unfair Terms in Consumer Contracts Regulations apply here. An unfair term in a standard consumer contract is a term that is significantly weighted against the consumer. Any term found by a Court to be unfair, is ineffective.<sup>2</sup>

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<sup>2</sup> Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms In Consumer Contracts, transposed into Irish law by the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27/1995) as amended by S.I. No. 307/2000 and S.I. No. 160/2013.

### 3.2. Landlord's rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?

Again this needs to be considered sectorally as market rents prevail in the private rented sector while differential rents, related to tenant's income, apply in local authority tenancies..

#### Private rental market

The RTA 2004 provided that rents in the private rented sector must be at a market rate and any rent which deviated from the market rate would be illegal. Market rent is defined as the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling having regard to the other terms of the tenancy as well as the letting values of a similarly placed tenancies.

#### Rent increases in 'houses with public task'

#### Local authority tenancies

Local authority rents are set on a differential basis and are related to the household's ability to pay, so where the household's income is low then the rent will be low and should the household's income increase then the rent will increase proportionally.

- Rent and the implementation of rent increases
  - When is a rent increase legal?

In the private rented sector the RTA 2004 provided that once the rate was agreed upon, it was open to annual review with the result that it could be reviewed upward or downward once per annum in order to better reflect market rates. The Act defined rent review broadly and as such it left the method of reviewing the rent rate open to the parties who could decide their own rent review formula so long as the method chosen did not result in a rent which deviated from the market rate..

- Entering the premises and related issues
  - Under what conditions may the landlord enter the premises?

The landlord has a right of reasonable access which he may rely upon to enter the dwelling in order to inspect the condition of the dwelling, to carry out repairs or to show prospective tenants around. In order to avail of rights of access the landlord must give the tenants at least 24 hours' notice and access must be limited to reasonable times of the day. Where the tenant refuses the landlord reasonable access then the landlord may not be liable for the repairs..

- Is the landlord allowed to keep a set of keys to the rented apartment?

It would not be unusual for the landlord or representative of the landlord to retain a set of keys to the rented dwelling in order to inspect the dwelling, carry out repairs or to show prospective tenants around. However, the landlord does not have a general

right of access, rather, as set out above, the landlord has a right of reasonable access. This in turn is largely dependent on the landlord giving the tenant sufficient notice. Should the landlord attempt to exercise excessive access of the dwelling this could constitute an unfair exclusion of the landlord's duty to allow the tenant peaceful and exclusive possession.

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

A landlord is not permitted to lock a tenant out of the rented dwelling. In the event that the landlord has given notice to quit but the tenant has refused to leave the landlord can only remove the tenant with court possession order, during which the tenant will be allowed to lodge a defence. There are detailed provisions governing rent arrears. Any landlord who operates in breach of the RTA 2004 could be liable to pay damages in compensation to the tenant.

- Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

The landlord does not have a right to take or seize a tenant's personal property in the rented dwelling.

## 4. Ending the tenancy

### 4.1. Termination by the tenant

- Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?

Where the tenant wishes to terminate the tenancy they must give the landlord valid notice. Any notice of termination for tenancies of houses let for rent or other valuable consideration, whether by landlord or tenant, must be in writing and must be served not less than 4 weeks before the date on which it is to take effect.<sup>3</sup> This minimum notice period applies to all residential tenancies regardless of whether the tenancy is a fixed term tenancy, a periodic tenancy or a Part 4 tenancy of under 6 months duration. Otherwise, where a tenancy is regulated by the RTA 2004 then the period of required notice will vary according to the duration of the tenancy in the manner set out below. Alternatively where the tenant fails to provide a valid notice of termination then he runs the risk of forfeiting some or all of his deposit. Although the notice periods set out below comprise a statutory minimum parties are free to agree to a longer notice period.

Termination by tenant under the RTA 2004	
Duration of tenancy	Notice period
Less than 6 months	28 days
6 or more months but less than 1 year	35 days
1 year or more but less than 2 years	42 days
2 or more years	56 days

For tenancies which are not regulated by the RTA 2004, the notice period is determined by the nature of the agreement, subject to the statutory minimum of twenty eight days.

- Under what circumstances may a tenant terminate a tenancy before the end of the rental term (e.g. unbearable neighbours; bad state of dwelling; moving for professional reasons)?

Parties are free to include an early termination or break clause. In the event that parties fail to include an early termination clause, they remain free to come to a mutual agreement which allows for termination prior to expiry of the term provided that a valid notice period is given. Where the tenancy is a fixed term tenancy the tenant is not allowed to unilaterally terminate the tenancy and any such action may cause the tenant to be liable in damages to the landlord and he may be required to continue to pay rent for the duration of the term. However, the tenant may terminate

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<sup>3</sup> Housing (Miscellaneous Provisions) Act 1992, s.16.

the tenancy where the landlord has breached his obligations or has refused to consent to the tenant assigning or subletting. Where the tenant wishes to leave the tenancy upon expiry of the term, he must give notice to the landlord of at least 28 days. In the event that the tenant is seeking to bring about a termination due a landlord breach of obligation, the tenant must first notify the landlord of the failure in writing and give the landlord the opportunity to remedy the failure in a reasonable time. The landlord does not have a right to compensation where an early termination has been brought about in a manner which complies with the notice requirements of the RTA 2004. It is only when the tenant deviates from the required procedure that a landlord may claim compensation. Where the landlord is in breach of tenancy obligations the tenant may give a shorter notice period. As set out above the tenant must afford the landlord the opportunity to remedy a breach however where a landlord fails to remedy the breach then the tenant may give 28 days' notice. The main exception to this general rule is where there is imminent danger to the tenant due to the landlords breach; in this situation the tenant may give 7 days' notice..

- May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?

Tenancies in the residential sector would rarely provide for the tenant to propose a replacement tenant for one who leaves but there is nothing to prevent a tenant finding a replacement he wants to assign to. This might be appropriate where a flat is taken by a group of students to avoid the problem that a notice by one joint tenant would end the tenancy of all the others. However, such clauses are rare and in general the landlord will find a replacement tenant without the previous tenant's assistance.

#### **4.2. Termination by the landlord**

- Open-ended contract (if existing): under what conditions and in what form may the landlord terminate the tenancy (= eviction) (e.g. the landlord needs the house for himself or wants to renovate and use it differently in the future)?
- Are there any defences available for the tenant against an eviction?
- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?
- Are there any defences available for the tenant in that case?
- What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?

An RTA tenancy can only be terminated by one party serving a valid notice of termination upon the other in accordance with Part 5 of the Act.<sup>4</sup> The landlord seeking a termination must give a certain period of notice to the other party. The notice period will depend on the duration of the tenancy; the longer the duration of the tenancy, the longer the notice period required. However, in the case where the landlord wishes to terminate the tenancy as a result of anti-social behaviour or behaviour which threatens to damage or does actually damage the fabric of the

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<sup>4</sup> RTA 2004, ss 57 and 58.

dwelling then only a seven day notice period is required.<sup>5</sup> Anti-social behaviour is defined by section 17 to mean;

- engaging in behaviour that constitutes commission of an offence;
- engaging in 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 ;
- engage, persistently, in behaviour that prevents or interferes with the peaceful occupation by any person residing in that dwelling or in a neighbourhood dwelling<sup>6</sup>

<b>Termination by landlord of RTA tenancy</b>	
<b>Duration of tenancy</b>	<b>Notice period</b>
Less than 6 months	28 days
6 or more months 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 or more years	112 days

Failure to provide the correct notice period will result in an invalid notice of termination and this will cause the tenancy to continue to operate, potentially resulting in the attraction of Part 4 tenancy status. As such where a landlord fails to provide a valid notice of termination he will run the risk of the tenancy running for a period in excess of the original term envisaged. It is an offence for a landlord to take any action in reliance on an invalid notice of termination which he knew or ought to have known was invalid.<sup>7</sup> Parties are allowed to deviate from the general notice periods where there has been a breach of obligation on the part of the other party. Where the tenant is in breach due to anti-social behaviour on their part the landlord may only give notice of 7 days. However the landlord must produce sufficient evidence. Anti-social behaviour is defined by statute and it is important to set out that a single incident may constitute ASB. Where the breach relates to rent arrears then special rule regarding rent arrears apply as set out below. The landlord has a duty to mitigate the loss from unlawful termination of the tenancy and should make efforts to fill a vacant tenancy.<sup>8</sup>

## **Part 4 tenancy**

<sup>5</sup> *Ibid.*, s. 67(2).

<sup>6</sup> *Ibid.*, s. 17.

<sup>7</sup> *Ibid.*, s. 74.

<sup>8</sup> *Kinney and Anor v O'Doherty* TR 26/DR1039/2008.

As set out earlier, where a tenancy which is governed by the RTA 2004 has been in operation for six months and a valid notice of termination has not been served then a Part 4 tenancy will come into operation with an array of legal consequences for both parties. This affects the termination procedure. In particular, a landlord can only bring about a termination of a Part 4 tenancy on one of six grounds and in doing so he must adhere to the particular requirements of any one of those six grounds<sup>9</sup> in addition to complying with the normal procedural requirements set out above.<sup>10</sup>

**Breach of the tenancy:** In the first instance a landlord may terminate a Part 4 tenancy where a tenant has failed to comply with his obligations. However, the mere presence of a breach is not usually<sup>11</sup> sufficient to allow a landlord to terminate the tenancy, rather the landlord must first afford the tenant the opportunity to right the wrong complained of by notifying the tenant of the breach and allowing the tenant reasonable time<sup>12</sup> to correct the failure. Where the tenant fails to remedy the issues within the time then the landlord is entitled to terminate the tenancy.<sup>13</sup> Where the breach relied upon relates to rent arrears the landlord must first successfully navigate a more complex termination procedure prior to bringing the tenancy to an end. The landlord must notify the tenant of his breach and afford him a reasonable time to remedy the breach. In addition the landlord must serve the tenant with a 14 day warning letter in relation to their rent arrears.<sup>14</sup> This notice must detail the arrears and give the tenant a reasonable period of time to remedy the breach. If the tenant fails to remedy the breach then the landlord must serve a second notice informing the tenant that the rent is due and giving the tenant a further 14 days to pay. Should the tenant fail again then the landlord may terminate the tenancy by serving a notice of termination. In this scenario the landlord is only required to give 28 days' notice.<sup>15</sup>

**Where the dwelling is no longer suitable:** Aside from breach of obligation, a landlord may bring a Part 4 tenancy to an end where the dwelling is no longer suitable for its purposes. In particular, regard is to be had to the number of bed spaces as well as the composition of the household.

**In contemplation of sale:** The landlord may also bring a Part 4 tenancy to an end where he intends to sell the property within three months. When terminating a part 4 tenancy on this ground the landlord must intend to enter an enforceable agreement to transfer the whole of his interest in the dwelling for full consideration within three months.<sup>16</sup>

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<sup>9</sup> RTA 2004, s. 34.

<sup>10</sup> RTA 2004, Part 5.

<sup>11</sup> In serious cases, particularly in the event of anti-social behaviour, the presence of the breach will be sufficient in isolation and there the landlord will not be required to give the tenant an opportunity to remedy their behaviour.

<sup>12</sup> In *Canty v Private Residential Tenancies Board* [2007] IEHC 243 there was a failure to pay rent, and the landlord gave the errant tenant three days to remedy the issue. The court found that this period was not reasonable and instead substituted a 14 days period. As such the period of time given will depend on the nature of the breach complained of and is by nature a relative condition.

<sup>13</sup> *Barrington-Martin and O'Neill and Anor* TR66/DR695/2007, July 9, 2007.

<sup>14</sup> RTA 2004, s. 67(3).

<sup>15</sup> RTA 2004 s. 67(2).

<sup>16</sup> *O'Gorman v. Slattery* TR36/DR236/2007, 28 March 2007 where a landlord served a notice of termination on the basis of sale however the tenant failed vacate and arrears. In response the landlord changed locks prevent tenant from gaining access. The tenancy tribunal found that changing the locks

Dwelling required for landlords own use: The landlord may also bring a part 4 tenancy to an end where a landlord requires the dwelling for his own uses. However, where the landlord seeks to terminate on this ground he must provide an additional statement to the tenant stating the identity of the new occupants and where the landlord is not one for the occupants the statement must set out the relationship between the new occupants and the landlord, as well as setting out the expected duration of occupation. In addition, where the dwelling becomes available for letting within 6 months then the landlord is obliged to offer the dwelling to the previous tenants.<sup>17</sup>

Substantial refurbishment: The landlord may also bring a Part 4 tenancy to an end where he intends to substantially refurbish or renovate the dwelling. This ground may only be relied on where the manner of renovation requires the dwelling to be vacated. When seeking to terminate a tenancy on this ground the landlord must supply the tenant with a statement detailing the nature of the reservation and should a tenancy of the dwelling become available then the landlord is obliged to offer the tenant a tenancy.<sup>18</sup> Where the landlord wishes to terminate a Part 4 tenancy but is unable to rely on one of the 6 permitted grounds he must either serve notice on or after the end of the fourth year or serve notice during the first six months of the tenancy.

#### 4.3. Return of the deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?

A security deposit is normally paid by a tenant to a landlord or agent at the commencement of a tenancy. The landlord or agent hold the deposit of the duration of the tenancy and at the end of a tenancy the landlord, or their agent, is under a duty to return the deposit within a reasonable timeframe.

- What deductions can the landlord make from the security deposit?
  - In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

In the event that the tenant causes damage to the dwelling in excess of normal wear and tear, the landlord will be able to use part or all of the deposit to offset the cost of repair. Alternatively where there is rent outstanding at the end of the tenancy the landlord may retain some or all of the deposit to cover the arrears. Finally where the tenant owes money for utility bills at the end of the tenancy and the utility bill is in the landlords name then he may withhold some or all of the deposit to cover these costs. The majority of disputes before the Private Residential Tenancies Board concern allegations of illegal retention of the deposit. The extent of the number of claims has forced the Government to consider introducing a deposit protection scheme.

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constituted an unlawful termination of the tenancy and awarded €9,000 compensation for inconvenience. Also see *Boyne v. Hanaway* TR49/DR1262/2008.

<sup>17</sup> *Barrett v. Ward* TR135/DR963/2007, 31 March 2008, landlord failed to offer the dwelling to the previous tenants and was imposed with paying compensation of €3,300 to the tenants.

<sup>18</sup> *Hewer v. Williams* TR21/DR427&1252/2008, 30 July 2008.

#### 4.4. Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?
  - Are there specialized courts for adjudication of tenancy disputes?

The RTA 2004 substantially reformed the law regulating the relationship of landlord and tenant with respect to private residential tenancies. In particular, the Act established the Private Residential Tenancies Board which was charged with primary responsibility for regulating the residential tenancies sector. The Board was empowered to provide alternative dispute resolution mechanisms, including mediation and arbitration and ultimately a hearing before a board from the Private Residential Tenancies Board. Any private tenant has the right make an application to the Board for dispute resolution services.

Total disputes dealt with by the Private Residential Tenancies Board 2012

<b>Nature of dispute</b>	<b>Total Disputes 2012</b>
Deposit retention	836
Rent arrears	719
Breach of landlord obligations	462
Breach of tenant obligations	424
Invalid Notice of termination	419
Standard and maintenance of dwelling	369
Overholding	283
Unlawful termination of tenancy (Illegal eviction)	202
Other	116
Anti-social behaviour	115
Breach of fixed term lease	113
Damage in excess of normal wear and tear	105
Rent more than market rate	61

## 5. Additional information

- How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?

Local authorities are the main providers of housing with a public task in the Ireland. This is rented accommodation provided to eligible households experiencing housing need by the council which is cheaper than in the private rented sector. Matching of landlord and tenant does not take place through a market, as is the case in the private rented sector. Instead, local authorities provide social housing supports to households based on need. The local authority is under a statutory duty to carry out a housing need assessment within its functional area at regular intervals, (triennially). However, it is only when a local authority receives an application for social housing support from an eligible household that the matching process will begin. Any person over the age of 18 can apply for local authority housing in Ireland and where their application is successful they may be housed in a house or flat, or in supported or sheltered accommodation. Where the applicant has special needs the authority may be able to match that person with suitable accommodation. There are a number of stages to the application process. In order to qualify the applicant must have a legal right to remain in the State on a long term basis, be eligible for social housing and in need of social housing. sets out the legal residency rights of a range of groups including:

- naturalised citizens;
- non-EEA nationals married to/in civil partnership with an Irish citizen may be considered as part of a joint application for that household, provided he/she holds a valid Stamp 4 and in this case no specific length of prior residence is required;
- UK nationals, again no specific length of prior residence or employment is required;
- European Economic Area nationals apply for social housing support from housing authorities provided that they are employed or self-employed in the State. EEA nationals who are unemployed may apply so long as their lack of employment is due to illness or accident or they are recorded as involuntarily unemployed after having been employed for longer than a year, and they are registered as a job-seeker with Department of Social Protection and FÁS;
- Non EEA nationals married to or in civil partnership with a non-Irish EEA national will be accorded the same rights and entitlements as their EEA national spouse or civil partner with regard to social housing supports;
- Non-EEA nationals with an Irish citizen spouse/civil partner or EEA spouse/civil partner;
- Asylum seekers are not eligible to be considered for social housing support;
- A non-EEA national who has been granted Refugee, Programme Refugee, or Subsidiary Protection status is eligible to be considered for social housing support;

- Non-EEA nationals with an Irish citizen child may apply for social housing support provided that the child is emotionally and financially dependent on them, and that he/she has been granted a Stamp 4 by Department of Justice on that basis and currently continues to hold that valid Stamp 4.

Once a household has a legal right to reside in the country, that household may submit an application form to the local authority. Upon receipt of the application the housing authority will assess whether the applicant is eligible for social housing. In order to be eligible an applicant will have to satisfy an income test and will have to show that they do not have suitable alternative accommodation. A household will be regarded as having suitable alternative accommodation where a member of the household has property that the household could reasonably be expected to live in. However a property will not be regarded as alternative accommodation where it is occupied by someone who is divorced or legally separated from a member of the household, or whose civil partnership with a household member has been dissolved, it would be overcrowded if the household lived in it, it is unfit for human habitation or it would not adequately meet the accommodation requirements of a household member with a disability.

Once the applicant has been determined eligible for social housing support the authority will then assess whether the housing is in need of social housing. This involves the authority assessing the current accommodation of the applicant. Where such accommodation is temporary, overcrowded, unfit for human habitation, is not suited to the accommodation requirements of a household member with a disability, is shared with another household or is unsuitable for the household in another material way, or where the current accommodation's mortgage has been classified as unsustainable as part of the Mortgage Arrears Resolution Process (MARP) laid down by the Central Bank, then the applicant will demonstrate a need for social housing and the household will be accepted by the authority as being eligible for and in need of social housing supports and placed on a housing waiting list. These lists vary in length greatly from area to area as each housing authority draws up its own rules for deciding order of priority on the waiting list. However these lists generally include people who are homeless, people with special housing needs as well as people seeking a transfer to another Council property. The allocation of local authority housing is subject to equality legislation prohibiting discrimination on 9 grounds.

In Ireland, the majority of housing waiting lists are processed in a manner which is geared towards prioritising certain groups over others according to housing need. Housing authorities in urban areas often use a points based system with households apportioned points based on a number of criteria including length of time on housing waiting list. However in some regions housing authorities are introducing choice based housing allocation systems.

When housing becomes available it is allocated to households at the top of the waiting list. While a household is free to refuse a certain allocation the local authority may reduce that household's priority on the waiting list where the authority considers

that there is not a good reason for refusing the offer, and this is more likely where the household has refused more than one offer. Where an application for housing has been refused or where a household on a housing list considers that the local authority has treated them unfairly by not allocating them a house the household may apply to the Office of the Ombudsman where the issue may be reviewed.

### Homelessness

Providing housing support to homeless persons forms a major aspect of local authorities housing functions. While the Housing Act 1988 did not place a duty on housing authorities to provide housing to people who are homeless, it placed responsibility on the local authority to consider the needs of homeless persons and respond accordingly. Under that Act local authorities are empowered to provide funding to voluntary bodies for the provision of emergency accommodation and long term housing for people who are homeless. Furthermore, the authority is required to carry out assessments every three years of the number of people who are homeless in their administrative area as part of the housing needs assessment. Homeless persons may apply for social housing supports in the same way as any other household and they will be assessed in the framework set out above. However, they are given overall priority for housing.

### Rent Supplement

Rent Supplement provides financial assistance on the basis of need, to those private rented sector tenants who are experiencing difficulties in paying their rent. The objective of the scheme is to provide short-term income support to assist with reasonable accommodation costs of eligible persons living in private rented accommodation who are unable to provide for their accommodation costs from their own resources, and who do not have accommodation available to them from another source. Successful applicants must fulfil various income and housing requirements. Applicants must not be in full time employment or in full time education, and are means tested and also subject to a habitual residence test. In determining habitual residence it is presumed, until the contrary is shown, that a person is not habitually resident in the State at the date of the making of the application concerned unless the person has been present in the State or any other part of the Common Travel Area for a continuous period of two years ending on that date. However, a deciding officer is required to also take into account all the circumstances of the case including, in particular, the length and continuity of residence in the State or in any other particular country, the length and purpose of any absence from the State, the nature and pattern of the person's employment, the person's main centre of interest; and the future intentions of the person concerned as they appear from all the circumstances. The accommodation must be suitable for the applicant's needs and the rent is capped to a maximum set by the local authority.

### Housing Assistance Payment

In 2013 the Government announced plans to overhaul the rent supplement scheme, replacing it with a housing assistance payment which will allow recipients of rent supplement who take up full-time employment to retain a portion of their payments. This change will lead to all of the social housing services provided by the State coming together under the local authority system. Under the housing assistance payment scheme applicants will source their own accommodation within the private rented market and the tenancy agreement will be between the Housing Assistance Payment recipient and the private landlord. The local authority will pay the new assistance payment on the tenant's behalf directly to the landlord. This change was designed to reduce the possibility of landlords requiring illegal top up payments. The tenant will pay a rental contribution to the local authority based on the differential rent scheme for the relevant local authority; therefore the exact amount will depend on a tenant's ability to pay.

- Are legal aid services available in the area of tenancy law?

Issues relating to costs, delays and uncertainty have meant that for many tenants and landlords the courts did not represent an efficient method of resolving general disputes. In many ways the dispute resolution reforms introduced by the Private Residential Tenancies Board have gone a long way towards providing a fair, transparent, cost-effective and relatively efficient system. For non RTA tenancies, the courts remain the primary forum for dispute resolution and this can be problematic as legal aid is not generally available for any dispute concerning rights and interests in or over land.

- To which organizations, institutions etc. may a tenant turn to have his/her rights protected?

Ireland has perhaps the least developed tenant representation framework in Western Europe. There is no national association to represent the interests of private rental tenants in the legislative process. Nor is there a national association to represent local authority tenants. However, some organisations (e.g. Threshold) provide support facilities to tenants.