

Private Residential Tenancies Board



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INTRODUCTION

The Residential Tenancies Act 2004 (RTA) has been in force for over four years. The principles set down in the legislation are established. However the RTA is complex and often difficult to understand. In the High Court Judge Mary Laffoy stated that it was an "extremely complex piece of legislation". This comment was made with reference to the rules governing termination of a Part 4 Tenancy for alleged non-payment of rent as being "very technical and confusing".

In the Supreme Court, Judge Nicholas Kearns stated that the RTA was unsatisfactorily drafted in a number of respects and that its meaning was far from clear.

The original intention behind the legislation was that the parties would not require legal representation to pursue their rights under the RTA. Consequently the complexity and the uncertainty of the RTA is disappointing and with respect unacceptable.

Apart from the problems with the legislative text there are lengthy and unpredictable delays in the dispute resolution process operated by the Private Residential Tenancies Board (PRTB). This impacts on the effectiveness of the dispute resolution process to the disbelief of landlords, tenants and their advisors.

OVERVIEW

The general scheme of the legislation is as follows:-

Part 1 – Preliminary and General

S3 – Application of RTA
S4 and S5 – Interpretation
S6 and S7 – Service of notices
S9 – Offences

Part 2 – Tenancy Applications of Landlords and Tenants

S12 – Landlord (L) obligations
S14 – Penalisation of Tenant (T) prohibited
S15 – Duty owed by L to certain third parties to enforce T's obligations.
S16 – T's obligations
S18 – No contracting out of S12 or S16 permitted

Part 3 – Rent and Rent Reviews

S19 – Setting rent above market rent prohibited.
S20 – Frequency of rent reviews
S21 – Right to rent review where none provided

S22 – T to be notified of new rent at least twenty-eight days before date on which new rent is to have effect
S23 – Proceeding for rent arrears

Part 4 – Security of Tenure

S25 – Non-application of Part 4 in certain circumstances
S26 – Greater security of tenure not affected
S28 – Statutory protection – Part 4 Tenancy – After six month occupation
S30 – Terms of Part 4 Tenancy
S34 (plus table) – Termination of Part 4 Tenancy
S36 – Termination by T
S40 – Additional statutory right that further Part 4 Tenancy
S56 – Damage for abuse of S34 Termination Procedure

Part 5 – Tenancy Terminations – Notice Periods and Other Procedural Requirements

S58 – Termination of tenancies of dwellings restricted to means provided by Part 5
S59 – Exclusion of existing rules and enactments
S60 – Greater notice periods not affected
S61 – Construction of certain references to periods of notice and durations of tenancies
S62 – Requirements for a valid notice of termination (NOT)
S65 to S68 – Periods of notice to be given
S69 – Exceptions to requirements in S66 to S68

Part 6 – Dispute Resolution

Part 7 – Registration of Tenancies

S134 – L's obligation to apply to register tenancy
S139 – Updating of Particulars entered in Register
S142 – Presumption in relation to date of commencement of tenancy
S145 and S145 – Provision in aid of enforcement of registration requirements

Part 8 – Private Residential Tenancies Board

Part 9 – Miscellaneous

S182 – Limitation on certain disputes being the subject of Court proceedings
S184 – Voidance of provisions designed to facilitate terminations
S186 – T may terminate where consent to assignment or subletting is withheld
S189 and S190 – Jurisdiction in aid of Part 6 Resolution Procedure and supplemental provisions
S191 and S192 – Concerning long occupation equity
S195 – Proposed overholding under a fixed term tenancy

Miscellaneous

Schedule

Protection for sub-tenancies created out of Part 4 Tenancies

THE LEGISLATION

The RTA deals with the regulation of the main stream private rented residential housing sector only and so does not apply to the following rented properties: -

- business lettings;
- holiday lettings;
- formerly rent controlled dwellings or long occupation Lease tenancies (separate legislation applies to these);
- owner/occupied accommodation (example rent-a-room scheme);
- dwellings in which the spouse, parent or child of the landlord lives; and
- social housing.

One of the most dramatic changes brought about by the RTA is that disputes between landlords and tenants of dwellings are dealt with by the PRTB and not by the Courts.

Part 6 of RTA which deals with dispute resolution came into effect on 6th December 2004.

The Determination Orders issued by the Board and the reports of the Tenancy Tribunal are published on the PRTB website namely www.prtb.ie/disputes.htm.

Regrettably the Determination Orders do not provide a summary of the relevant facts. Consequently the Orders are difficult for practitioners when advising clients. The Orders tend to be short, uninformative, confined to a few paragraphs setting out the terms of the Order made by the Board.

The reports of the Tenancy Tribunal as opposed to the Determination Orders are far more informative. They do provide an account of the main facts and sometimes the conflicting and contradictory evidence presented to the Tribunal by the parties.

The Tribunal has been requested to consider points of interpretation involving the legislation. These cases are helpful because they indicate the thinking of the Tribunal.

A dispute comes before the Tenancy Tribunal in a number of circumstances for example where the Board takes the view that mediation or adjudication is not appropriate or where mediation has failed and the parties requested a Tribunal hearing or where there is an appeal from an adjudication. The Tribunal reports are also available on the website.

REGISTRATION

As and from September 2004 all landlords must register new tenancies with the Board. In order for a landlord to avail of the PRTB dispute resolution service the tenancy must be registered with the Board. A tenant does not have to be registered to avail of the services of the Board.

A new tenancy must be registered within a month of the commencement of the tenancy. Landlords are responsible for registration. Once registration has been completed both the landlord and tenant are each given a registration number which must be used in any dealings with the Board. Registration with the Board costs €70.00. In the event that you are registering a number of tenancies in the same building at the same time you can pay a total fee of €300.00. Should you fail to register with the Board on time i.e., once the one month period has expired then the registration fees are doubled. A tenant should not be asked to pay the registration fee.

It is important to remember that in cases where a four year tenancy expires and a new tenancy commences immediately afterwards then the landlord must register a new tenancy with the Board. The appropriate registration forms can be downloaded from the PRTB's website at www.prtb.ie.

TENANT'S RIGHTS

Once a tenant has been in occupation of a property for at least six months, what is known as a "Part 4 Tenancy" comes into place. This means that unless the landlord serves a valid Notice of Termination (NOT) within six months from the commencement of the tenancy the tenant is entitled to remain on in the premises for a further three and a half years. The effect of a tenant remaining in occupation of a property on the expiration of the six month period is that the tenant becomes entitled to a new tenancy for a period of four years from the date of commencement of his initial tenancy.

A tenant cannot be asked to contract out of his right to a "Part 4 Tenancy" at the commencement of his Lease.

VALID NOT

Section 62 of the Act sets out the details which a NOT must contain in order to be valid. It is essential that the NOT is drafted correctly. If a landlord is attempting to terminate a tenancy once the initial six month period has expired then he must give the reason for the termination. A landlord should ensure that an adequate period of notice is given to the tenant and depending on the duration of the tenancy the notice period will vary.

A Part 4 Tenancy may only be terminated by a landlord if the landlord can prove one the following grounds apply:-

1. the tenant has failed to comply with the tenancy obligations e.g. failure to pay rent;
2. the dwelling is not longer suited to the accommodation needs of the tenant;
3. the landlord intends to sell the dwelling;
4. the landlord requires the dwelling for occupation by himself or a family member;
5. the landlord intends renovating and refurbishing the dwelling; and
6. the landlord intends changing the use of the dwelling.

TERMINATION BY A TENANT

A tenant may terminate a Part 4 Tenancy at any time by serving on the landlord a NOT given the required period of notice. A tenant is not required to give a reason for terminating his tenancy. A Part 4 Tenancy will be deemed to have been terminated by the tenant when any rent owed by him is in arrears for a period of twenty-eight days or more if, whether before or after the end of that period, the tenant has vacated the dwelling and no NOT has been served by the tenant. A tenant remains liable for rent for the period that would have elapsed had a NOT giving the required period of notice been served by him.

DISPUTE RESOLUTION SERVICE

The dispute resolution process used by the PRTB is confidential, supportive and non-confrontational. The landlord, tenant or other parties directly affected by the actions of the tenant, for example neighbours, can initiate the dispute resolution process. As already pointed out in order for a landlord to use the dispute resolution service a landlord must be registered with the PRTB.

Examples of matters referred to the PRTB are disputes relating to deposits, lease terms, termination of tenancies, rent arrears and complaints by neighbours.

Disputes that are not resolved either by mediation or adjudication will be referred to a Tenancy Tribunal established by the Board.

The objective of mediation is to have the dispute resolved by agreement between the parties with the assistance of a mediator.

The objective of the adjudication is to have the dispute determined by an adjudicator. The adjudicator's role is to decide how the dispute should be resolved. The adjudicator may base his decision on an agreement reached between the parties at the adjudication or may make his own decision in the determination of the dispute. On receipt of the determination of an adjudicator either of the parties may appeal his decision to a Tenancy Tribunal of the PRTB for public hearing and determination. The adjudication hearing is an informal process.

Currently there are substantial delays in waiting for an adjudication hearing to be called. Following the adjudication hearing it can take the PRTB up to four to six weeks to furnish the parties with its determination. Once the Board issues the adjudicators determination either party has twenty-one days to appeal the decision. On the expiration of the twenty-one day period the Board will issue its Order which becomes binding on the parties.

Failure to comply with the Determination Order of the Board is an offence. The affected party should notify the PRTB that the Order has not been complied with and the PRTB will then refer the matter to its enforcement section. The affected party or the PRTB may also apply to the Circuit Court for an Order directing the party concerned to comply. A party who fails to comply with one or more of the terms of the Determination Order is guilty of an offence and is liable on summary conviction to a fine of up to €3,000.00 or imprisonment for up to six months or both.

The PRTB is rigorous in enforcing, through the Courts, its Determination Orders where it is satisfied that there has been non-compliance.

CONCLUSION

In our view there was a need to remove landlord and tenant disputes from the archaic Civil Courts. The formality of the Courts in such circumstances was frightening to say the least. The atmosphere generated anxiety and fear. Add into that the number of lawyers (solicitors and barristers) required for the presentation of argument and the fact that it was heard in public did give cause for substantial change. From this perspective the idea of an independent, informal, fair-minded rent Tribunal had to be warmly welcomed.

Was it necessary to have over two hundred sections in the new legislation? Surely this volume of legislation put the relationship between landlord and tenant of residential dwellings back into the hands of the lawyers but in a less formal atmosphere.

The idea of mediation and adjudication is to be welcomed. So also is the idea of having the ultimate decision rest with the Tenancy Tribunal, if required. But it is our view that those persons who approached these services in a casual or unprepared way, suffered.

It is also our view that it is a great pity that the original intention to have disputes determined with speed was a good one. It is a great pity that there are substantial delays in achieving a hearing and more substantial delays in waiting for the decision. In our view this fundamentally undermines one of the principal objectives of the legislation.

The Law as drafted is a tenant's charter. It means that tenants can on a whim give the landlord notice and terminate the tenancy. Because the landlord does not have the same facility there is a substantial lack of balance.

Further there is no cost whatsoever in terminating the tenancy to the tenant before the expiration of the term. In fact the tenant can terminate five weeks after the tenancy commences. Is this a fair commercial arrangement? We think not.

The fact that the decisions coming out from the Board are published on the website is a good idea. Once again it is a pity that they are behind in time. Attitudes and circumstances can change very quickly and so it would help the renting public and their advisors if the decisions were more current.

In final conclusion the idea was good. Its practice has not lived up to the original concept.