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**AN BILLE UM THIONÓNTACHTAÍ CÓNAITHE (LEASÚ),  
2012  
RESIDENTIAL TENANCIES (AMENDMENT) BILL 2012**

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**EXPLANATORY MEMORANDUM**

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*Purpose of Bill*

The Bill is by its long title an Act to amend the Residential Tenancies Act 2004 so as to provide for the payment of deposits to the Private Residential Tenancies Board in respect of tenancies required to be registered under Part 7 of that Act; to require further that payments of supplementary welfare allowance under the Social Welfare Acts in respect of rental payments shall be paid only in respect of a tenancy registered with the Board; and to provide for connected matters.

The Bill has two main purposes. First, it requires tenancy deposits to be paid over by a landlord to the Private Residential Tenancies Board rather than being held by the landlord personally. This will reduce the number of disputes arising where a deposit is not returned after the end of a tenancy and will facilitate the resolution of those disputes.

Second, the Bill seeks to reduce the number of cases where supplementary welfare allowance is used to facilitate rent payments in respect of unregistered tenancies.

*Provisions of Bill*

*Section 1* defines “the Principal Act” as meaning the Residential Tenancies Act 2004.

*Section 2* defines “deposit”, a term used in but undefined by the Principal Act. It means any money intended to be held (by the landlord or otherwise) as security for the performance of any obligations of the tenant or the discharge of any liability of the tenant, arising under or in connection with a tenancy.

*Section 3* provides that, where a landlord requires a tenant, on entering into an agreement for a tenancy or lease, to pay a deposit, the deposit shall be paid by the landlord to the Board at the time of application for registration of the tenancy.

The deposit shall be held by the Board until an application for repayment is made under *subsection (3)* or a dispute is referred to

the Board for resolution under section 76 of the Principal Act. A landlord who contravenes *subsection (1)* is guilty of an offence.

Where a landlord and a tenant jointly apply for the repayment of a deposit by the Board to the tenant, the landlord, or in part to the tenant and in part to the landlord, the Board must promptly repay the deposit in the manner specified in the application.

The section then sets out the principles according to which disputes about deposits are to be determined by the Board:

- none of the deposit shall be repaid to the tenant if the tenant is in arrears of rent or has caused a deterioration in the condition of the dwelling and the rent outstanding or the cost of restoring the dwelling is greater than the deposit;
- if the tenant is in arrears of rent or has caused a deterioration in the condition of the dwelling and the arrears or the cost of restoring the dwelling is less than the deposit, then there shall be repaid to the landlord the amount of rent that is in arrears or the amount of the cost of restoring the dwelling and the remainder shall be repaid to the tenant;
- in any other case, the deposit shall be repaid in full to the tenant.

It is provided that no provision of any lease, tenancy agreement, contract or other agreement entered into after the commencement of the Bill may operate to vary, modify or restrict in any way this section.

Section 115 of the Principal Act is amended to allow for a Tribunal hearing a dispute under the Principal Act to direct that a specified amount of damages be paid by either a landlord or a tenant for unreasonably refusing to agree to a joint application for the repayment of a deposit under section 2(3) of this Bill.

A further consequential amendment, relating to disputes about deposits, is made to section 78 of the Principal Act and consequential repeals are made to section 12(1)(d) and (4) of the Principal Act.

*Section 4* amends section 92 of the Principal Act (“Initial steps that may be taken by Board to resolve matters referred”) by inserting a new subsection (5) which provides that, for the purposes of that section, and in particular to enable the Board to clarify for itself and for the parties any issue arising in relation to a dispute referred to it, the Board may inquire into any relevant aspect of the dispute concerned; require either party to furnish to it, within a specified period, such documents or other information as it considers appropriate; and provide to, and receive from, each party such information as is appropriate.

*Section 5* requires the Board to establish an investment account into which deposits paid to it under *section 2* are to be deposited. The National Treasury Management Agency shall manage the account on behalf of the Board.

Moneys in the account shall be invested and the investments shall be realised or varied as occasion requires and the proceeds of any such realisation, and any dividends or other payments received in respect of moneys invested under this section, shall be paid into the Exchequer. However, the NTMA must ensure that there is always within the account a sufficient amount of money to enable the Board to repay deposits to tenants and landlords under *section 2*.

*Section 6* provides that the Department of Social Protection must not make a payment of a supplement towards the amount of rent payable by a person in respect of his or her residence where the tenancy has not been registered in accordance with the provisions of Part 7 of the Principal Act. However, this does not prevent the payment by the Department of Social Protection of such a supplement upon the creation of a tenancy, or of assistance in the form of a deposit prior to the registration of the tenancy.

*Section 7* provides for the short title and the collective citation and construction of the Bill.

*Deputy Patrick Nulty,*  
*May, 2012.*