



**An Bille um Thionóntachtaí Cónaithe (Leasú) (Uimh. 2),
2018**

Residential Tenancies (Amendment) (No. 2) Bill 2018

Meabhrán Mínitheach
Explanatory Memorandum



**AN BILLE UM THIONÓNTACHTAÍ CÓNAITHE (LEASÚ)
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RESIDENTIAL TENANCIES (AMENDMENT) (NO. 2) BILL 2018**

EXPLANATORY MEMORANDUM

General

The purpose of this Bill is to amend the Residential Tenancies Acts 2004 to 2016 to give legislative effect to a number of commitments and agreed actions under the Strategy for the Rental Sector and as part of the September 2017 policy review of Rebuilding Ireland, Action Plan for Housing and Homelessness.

The Bill's key provisions include:

- empowerment of the Residential Tenancies Board (RTB) to investigate, without the need for a complaint from the public, and administratively sanction, landlords who engage in improper conduct including the implementation of unlawful rent increases in Rent Pressure Zones (RPZs);
- the creation of criminal offences for landlords connected with non-compliance with rent increase restrictions in RPZs and tenancy registration requirements and non-cooperation with investigations related to administrative sanctions;
- lengthening notice periods for tenancy terminations by landlords;
- requiring the annual registration of tenancies with the RTB; and
- requiring the mandatory publication of RTB determination orders.

Provisions

There are 3 Parts in the Bill, comprising 25 sections.

PART 1

Preliminary and General — (sections 1 and 2)

This Part contains standard provisions relating to short title, collective citation, commencement and definitions.

PART 2

Amendment of Residential Tenancies Act 2004

The key and necessary amendments to the Act of 2004, i.e. the Residential Tenancies Act 2004, provided under this Part are set out below.

Section 3 amends section 19 of the Act of 2004 which relates to rent setting by:

- (i) inserting a definition of a ‘substantial change in the nature of the accommodation provided under the tenancy’ in respect of which an exemption applies from the rent increase restriction in RPZs;
- (ii) requiring a landlord to notify the RTB, and to provide supporting information, where he or she wishes to avail of an exemption from the rent increase restriction; and
- (iii) creating the following 3 offences –
 - (a) non-compliance with the rent increase restriction;
 - (b) knowingly or recklessly furnishing information to the RTB which is false or misleading in a material respect to avail of an exemption from the rent increase restriction; and
 - (c) non-compliance with the new requirement for a landlord to notify the RTB where he or she wishes to avail of an exemption from the rent increase restriction.

Sections 5 and 6 technically amend sections 41 and 45 of the Act of 2004, respectively, to ensure that tenancies established under sections 41 and 45 for sitting tenants (i.e. further Part 4 tenancy agreements) are not treated as new tenancies but as extensions to the sitting tenants' previous tenancy in the dwelling in question. These amendments are included to ensure that various notice periods afforded under the Act, such as termination notices and rent review notices, are correctly applied.

Section 7 amends section 66 of the Act of 2004 to extend the notice periods that a landlord provides in serving a notice of tenancy termination to any tenant who has occupied a dwelling for more than 6 months and less than 5 years. Also, where a notice of tenancy termination notice is determined to be invalid due to a defect contained in it, or occurring during the service of the original notice by the landlord, the RTB will be empowered to permit a landlord to remedy such a defect by issuing a ‘remedial notice’ to the tenant which provides at least a further 28 days on top of the original notice period for tenancy termination. Provision is made for a review of the new tenancy termination provisions to commence during the third year of their operation.

Sections 9 and 10 technically amend sections 93 and 109 of the Act of 2004, respectively, to empower the RTB to charge for its mediation services, if deemed necessary in the future.

Section 11 technically amends section 123 of the Act of 2004 to make it mandatory for the Board to publish its determination orders and notices of cancellation thereof. Currently, the Board has the option whether or not to so publish; this amendment aims to enhance transparency.

Section 12 amends section 134 of Act of 2004 to require the annual registration of tenancies with the RTB. The aim is to gather accurate and detailed tenancy and rental data on an annual basis.

Section 14 technically amends section 136 of Act of 2004 to require that the address at which the landlord ordinarily resides and the address of the landlord’s authorised agent are both included on the RTB’s register of tenancies.

Sections 15 and 16 amends sections 137 and 137A of the Act of 2004, respectively, to provide for fees for tenancies registration on an annual basis. Fees applicable to approved housing bodies under annual registration are half the normal amount.

Section 17 inserts a new section 144A into the Act of 2004, which empowers the RTB to pursue updates to its register from landlords with regard to rent alterations relating to tenancies in their dwelling. A

new criminal offence is created with regard to non-compliance with the requirement to update rent information on the RTB register.

Section 18 of the Bill insert sections 148R to 148AG into the Act of 2004 to form a new Part 7A - Complaints, Investigations and Sanctions.

Part 7A of Act of 2004:

Section 148R is a standard provision to define the meaning of certain terms used in Part 7A.

Section 148S sets out the powers of an authorised officer for the purposes of carrying out an investigation under Part 7A. For example, the authorised officer may –

- enter, inspect, examine and search any premises where he or she has reasonable grounds for believing that any activity in connection with the letting or tenancy of a dwelling is carried on and inspect and take copies or extracts from relevant records or remove them entirely for a reasonable period for the purposes of his or her investigation,
- require any person at the premises or the owner or person in charge of the premises and any person employed there to give to him or her such assistance as he or she may reasonably require for the purposes of his or her functions under this Part,
- require a landlord to provide an explanation of a decision, course of action, system or practice or the nature or content of any records.

Where an authorised officer considers it appropriate, an oral hearing may be conducted to facilitate an investigation. Where a person fails to comply with this section, the authorised officer may apply in summary manner to the District Court for an order requiring compliance. A person shall be guilty of an offence, where he or she hinders an authorised officer's investigation.

Section 148T requires, subject to certain conditions, the RTB to cause an investigation to be carried out upon receipt of a complaint of improper conduct by a landlord under the Act.

Section 148U provides for the appointment of one or more than one authorised officer and a decision maker by the RTB for the purposes of carrying out an investigation into a particular case of possible improper conduct and the imposition of a sanction, if warranted, under Part 7A.

Section 148V sets out procedures for notifying relevant parties of an investigation and advises the landlord of his or her opportunity under *section 148W* to acknowledge his or her improper conduct.

Section 148X provides for the preparation of an investigation report by the authorised officer. A draft investigation report is provided to the relevant parties and submissions thereon are invited within 21 days. The authorised officer submits the final investigation report to the decision maker. The investigation report shall state the authorised officer's view on whether the landlord has engaged in improper conduct but shall not contain a recommendation with regard to any sanction. A decision maker may convene an oral hearing on the matter and/or cause a further investigation to be undertaken to assist in making a decision on whether or not to impose a sanction. A sanction may comprise any or all of the following: a financial penalty of up to €15,000; payment of RTB investigation costs of up to €15,000; and a written caution.

Section 148Y provides for the preparation and issue of a RTB decision notice following the completion of an investigation under Part 7A.

Sections 148Z to 148AC provide for a right of appeal of RTB decisions under Part 7A to the Circuit Court and where no appeal occurs, provides for the RTB to apply to the Circuit Court to confirm the RTB decision under Part 7A. *Section 148AC* provides for a right of appeal of a Circuit Court decision under Part 7A to the High Court on a point of law and for procedural matters.

Section 148AD sets out the matters that a decision maker or the Circuit Court shall consider in determining the nature of the sanction to impose. *Section 148AE* obliges the RTB to publish particulars of the sanctions imposed. *Section 148AF* requires the RTB to set out, in rules made with the consent of the Minister, the procedures to be followed under Part 7A in relation to an investigation. Authorised officers and decision makers are required to perform their functions without undue formality.

Section 148AG provides for the relationship between investigations under Part 7A and criminal proceedings. The key principle is that where a sanction has been imposed for improper conduct, criminal proceedings cannot be taken on foot of the same conduct and vice versa.

Section 19 of the Bill technically amends section 151 of Act of 2004 by extending the functions of the RTB to include the investigation of landlords and the imposition of sanctions in accordance with the new Part 7A.

Section 20 of the Bill inserts a new section 164A into the Act of 2004 to provide for the appointment of authorised officers and decision makers by the RTB and the creation of a panel of authorised officers and a panel of decision makers.

Section 23 inserts *Schedule 2* into the Act of 2004 which details the improper misconduct in respect of which investigations may be caused under Part 7A including: non-compliance with the rent increase restrictions; non-compliance with the new requirement under this Bill for a landlord to notify the RTB where he or she wishes to avail of an exemption from the rent increase restriction; seeking to rely on an exemption from a rent increase restriction in respect of a dwelling that does not comply with the exemption requirements; and non-compliance with the requirements to register a tenancy and to update the register with particulars regarding rent alterations.

Section 24 inserts *Schedule 3* into the Act of 2004 which include provisions applicable to oral hearings conducted by authorised officers pursuant to section 148S of the new Part 7A or by decision makers pursuant to section 148X of the new Part 7A.

PART 3

Amendment of Residential Tenancies (Amendment) Act 2015

This Part provides for the repeal of certain provisions contained within the Residential Tenancies (Amendment) Act 2015 that have not come into operation and have been overtaken by the provisions in this Bill.

*An Roinn Tithíochta, Pleanála agus Rialtais Áitiúil,
Nollaig, 2018.*