

**Joint Oireachtas Committee on Housing, Planning & Local Government**  
**Submission on the General Scheme of the Residential (Amendment) Bill 2018**  
**Residential Tenancies Board (RTB)**

30th May 2018

**1. Introduction**

I would like to thank the Chair and the Joint Committee for affording the RTB the opportunity to comment and put forward our views on the proposed new legislation. At the outset, I would like to confirm that the RTB supports the vast majority of what is proposed in the General Scheme. The RTB's vision is to have a well-functioning rental sector that is fair, accessible and beneficial to all. It is clear that the current rental sector in Ireland, while beginning to show signs of stability, is still in crisis. With rents higher than they have ever been before, access to the market is difficult for many tenants from both a supply and affordability perspective. There were some indications of moderation in rent inflation in the market in the RTB Rent Index for quarter 4 2017, however, supply is still restricted and there are indications that some landlords are exiting the market.

In this regard, we strongly support any initiative to ensure the regulatory framework works more effectively. The key focus of the proposed legislation is to provide the RTB with more effective powers to directly regulate the sector, particularly in relation to Rent Pressure Zones. It is clear that the current practice of relying on tenants or landlords to take cases/disputes to the RTB is not sufficient on its own to ensure that the law or regulatory framework is adhered to. In particular, in a market which has very restricted supply, parties may be reluctant to take cases to the RTB due to concerns about potential repercussions including losing their home or access to another rental property. Relying on a dispute system that requires parties to take cases to the RTB is a weakness within the regulatory framework which the new powers seek to rectify. However, on a broader note it is important to point out that the vast majority of landlord and tenant relationships are working well, and we have patched on more and more to the existing regulatory framework over the last number of years. This has led to an extremely complicated and bureaucratic regulatory framework that most landlords and tenants simply do not understand. This is the biggest threat to successful implementation. Therefore, it is important that as we add further to the existing law that we prioritise simplifying the legislation and the framework beneath it. In addition, supply is still a significant issue and increasing regulation in isolation to other measures will not work, we need to work tandem to the development of regulation on the underlying issue of supply.

We have set out below our general views on the Scheme, our views on areas that might be further developed and some initial thoughts on the implications of such legislation for the RTB.

**2. The RTB**

The RTB is the primary state regulator for the rental sector in Ireland and one of the only bodies that works impartially with both landlords and tenants. Our key functions are to operate a national system of tenancy registration, to replace the courts for the majority of landlord and tenant disputes through our Disputes Resolution Services and, increasingly, to focus on the provision of information, research

and education. We provide high-quality information to tenants and landlords as well as to the general public on their rights and obligations, in terms both of living in and providing accommodation in the rental sector. We also provide accurate and authoritative data on the rental sector, such as the Rent Index, which allows us to monitor rental trends.

At the end of 2017 there were approximately 340,000 tenancies registered with the RTB, which encompassed just over 700,000 occupants. Of these 313,000 were private rented sector tenancies with the remainder being made up of tenancies managed by Approved Housing Bodies. As evident from these numbers the size and scale of the sector is bigger than ever before and the RTB interacts with a huge section of the population. Last year we took a record number of 170,000 calls and responded to 60,000 emails. In terms of our dispute resolution services, last year over 5,800 cases were referred to us by either tenants, landlords or third parties. The most common reasons cited for taking a dispute application were, invalid notices of termination at 25%, rent arrears and overholding at 27% and deposit retention at 21%. We have seen an increase in cases being brought to us regarding rent reviews, but the numbers are coming off a very low base to begin with. There were 481 cases which cited 'rent more than market rate' in 2017 compared to 255 in 2016. It is difficult to measure compliance with rent pressure zone legislation from our dispute applications, as anecdotally we know that many tenants will not bring cases to us for fear of losing a tenancy. We have, through the Rent Index, started to see moderation in rent levels which may indicate growing compliance. However, while the vast majority of landlords may be compliant that does not help the minority of tenants who are paying unlawfully increased rents and our ability to monitor the market is impaired by the current regulatory framework.

### **3. General Views on the Bill**

As the Committee are aware, Part 2 of the General Scheme proposes to give the RTB new powers to investigate and sanction contraventions of the Residential Tenancies Act, in relation to rent setting in Rent Pressure Zones, and in relation to failing to register a tenancy.

#### *3.1 Civil sanctions regime – Head 3*

The principle function of this part of the proposed legislation is to give the RTB powers to directly investigate and sanction landlords who are charging more than the 4% per annum maximum rent increase or who are misapplying the exemptions (properties not let in last two years or that have been substantially changed). These are powers the RTB does not currently have, and this means that even if we are aware of or have been informed about a potential contravention/breach under the legislation we can do nothing about it unless the tenant takes a case through our Dispute Resolution Service. The new powers will be significant in terms of expanding the overall role and remit of the RTB to allow it to proactively enforce landlord and tenant law and assume a more active and direct regulatory role in the sector. The RTB has been accused of 'not having teeth' in the past, as it is set up as a reactive organisation that responds to complaints. The RTB has been actively trying to change this by concentrating on the provision of information, education and increasing awareness as a means of preventing disputes. These new powers will give us another way to proactively regulate the sector.

One of the most important elements of the new powers is that they are based on a civil sanctions regime, meaning that the RTB, via the Director, can impose a sanction directly on landlords found to be in contravention of the law without the need to take a prosecution through the courts. Sanctions can range from a caution all the way up to a sanction of €15,000. This framework is beneficial in many ways;

- A civil sanction regime which does not need to be referred to the courts, is a much quicker, and more cost effective method of resolution, which should serve the citizen better.
- It importantly allows proportionality to be applied to potential contraventions. 86% of landlords in Ireland are non-professional landlords who own only one or two properties. Some of these landlords may not fully understand the law, and this regime offers them an opportunity to acknowledge the contravention at an early stage and allows for a proportionately lesser sanction to be applied. The primary objective is not to punish but to work with the sector to improve compliance.
- The proposed framework also provides protection for persons who make complaints and allows complaints to be made anonymously. A complaint may trigger an investigation, but the onus will be on the RTB to investigate and determine if a contravention has occurred and a tenant in this scenario should not feel they are putting their tenancy at risk by making a complaint.

### *3.2 Investigation Powers – Head 3E*

One of the most significant elements of the civil sanction based structure is the substantial investigative powers that the RTB will be given. At present the RTB have a regulatory responsibility to ensure that all residential tenancies are registered with us and enforcement of non-compliance is an offence that must be prosecuted in the criminal courts. While the RTB considers non-registration a very serious matter, there are weaknesses to this being the only method of sanction available to the RTB. Significantly, the RTB is restricted in their powers of investigation because in any potential criminal prosecution a party has the right not to incriminate themselves. This makes prosecution for non-registration very difficult, very time consuming and very costly. In the proposed civil sanctions regime, the RTB will be permitted to require persons to provide us with documents, accounts and to answer the investigating officers' questions. This will not only allow us to start proactively dealing with potential breaches in relation to rent pressure zones but will also dramatically improve our enforcement for non-registration.

The RTB believes that, in time, these investigative powers could be used for other contraventions that may be prescribed by the legislators and will enable the RTB to become a more proactive and effective regulatory body.

### *3.3 Criminal Offences – Head 5*

The proposed Bill will make it an offence for landlords to implement rent increases that contravene the law around rent limits (4% per annum in Rent Pressure Zones (RPZs)) Non-registration of tenancies will also still be an offence, which means that can still be prosecuted as criminal offences. This means that the RTB, instead of having one option available for enforcement, will be able to determine whether the civil sanctions route or criminal prosecution is more appropriate having regard to particular circumstances of the case. It is likely that criminal prosecution will be reserved for very serious contraventions, or repeat offenders. This again allows the principle of proportionality to be applied.

### *3.4 Notification of Exemptions – Head 5*

The Scheme also provides that landlords must notify the RTB if they are relying on an exemption from an RPZ. Exemptions are available in two circumstances, where properties are new to the rental market or those that have not been let in the previous two years; and properties which have undergone a substantial change in the nature of the accommodation that affects the letting value. This notification

requirement will allow the RTB to monitor the impact of the Rent Pressure Zones as currently we cannot distinguish tenancies that are regulated and unregulated. It will also allow us to investigate individual exemptions as appropriate under our proposed new powers.

### *3.5 New Notice Periods - Head 9*

The Bill also provides for longer notice periods for tenants where a notice of termination is being served, giving tenants more time to move out of their rented accommodation. This will give a greater degree of security and certainty to tenants, and is in line with the Strategy for the Rental Sector which commits to moving to indefinite security of tenure over a period of time. It is important that for tenancies that are under 6 months that the notice period remains at 28 days. In the first 6 months of a tenancy, landlords can serve notice without a reason, and in essence the first 6 months is a probationary tenancy that can be ended within 28 days. Probationary tenancies are important, and without them it may be more difficult for tenants without a track record in the market or more vulnerable households to access rental homes.

In addition to safeguarding probationary tenancies, it is important that as we move towards indefinite security of tenure that we proof the legislation against any unintended consequences and also that we balance this by providing quicker and more effective access to justice when things go wrong in a tenancy. In this regard one of the other proposed changes in the General Scheme is that where a landlord has served an invalid notice of termination, and the tenant has been given the required notice within the first notice that the remedying notice will only have to be for an additional 28 days. This will address an issue we already have with the current legislation, whereby a landlord might serve a 224 day notice to a tenant and they do not find out until the notice period has expired that they got the notice wrong. In many of these cases the notice is invalid on technical grounds, for example, the calculation of the notice period is wrong by one day, which means that the landlord has no option but to serve another 224 day notice. It is important that as we strengthen security of tenure we also allow for remedy of error or mistakes or we risk making the sector very unattractive to landlords.

### *3.6 Published Register to provide rental information and requirements for updates - Head 13 and Head 15*

This Head is intended to enable the RTB to set out the current registered rent within its published register of tenancies. The purpose of this provision is to enable tenants to confirm that they are being charged the correct rent. In order to do this they need to be able to see the old rent and the date it was last set or reviewed, so they can establish if the rent has increased by more than the allowed 4% in a RPZ. This may also assist a new landlord or receiver who has acquired a property and is unsure of the previous rent and therefore may not be setting the rent at the legal and legitimate rate.

While the proposed changes go some way towards addressing the issue of rent transparency, the RTB has some concerns regarding the provisions. It is our view that this provision will only truly become effective if we introduce annual registration and that without annual registration it may actually be misleading to the public as many rents will be out of date. At present it is only at a point of a new tenancy that a tenancy is required to be registered with the RTB, and therefore while some landlords may update the rental information of their ongoing tenancies, the only reliable rental data that we have is in respect of new tenancies. If we publish information on rents at a tenancy level it may not be up to date and could be misleading to a new tenant or landlord.

The proposed legislation seeks to address this issue by requiring landlords to notify us of all rent reviews and any other updates or changes to a tenancy and by making it a criminal offence if they do

not. It is our view that that this will still be unreliable, as we will not know if a landlord has changed the rent and not notified us. It is also our view that a system of more prescribed notices is overly bureaucratic and that to make it a criminal offence not to notify the RTB of a rent review is not proportionate or an effective way of regulating the sector. Annual registration is a simpler and more effective model whereby landlords will be required to provide us with up to date details on a yearly basis and the RTB can proactively remind landlords of their obligations in this regard.

In addition to this, it is important that with regard to GDPR compliance the drafting of this Bill gives the RTB explicit powers to publish rents at a tenancy level, and, that it is clear that the State has made a decision that this level and type of personal data is being made available in the public interest.

#### **4. Further areas for Development**

As stated above, the RTB feels that the Bill would be strengthened with the inclusion of a provision for annual registration of tenancies. This is something that the Minister has indicated will be done, but we need to start planning and designing for it now, as having up to date and accurate data on the sector is an essential part of both understanding the sector and regulating it.

One of the other areas that has arisen as a difficulty/issue since the introduction of rent pressure zones, is that there are landlords who at the time of the introduction of the RPZs had tenancies with rents significantly below market rate. These rents can now only be adjusted by 4% per annum. Many landlords who have a long-term, good existing tenant do not put up the rent year on year and they only re-adjust it at the point where they are letting the property to a new tenant. This is something that they cannot now do and many landlords have expressed serious concerns about this and have indicated they may leave the market as a result. It is very difficult to ascertain how many tenancies fall within this category and how many landlords will exit or have actually exited the market as a result of this. However, it is clear that the current system incentives chasing the market and can make some existing rental stock unattractive to investors. The RTB has been working with the Department to seek ways to address this issue, however, finding a solution is very difficult, as a decision must be made as to what rent is significantly below market rate and what should, or could, such rents be adjusted by. Nevertheless, we will need to find a way of addressing the issue and allow for some periodic realignment of rents and it is important that the issue is not forgotten in the interim.

A further technical issue arising from the current framework for rent regulation is the need to provide 3 comparable rents in a rent review notice. Landlords are required in law currently to provide 3 comparable rents for similar properties in a similar location that have been advertised in the last 4 weeks every time they serve a rent review notice. The purpose of which is to give the tenant some assurance that the rent being charged is in line with market rents. This provision is proving very difficult in a restricted supply market where there are not always 3 comparables to call upon, and is particularly difficult in RPZs where rents are regulated and are being adjusted by 4%. Many landlords as a consequence, even when trying to follow the law, are being found to not be in compliance with it. The RTB would consider that this requirement should be removed and replaced with something more appropriate.

On a broader level, as previously highlighted, it is important that the necessary focus on regulation for the sector is accompanied by a focus on supply to the sector. The number of private rental tenancies in the sector last year decreased from approximately 319,000 to 316,000. This represents the first annual reduction in the total number of private rental tenancies registered with the RTB since 2010.

It is too early to say these figures point to an overall trend in the reduction of the number of tenancies in the private rental sector however, we know that, in a housing crisis, we cannot afford to lose any stock and that it is the most vulnerable tenants that are effected most by a lack of supply. Therefore we need to look at how we are going to both protect existing stock and attract new stock.

## **5. Implications for the RTB**

The proposed new powers and functions that are to be given to the RTB under this legislation are significant in their nature. It is imperative that the RTB is given the appropriate resources at the right levels to successfully embed this new regulatory framework without it impacting on our other core services.

The RTB is a small organisation that is responsible for regulating and supporting a rental sector that now includes nearly a third of the population. The sector has grown dramatically in the last 10 years and as it has grown so have the demands for our services. Our functions have also grown in this period. It is important therefore that the RTB as well as getting sanction for staff and an appropriate budget, are given the time to recruit, and put in place a system and a structure to support successful implementation.

## **6. Conclusion**

As stated at the outset, the RTB supports the vast majority of the proposed legislation. The proposed new powers for the RTB are a significant new function for the RTB, but should enable the RTB to much more proactively regulate the sector. One of the most important elements of the new legislation is its ability to apply proportionality. The job of regulation is not about punishment but about supporting all involved in the sector, whether they are landlords or tenants, on pathways to compliance. With this in mind it is very important that we prioritise moving to a simpler regulatory framework in the future. Regulation should not be a hurdle for people to climb but something that enables people to become better landlords and tenants. We also cannot rely on regulation alone to resolve the current crisis and must look again at supply for the rental sector. Tenants are under immense pressure in the current market and the proposed legislation will strengthen the regulatory framework.

In the interim period to the commencement of new legislation it is important that we recognise and promote the existing protections in the law. Existing and new tenants who are faced with increases over and above the 4% rent cap in Rent Pressure Zone areas can refer a dispute to the RTB. Where tenants have agreed to rent in excess of the limit and signed a tenancy agreement, they are still protected under the law; they cannot contract out of their rights. If a landlord has been found not to have not adhered to the limits, it can have significant consequences and damages of up to €20,000 can be awarded as well as repayment of the additional rent. Cases can be referred to the RTB up to six years after the tenancy was in place.