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Threshold
Solving housing problems, preventing homelessness
40 Years

Joint Oireachtas Committee on Housing, Planning & Local Government

Observations on the General Scheme of the Residential Tenancies (Amendment) Bill 2018

Threshold welcomes the opportunity to comment on the General Scheme of the proposed bill and we thank the committee for the invitation to do so. We understand that the Joint Committee have been referred the General Scheme of the bill as part of the pre-Legislative scrutiny process and that the purpose of your current consultation is to make an informed decision on whether pre-legislative scrutiny of the Bill is required or not. Given the short timeframe we have confined our remarks to higher level observations which directly address the issue of the need (or otherwise) for pre-legislative scrutiny. We look forward to commenting, in more detail, on the bill as it makes its way through the legislative process.

General Observations

Threshold welcomes the publication of the General Scheme of the bill, which promises to strengthen Rent Pressure Zone enforcement, enhance tenant's rights and provide a degree of rent transparency. The bill falls short in some regards, most significantly in the proposal for rent transparency, and there is a missed opportunity to make small but significant legislative changes, but overall the legislative changes envisioned in the bill are positive and are to be welcomed.

Without prejudice to the foregoing we would like to make a general point about the growing complexity of the Residential Tenancies Act. The act has long since outgrown interpretation by anyone other than specialists in the area. There are two amendment acts expected in the near future which will add to the complexity of the legislation.

Head Three - Investigation and Enforcement regime

This section seeks to add a new investigation and enforcement regime under the remit of the RTB. A new administrative sanction regime is to be enforced by Authorised Officers (AOs) appointed by the Director of the RTB. The AOs are to be given significant investigative powers and the imposition of sanction will be by the Director of the RTB, subject to appeal to the District Court. Any enforcement

regime will only be as effective as the will to use it. It is important that the scheme is properly funded and that the RTB make full use of the powers to be granted to them.

It appears that the sanctions and investigation regime will apply only to scheduled matters. These matters are - enforcement of the RPZ amendments, the landlord registration requirements and enforcement of the proposed new requirement that a landlord provide a schedule of rents upon request. It is our view that consideration should be given to expanding the sanctions and investigation regime into areas where tenants are unable to bring cases before the RTB. For example, in respect of discrimination under the Equality Acts, a person is unable to bring a complaint to the RTB because of the lack of a landlord/tenant relationship. Currently a person may apply to the Workplace Relations Commission for relief, however this is arguably unsatisfactory given the subject matter of the complaint – private rented accommodation - and the particular expertise of the RTB in these matters.

The inclusion of other matters in the schedule may also be useful in circumstances where tenants fear making a complaint to the RTB for fear of retribution. The recent press coverage of manifestly substandard accommodation at the lower end of the private rented market makes a strong case of the inclusion of minimum standards regulations as a scheduled matter. The powers of the AOs will be considerable and may be useful in such cases. The phenomenon of 'rogue landlords' operating slums is often complicated by a lack of transparency about ownership and control of buildings. The powers of compulsion proposed by the bill may well be useful in this context. It seems reasonable that in cases where there are serious, life-threatening breaches of minimum standards that the RTB officers should be allowed to investigate complaints from TDs, members of the public or organisations like threshold.

We submit that the bill must make clear and explicit the relationship between the investigation and sanctions regime. In particular it must be made explicit that a tenant will not lose their right to apply to the dispute resolution service for compensation as a result of the landlord having already been sanctioned. Similarly explicit provision should be made of the inclusion of any decision of the Director as evidence in such a case.

Head Five – Rent Pressure Zone enforcement

We welcome the insertion of a new provision at s 19(5A) to require a landlord to inform the RTB if they wish to take advantage of the 'substantial change in the nature' exception. It is our view that abuse of this provision has been one of the major failings of the 2016 legislation and has undercut attempts to enforce the rent pressure zones. The RTB published Guidelines for good practice in the

'substantial change' exemption in Rent Pressure Zones on 23 November 2017. The guidelines provide a list of renovation works 'likely to constitute a substantial change' and actions considered to be 'general upkeep/upgrade repairs' that are not likely to constitute a substantial change. While the guidelines are welcome, Threshold continues to call for the term to be given a legal definition in order to provide clarity and prevent avoidance measures by landlords. The inclusion of the obligation for the landlord to inform the RTB if they wish to take advantage of the exemption is an opportunity to close this particular avoidance loophole. While the head makes clear that the notification, or lack of notification, will be evidence in any prosecution there may be a role for the RTB in verifying that the information contained in the notice is correct and that the proposed change has, in fact, occurred. Consideration should be given to requiring the notification in the form of a statutory declaration.

The bill should also make explicit that the lack of notification may be used as evidence by a tenant who wishes to bring a dispute for illegal rent increase before the RTB. The RTB should be obliged to take the notification, or lack of notification, into account during disputes.

The creation of the proposed criminal offences is welcomed. In particular we welcome the prohibition on raising the rent by more than 4%. The bill should make explicit that the RTB adjudicators and mediators may not issue a determination or validate an agreement which breaches the 4% limit. We have encountered a number of cases where RTB mediations and adjudications have concluded with a tenant's rent increasing by more than the lawful amount. It is clearly not within the spirit of the 2016 legislation that the RTB should be party to unlawful rent increases.

Head Six – Section 41 of the 2004 Act

We strongly welcome the proposed changes to section 41 of the 2004 Act. The proposed change has been a longstanding suggestion from a variety of sources, not least Threshold. The amendment of this section will remedy a longstanding ambiguity in the 2004 Act, an ambiguity which has been used to conduct rent reviews outside of the normal rules.

Head Nine – Notice Periods

This head seeks to extend the termination periods and to introduce a new rule for the calculation of notice periods where a notice has been the subject of a dispute at the RTB. The increase in notice periods is welcomed and reflects the current reality of renting in Ireland where finding alternative accommodation can be exceptionally difficult. In this context we would suggest that there is little rationale in retaining the notice period of 28 days for tenancies of less than six months, while increasing the notice period for tenants' resident for six months and one day to ninety days.

The bill also seeks to introduce a new rule regarding disputed notices. The proposal is that where a notice has been disputed to the RTB, and found to be invalid, and the notice period has expired, the new notice period shall be 28 days. This may have profound unintended consequences which may undercut the entire act. Head nine section three may be read to mean that where a notice has been found to be invalid, and the notice period give has expired, the new notice period is 28 days. The following scenario would then be possible. A landlord may have a tenant who has been in occupation for 15 years and therefore entitled to 224 days' notice. If he were to issue a termination notice giving the tenant 1 days' notice, the tenant would rightly appeal to the RTB, who would rightly deem the notice invalid. Since the notice period given in the original notice (one day) had expired, the bill would then allow for a remedied notice giving only 28 days' notice. This section would appear to set the notice period for all tenants in private rented accommodation at 28 days plus the time it takes for the RTB to deem a notice invalid. It is very likely that the intention of this section was to cover cases where a notice had been deemed invalid for reasons other than incorrect notice period, however as currently presented the section is extremely concerning.

Head 13 – Rent Register

This head removes the prohibition on the RTB publishing rent payable on a particular dwelling on the Rent Register. It would appear that the intention is to publish prevailing rents in a locality.

While the Act provides that a tenant is informed of the previous rent, there is nothing to prevent a rogue landlord misinforming a tenant. For this reason, Threshold is urgently calling for Rent Transparency to hold landlords to account and arm potential and sitting tenants with the details they need to make informed choices or challenge illegal rent at the RTB**.**

At present you can type your address into the RPZ calculator on the RTB website and it will tell you if the property is in an RPZ area. A simple safeguard for new renters would be if an extra function could be added to show the registered rent with the RTB. This would not require the disclosure of any sensitive information. Threshold would be happy to work with all stakeholders including the Office of the Data Protection Commissioner to come up with workable solutions.

The potential problem with the proposal is that it will not provide the necessary level of detail for a tenant and may, in fact, be counterproductive.

Two identical apartments, next door to each other, may lawfully be subject to very different rents. The rent will vary depending on upkeep, fixtures and fittings and the rent before the introduction of the RPZs. Knowing the average rent in an area, or even the precise rent for a particular type of property in an area, can leave a tenant with nothing more than the suspicion that perhaps the rent

they are being charged is unlawful if they are paying more. The tenant will still be in a position where they have to prove that the rent they are paying is more than 4% above what the previous tenant was paying. The average rent in an area is largely irrelevant in this regard and is, in a quasi-judicial RTB setting, proof of nothing.

It is possible that providing tenants with nothing more than a suspicion that their rent is unlawful may prove counterproductive. It may lead to tenants taking speculative cases to the RTB, alleging unlawful rent, in order to force the landlord to prove that the rent is lawful. The prospect of a huge increase in RTB workload is, of course, unwelcome.

Opportunities for amendment

There are a number of issues which might have been considered for inclusion in the bill. We understand that the primary purpose of the current bill is to introduce the sanctions and enforcement regime, and that a further amendment bill is expected towards the end of the year to address other matters. However there are a number of simple legislative changes which could be introduced to the current bill which would not require substantial or complex alterations, and which would make a significant difference to the lives of tenants.

The items below are some suggested amendments, which might realistically be considered in the context of the current bill. A more detailed list of Threshold's policy positions is available on request.

The inclusion of definition of 'rent' would prevent circumnavigation of the RPZ rules. We have noted from our services that a small minority of landlords are seeking to circumvent the RPZ rules by increasing charges for items not expressly covered by rent. This includes asking tenants to pay for services previously included in the rent. We have advised on cases where tenants have been asked to pay service charges or parking fees which they were formerly included in the rent. This approach to circumventing the RPZ legislation was suggested by the Irish Property Owners Association in a press release in December 2016, but subsequently withdrawn after intervention from the Competition and Consumer Protection Commission.

Delete Section 34(b) of the Residential Tenancies Acts which allows for 'no reason' evictions at the beginning of every further Part Four tenancy. Data from our services indicates that Section 34(b) of the Residential Tenancies Act is being abused. This section allows for 'no reason' evictions at the beginning of every further Part Four tenancy. We have noted a large increase in the numbers of evictions taking place pursuant to this section since the repeal of Section 42 which abolished termination in the first six months for no stated ground. It is our contention that the volume of terminations under this section is undermining the Rebuilding Ireland commitment to move towards

indefinite tenancies and is creating an imbalance in the operation of the RPZs. 'No reason' evictions have no place in the vision for the rental sector set out in Rebuilding Ireland. The removal of section 42 was very welcome, but a possibility has arisen that the problem its repeal sought to alleviate has revived in terms of the increased use of section 34(b).

A change in the law is required to protect tenants in cases where their landlord's property is being repossessed or where a receiver is appointed to a mortgaged property. The legal definition of 'landlord' needs to be changed to explicitly include both lending institutions and receivers so that the rights established under landlord and tenant law cannot be undermined or ignored as is currently the case. Threshold believes that a simple amendment to the definition of 'landlord' in the Residential Tenancies Act 2004, so as to explicitly include both receivers and lenders, would introduce a welcome degree of certainty for landlords, tenants, financial institutions and receivers. It would impose a requirement on a lender that has commenced repossession proceedings to terminate a tenancy in the manner provided for by the Residential Tenancies Act 2004. It would also impose a responsibility for repairs and the return of the tenant's deposit upon the expiry of the tenancy. The issue threatens to affect thousands of tenants in the near future. In February we expressed concern that Permanent TSB and Ulster Bank were to sell non-performing home loans. This is a matter of grave concern to the thousands of tenants who will be affected. We understand that 4,000 buy-to-let properties are to be included in the PTSB sale alone, affecting up to 10,000 tenants, and threatening to dramatically escalate homelessness among tenants in these properties. It appears, from recent press reports, that 2900 buy-to-let properties will be included in the Ulster Bank sale as well. A Departmental Working Group was established in 2017 to consider possible amendments. To date no report has issued from the working group.