



**Threshold's Observations on the General Scheme
of Residential Tenancies (Right to Purchase) Bill**

December 2023

Introduction

1. Threshold welcomes the invitation to contribute to the Committee as they consider the *General Scheme of Residential Tenancies (Right to Purchase) Bill*.
2. Threshold, the national housing charity, has worked with and supported tenants living in the private rental sector since 1978. Each year, Threshold assists approximately 20,000 households who are experiencing difficulties in their private rental tenancies, with an increasing number facing eviction due to their landlords deciding to sell the home. As a result, Threshold is suitably placed to identify the manner in which this proposed legislation will impact on renters.
3. There are many positive elements to the Bill, not least Heads 6 and 7, which are the only heads related to the tenant's right to purchase.
4. The remaining heads deal with numerous other matters which must be given due and careful consideration. These include, but are not limited to, the holding of Residential Tenancies Board (RTB) hearings in private, the expansion of the 'slip rule' and what appears to be the creation of a new ground for termination.
5. Given the significance of these proposed changes, this Bill cannot be hurried through the legislative process. If there is a desire for the passage of the Bill to be expedited to ensure the tenant's right to purchase is in place without undue delay, these other matters must be removed from the Bill so that they may be given full and due consideration in a separate Bill.
6. In this submission, observations on the heads related to the tenant's right to purchase are presented first. These will be followed by Threshold's observations of the heads which pertain to other matters causing us concern. These include changes to the grounds of termination in the case of transfer; procedural

standards; the holding of private hearings in special circumstances; the electronic communication of a Notice of Termination; notice period for Tribunals; and confidentiality requirements for RTB adjudicators. Finally, Threshold will comment on more minor aspects of the Bill, as well as those elements that are identified as positive in nature.

Right to Purchase

7. Threshold is largely supportive of the proposed amendments that will allow tenants the opportunity to buy their home based on the *first right of refusal* principle. Head 6, which requires that landlords issue a copy of the *invitation to purchase* to the RTB for the notice to be valid, is a necessary step in ensuring the effectiveness of the right to purchase process.
8. Threshold has a number of concerns primarily based on the principles of inclusion, specifically in relation to proposed Section 39B(5)(a) and 39B(5)(c).
9. There is no valid reason provided for the exclusion of non-Part 4 tenants from holding the right to purchase.
10. In addition, there is no valid reason that the right to purchase should be disappplied if the sale of the property is subject to Section 35A (Tyrrrelstown amendment) of the Act. The explainer in the Bill notes that the aim is “not to interfere with the sale of multiple rented dwellings under the same roof.” Extending the right to purchase to tenants of multiple rented dwellings, whose tenancy termination is subject to the Tyrellstown Amendment, will not necessarily interfere with the sale of the dwellings, nor be unduly onerous and/or cause hardship to the seller, as the property will be sold at market price. Tenants in such scenarios are in no less need of the security of a long-term home.

11. The section titled, “RTB mailshot to tenants and landlords when it receives a copy of a Notice of Termination” sets out what can be expected by all parties in respect of the right to purchase. We do note, however, that this wording may require tightening, in particular on the following section: “Landlords are *encouraged* to offer sitting tenants first refusal, to buy their rented homes” (*emphasis added*). Is it not the case that they will be legally obliged to offer first refusal as opposed to encouraged? It will be necessary for the relevant templates on the RTB’s website to be updated to include the technical language in Head 7.

Grounds of termination in the case of transfer

12. New provisions regarding the transfer of property for no or partial consideration, as set out under Head 5, are an area of key concern for Threshold. As said at the outset, we have concerns for this provision as it appears to be a new ground for a landlord to terminate a tenancy.
13. A transfer for full consideration, as it currently stands in the legislation, relates to the sale of a property for its full monetary value. The proposed amendment will potentially allow for a landlord to terminate a tenancy if they are transferring the property to another with unclear indication of the payment that occurred. Such scenarios could take the form of inter-familial transfers or the inter-transfer of properties by large or corporate landlords.
14. Threshold is strongly opposed to this proposed change. There is no valid reason for the property to be vacated for such transfers to occur. There are already sufficient grounds within the existing legislation for landlords to terminate a tenancy when there has been no wrongdoing by a tenant.

15. Unfortunately, Threshold is concerned that some will take advantage of such a provision to evict tenants so that the property can be rented out to new tenants at a higher rent. Instead of amending the grounds, the new owner will be entitled to issue a notice of termination, if they have valid grounds as per the Section 34 of the principal Act, once the transfer has occurred.
16. This provision is again referred to in Head 7, we reiterate our position that it has no place in the legislation and should be removed from this Bill.

Procedural standards

17. A number of proposed changes to the procedures to be followed by adjudicators and Tribunal members are set out in the Bill. Threshold is mindful that the work carried out by the RTB is complex and that the principal legislation can be difficult to interpret and, consequently, apply in practice.
18. Head 10 relates to the application of what is commonly termed the '*slip rule*'. Threshold notes that the proposed amendment will allow the '*slip rule*' to be used by an adjudicator or Tribunal in respect of rent arrears warning notices, notices of termination and any accompanying statement or statutory declaration as required.
19. We do not wish to see the ambit of the slip rule's application extended to effectively allow for more notices of termination to be declared valid under the guise that defects within them are largely inadvertent in nature. The provision of templates by the RTB is surely a safeguard against such errors occurring. The landlord, or their responsible agent, is required to sign and date a notice, ensuring to correctly calculate the notice period. Strict compliance with the formalities of ending a tenancy is the least a tenant can expect when being evicted from their home.

20. The proposed amendment to apply the '*slip rule*' to statutory declarations is significant and would have real world implications for private renters. Statutory declarations are an established mechanism for ensuring veracity across the legal landscape. Threshold does not feel that amendments which allow for a lax approach to be taken around compliance are permissible in any context, no less in that of landlord and tenant law in the private residential sector.
21. It is the experience of our frontline advisory staff to date is that defects in statutory declarations are, unfortunately, a common occurrence. This may be due them being treated as a 'tick box' exercise in some cases. This mindset cannot be encouraged, and our worry is that the proposal under Heading 10 to broaden the application of the slip rule risks depreciating the value of a statutory declaration.
22. Head 12 provides for an amendment to the principal Act to clarify in law that an adjudicator or Tribunal may permit a landlord to issue a '*remedial notice*' in situations where there has been an error in the original notice pertaining to rent arrears. Again, Threshold's view is that this is an overly liberal application of the '*slip rule*' which will facilitate a lax approach to compliance with the required procedures in the instance of rent arrears.
23. Head 22, which relates to slips and / omissions in Determination Orders (DOs), may serve as a safety mechanism of sorts, by providing that the Director may request the Board of the RTB to cancel and remedy a determination order that was issued under the dispute Resolution process.¹ How this operates in practice, however, remains to be seen and we do not wish to see DOs being cancelled or remedied on a frequent basis.

¹ in instances where there was an omission from the order, or a defect in the order or during its issuance where such defect does not materially prejudice the order.

24. Threshold questions what is meant by “*it contains a defect which does not prejudice, in a material respect, the determination order*”? Is it possible to be prescriptive as to what these defects might be? The reservations we have expressed regarding the wider application of the ‘*slip rule*’ apply in this instance also.

Private hearings in special circumstances

25. In accordance and Article 34.1 of the Constitution and a recent Supreme court decision (*Zalewski v An Adjudication Officer and the Workplace Relations Commission & Ors (Zalewski)*²), the RTB is required to administer justice in public except for in certain special and limited cases. The proposed amendments under Heads 16, 20, 23 and 26 are a result of this decision. Threshold poses no objections to such changes but stresses the need for clear procedural rules and oversight for the holding of hearings in private.

26. Under Head 16, 20 and 26, it is proposed that RTB adjudication and Tribunal hearings, as well as oral hearings conducted by authorised officers, can be held privately, similar to the approach taken by the Workplace Relations Commission, in ‘*special circumstances*’. To facilitate this, it is proposed that the Board of the RTB makes new ‘procedural rules,’ with the consent of the Minister for Housing, Local Government and Heritage under section 109 of the Principal Act to provide for such ‘*special circumstances*’.

27. However, it is essential that any new procedural rules devised to facilitate hearings being held in private are clear in nature and do not serve as a basis to afford RTB adjudicators, Tribunal members or authorised officers overly wide discretion to qualify certain types of disputes for private hearing. Equally,

² [2021 IESC 24], as per O’Donnell J., 6 April 2021.

applications made by either party for the hearing to be held privately must be properly scrutinised as part of a transparent process.

28. In addition, the proposed amendment under Heading 23 will allow the RTB to withhold publication of determination orders in ‘*special circumstances*’. As with the decision for hearings to be held in private, it is essential that new procedural rules are clear in nature. We note that this approach has been test run before the Workplace Relations Commission (WRC) and ask that a similar level of scrutiny apply to the RTB, so as to avoid any situation where determination orders are published with information unnecessarily omitted.

29. Threshold wishes to stress the importance of holding the majority of hearings in public, due to need for the broader public, landlords and tenants alike remain informed of the issues arising in Ireland’s private rental sector. To this end, we do not want to see the new legislation allowing a situation to develop where adjudicators, Tribunal members and authorised officers can make decisions to hold hearings in private without robust oversight as to why they have reached this decision.

30. Threshold has identified no issue with the second element of Head 26 which proposes that any person who publishes the identities of the parties to an oral hearing, which the authorised officer has determined is to be conducted in private, is guilty of an offence.”

Electronic communication of a Notice of Termination

31. Threshold has no objection to the proposal to permit the delivery of a Notice of Termination via electronic means.

32. Threshold does have a concern with the wording of “*electronic means*,” and “*reasonably believes*”.
33. In this regard, Threshold recommends that the proposed amendment specify that the notice can be sent by “electronic means to the email address of the person,” as is the case of the Act, which is set out in the explanatory notes for the purposes of comparison. If a tenancy agreement is seen to be akin to other contractual agreements, it would not be appropriate for a landlord or responsible agent to contact a tenant via a social media platform, for example.
34. We would welcome an indication of the procedure that attaches to the legal concept of ‘*reasonably believes*.’ Consideration must be given to people’s differing levels of technological ability and the manner in which the landlord and tenant communicated throughout the tenancy.

Timeframe for notice of a Tribunal

35. The explanatory note for the proposed amendments under Head 18, to reduce the notice of a Tribunal from 21 days to 10 days, is compared to previous changes to Section 100(2) of the Act. However, the previous changes to Section 100 (under *The Planning and Development (Housing) and Residential Tenancies Act 2016*) relate to the time frame to appeal to the Tribunal against an adjudicator’s determination. Meanwhile, the proposed changes to Section 104 are a reduction of the notice period of the holding of a hearing. These are separate matters and there is no need for them to be aligned.
36. Threshold cannot support the proposed reduction in the notice period given by the Tribunal. Ten days is simply too short a time frame for the parties, either tenant or landlord, to prepare for a Tribunal hearing. Given the duties and obligations which we all have in life, such as work, education and caring duties, 10

days is insufficient to prepare, to seek legal advice or to arrange time off from work. As an “efficiency measure,” it will likely only work to the benefit of the RTB. This is not a client-focused measure.

Confidentiality requirements

37. The explicit requirement for mediators to maintain confidentiality, as per Head 15, poses no difficulties.
38. Threshold has concerns about the practical implications of Heads 17 and 21, which are proposed on foot of the aforementioned Supreme Court decision that has consequences for all quasi-judicial bodies. The proposed amendments will make “clear that the obligations of confidentiality do not apply to adjudicators” and “to clearly provide for the RTB to administer justice in public in the context of its adjudication processes.”
39. However, as matters stand, the guidelines and parameters on the maintenance of confidentiality are yet to be put in place and the devil will ultimately be in the detail. We are concerned that a complete removal of the obligation for confidentiality goes beyond the spirit of ensuring the administration of justice in public; which is the stated objective of the proposed amendments.

Relationship between the Revenue and RTB

40. Threshold supports the amendments proposed under Head 24, which will provide a legislative footing for data exchange between the Revenue Commissioners and the RTB, as committed to in *Housing for All*.
41. This should facilitate increased enforcement of registration of tenancy requirements. In addition, Threshold hopes it will assist with access to justice for

those tenants whose landlords have failed to provide their address or who have not registered the tenancy with the RTB.

42. Our hope is that this provision will not simply exist as a paper tiger and that meaningful action will be taken on foot of the data exchange. For this to work in practice, it will be necessary to adequately resource the RTB and Revenue.

Positive aspects of the Bill

43. Threshold supports Head 9 which provides for a technical amendment to bring Section 62 in line with Section 80. This amendment resolves a discrepancy between the time limits in place to challenge the validity of a notice and the time frame for referring a dispute to the RTB.
44. Amendments set out in Heads 4, 11 and 13, relating to the treatment of tenants in non-Part 4 tenancies, are welcome. If we are to treat private renting as a legitimate tenure, the need for such changes are clearly evident.
45. Threshold further supports the changes proposed in a subheading of Head 16, in addition to Head 19, which outlines the circumstances in which an adjudicator or Tribunal can accept evidence from a member of An Garda Síochána.
46. Proposed amendments to the manner in which a three-person Tribunal can be called are a positive step. This will ensure that neither tenants, nor landlords, are put through the stress of appearing before two Tribunals.
47. The proposed requirement for the RTB to provide the Minister with information on the operation of *invitations to bid* will be necessary to monitor the effectiveness of

the legislation. Again, it bears repetition that the RTB must be adequately resourced to provide such information and analysis.

Further clarity required

48. It is unclear to us at this time what the overall purpose of the proposed amendments set out in Head 8 is and we would welcome further clarity on this provision.

Conclusion

49. As stated at the outset, there are many positive elements to the Bill. The move to provide a tenant with a right to purchase their home is welcome, and we hope it will aid many renters to secure a long-term home.

50. However, the majority of the heads do not pertain to the right to purchase. It is Threshold's opinion that these other matters be removed to be dealt with in a separate Bill. This will allow them to be given full and due consideration while avoiding any delay to the passage of the legislation providing for a tenant's right to purchase.

51. Threshold is available to provide further observations and engage with the Committee on the matters contained in this proposed legislation.

