

Residential Tenancies (No.2) Bill 2021

Bill No.87 of 2021

Shane Burke, Senior Researcher (Public Administration)

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Abstract

The [Residential Tenancies \(No.2\) Bill 2021](#) was published on 17 June 2021. The Bill, if enacted, would extend the emergency period under which protections will apply to certain renters, to 12 January 2022. The Bill also provides for restrictions to the amount of deposit, or advance payment, a tenant must pay to a landlord, to no more than two month's rent. The Bill provides that students, in student specific accommodation, will not have to give more than 28 days' notice when terminating a tenancy.



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Introduction

The [Residential Tenancies \(No.2\) Bill 2021](#) was published on 17 June 2021. The Bill, if enacted, would provide for restrictions to the amount of deposit, or advance payment, a tenant must pay to a landlord, to no more than two month's rent. The Bill also provides that students, in student specific accommodation, will not have to give more than 28 days' notice when terminating a tenancy.

The Government press release states:¹

“Having met previously with members of the USI, I know they were particularly concerned about students being asked to pay up to a year's rent in advance and having to provide lengthy termination notices. The measures Cabinet have approved today will go some way towards alleviating the concerns raised.”

The provisions of the Bill are summarised in the Table of Provisions below. The provisions are not further analysed in the Digest, as they are mostly technical amendments. The Digest gives a policy and legislative background to the proposed changes.

¹ Department of Housing, Local Government and Heritage. (2021). [Minister O'Brien & Minister Harris announce new student rental protections.](#)

Table of provisions

Table 1: Summary of provisions

Section	Title	Effect
1	Definitions	<p>“Act of 2004” means the <i>Residential Tenancies Act 2004</i>; (RTA 2004)</p> <p>“Minister” means the Minister for Housing, Local Government and Heritage.</p>
2	Amendment of <i>Planning and Development, and Residential Tenancies Act 2020</i>	<p>Extends the emergency period under which protections will apply to certain renters, to 12 January 2022.</p> <p>It also amends section 12 so that a notice of termination under that section cannot fall before 13 January 2022.</p>
3	Amendment of section 3 of Act of 2004	This section amends s.3 of the <i>Residential Tenancies Act 2004</i> , so that tenancies in student specific accommodation would have the same notice of termination periods, as outlined under Table 1 (s.66 of the Act of the RTA 2004).
4	Amendment of section 16 of Act of 2004	<p>Section 16 of the <i>RTA 2004</i> sets out tenant’s obligations under the Act. These currently include an obligation to pay rent (s.16(a) (i)); and an obligation to pay any charges or taxes that are in accordance with the lease or tenancy agreement (s.16(a)(ii)). Section 4 of the Bill will insert a new obligation into s.16(a) of the <i>RTA 2004</i> – an obligation to pay a deposit where this obligation is part of a tenancy agreement (s.16(a)(iii)).</p> <p>Section 4 of the Bill also makes a small technical change to s.16(a)(i) to replace the term “tenancy concerned” with the term “tenancy agreement”. This will mean that all three subparagraphs (i)-(iii) use the same terms.</p>
5	Restrictions on amounts payable	Inserts a new s.19B into the RTA 2004, to restrict the amount of a deposit, or advance payment, that a tenant is obliged

Section	Title	Effect
		<p>to pay to a landlord, to no more than the equivalent of 2 months' rent. This restriction will apply to tenancies created no earlier than one month after the passing of this Bill.</p> <p>This section also restricts the amount that a tenant is obliged to pay to a landlord regularly, during a tenancy, to one month's rent. There are exceptions made for student specific accommodation where the tenant wishes to pay more than this in advance.</p>
6	Amendment of section 57 of Act of 2004	This section provides technical amendments, so that specific accommodation will come under the RTA 2004
7	Amendment of section 58 of Act of 2004	This section provides technical amendments, so that specific accommodation will come under the RTA 2004
8	Amendment of section 65 of Act of 2004	This section provides that a student, if they choose, can provide more than 28 days' notice of termination of a tenancy.
9	Amendment of section 66 of Act of 2004	This amendment would require a student residing in student specific accommodation to provide a minimum of 28 days' notice to their accommodation provider, when terminating a tenancy.
10	Amendment of section 78 of Act of 2004	This section provides that a dispute can be referred to the Residential Tenancies Board, regarding a landlord's compliance with the new restrictions on the total amount that a tenant can be obliged to pay in respect of a deposit or an advance rent payment.
11	Amendment to Schedule 2 to Act of 2004	This section further extends what constitutes improper conduct by a landlord, to include seeking payments that would contravene the provisions of the new s.19B (asking for a deposit of more than 2 month's rent)

Section	Title	Effect
12	Short title and collective citation	This section provides that the Act may be cited as the Residential Tenancies (No. 2) Act 2021

Source: L&RS (2021)

Background

Policy and legislative context

Since the beginning of the Covid-19 pandemic, legislation has been put in place to protect those living in the private rented sector from eviction and rent increases. These measures have been taken in the interests of public health, given the public are urged to remain at home. As these are emergency measures (applying for a defined period), new legislation is required if the Government wishes to extend the period in which these protections may take place.

Moratorium on evictions and rent freeze for those unable to pay rent due to Covid-19

The [Planning and Development and Residential Tenancies Act 2020](#), enacted on 19 December 2020, followed on from the [Residential Tenancies and Valuation Act 2020](#), in continuing to provide a moratorium on evictions and a freeze in rents for a “relevant person”, defined as a tenant who is unable to pay rent due to:

- (a) Being unable, or having been unable, to work due to contracting Covid-19; or
- (b) Being in receipt of the temporary wage subsidy, or the supplementary welfare allowance; or
- (c) Being in receipt of any other payment out of public moneys introduced to alleviate the economic hardship brought about by the pandemic.

A relevant person must make a written declaration to the Residential Tenancies Board (RTB) in order to avail of protections. There are some exceptions to the application of these protections, such as if the landlord serves a written declaration to the RTB that the amount of rent owed by the tenant equals the value of 5 months’ rent or more, or that the tenant has refused to provide the RTB or Money Advice and Budgeting Service (MABS) with information or documentation required for the purpose of seeking advice.² A landlord may also claim that protections under the Act, offered to their tenant, would place the landlord under undue financial hardship. In the case of the latter, a landlord is a “relevant person” if during the emergency period, he or she is in receipt of (or was entitled to):

- Illness Benefit for Covid-19 absence, or the Temporary Wage Subsidy, or any other social welfare payment or State support paid as a result of loss of earnings due to Covid-19; or
- the rent in respect of the tenancy is the landlord’s sole or main income; or
- the rented property is subject to a mortgage and the landlord is unlikely to be able to pay that mortgage if the rent due remains unpaid during the emergency period.

² Government of Ireland – [Part 3 \(Residential Tenancies\) of the Planning and Development, and Residential Tenancies Act 2020: Guidance for Landlords and Tenants.](#)

The Act also provided that from 11 January to 12 April 2021 (“the emergency period”), a 90 day (rather than 28 days) termination notice period applies, where a tenant is in rent arrears due to Covid-19, and is at risk of losing their tenancy.³

The provisions of the *Planning and Development and Residential Tenancies Act 2020*, relating to residential tenancies, were set to expire on 12 April 2021. The *Residential Tenancies Act 2021* extended the emergency period to 12 July 2021, for relevant persons.

Regulations around security deposits in the residential sector

The Residential Tenancies Board (RTB) outlines the procedures for security deposits [here](#). In essence a tenant pays their landlord a security deposit at the start of a tenancy. This deposit is held by the landlord for the duration of the tenancy and returned to the tenant, in full, when the tenancy comes to an end, on the condition that there are no: rent arrears, outstanding utility bills, or other charges due, or damage to the property (beyond normal wear and tear).

The RTB explains that there are no legal guidelines stipulating how much a landlord may request as a security deposit. They recommend that a tenant avoid paying a deposit in cash, and always get a receipt. The RTB only has jurisdiction once the tenancy commences, so if a deposit is paid days before the tenancy commences, this will be outside the RTB’s jurisdiction.

Provision for a deposit protection scheme, managed by the RTB, was included under s.61 of the [Residential Tenancies \(Amendment\) Act 2015](#), however this section has not been commenced, and requires a commencement order under s.1(4).

Previous legislation related to the current Bill

Since the beginning of the Covid-19 pandemic, legislation has been put in place to protect those living in the private rented sector (PRS) from eviction and rent increases, in the interests of public health. The chronology of primary legislation is as follows:

The [Emergency Measures in the Public Interest \(Covid-19\) Act 2020](#) – introduced a blanket moratorium on rent increases and evictions for all tenants and commenced at the end of March 2020. The emergency period defined in the Act, relating to residential tenancies, expired at the end of July 2020.

The [Residential Tenancies and Valuation Act 2020](#) – provided for revised periods of Notice of Terminations served during a defined “emergency period”. It also restricted the application of the moratorium on rent increases and evictions to “relevant persons” who have declared to the Residential Tenancies Board (RTB), that they meet the requirements of this definition, and consequentially their tenancy is at risk. This Act commenced on 1 August 2020.

³ Ibid.

The [Residential Tenancies Act 2020](#) – was enacted on 24 October 2020 and introduced a moratorium on evictions for all tenants, whenever there is a 5 km restriction imposed on people’s movements. During this emergency period a landlord may serve a Notice of Termination, but a tenant cannot be made to leave their dwelling.

The [Planning and Development, and Residential Tenancies Act 2020](#) – followed on from the *Residential Tenancies and Valuation Act 2020*, in order to extend the moratorium on evictions and rent increases for relevant persons, defined in that Act. Part 3 of the Act which deals with residential tenancies defines the ‘emergency period’ as 11 January 2021 to 12 April 2021.

The [Residential Tenancies Act 2021](#) further extended the emergency period specified in the *Planning and Development, and Residential Tenancies, Act 2020*. The Act also ceased protections for tenants in rent arrears, or who owed other charges, under the moratorium on evictions put in place by the *Residential Tenancies Act 2020*, whenever there is a 5km restriction imposed on people’s movements.

Similarly, amendments to the *Planning and Development, and Residential Tenancies, Act 2020* provided that the protections in Part 3 of that Act do not apply to a tenant in arrears of rent for 5 months or more.

Statistics relating to the private rented sector

The Residential Tenancies Board (RTB) [rent index report for Q4 2020](#) shows that standardised average rents nationally are €1,256 (no change from Q3), while in Dublin they are €1,745 (a very slight reduction on Q3). Year-on-year rents increased by 2.7% nationally, and by 5% in the Greater Dublin Area (GDA). According to the report, rent for a 2 bed house in Dublin was €1,684 - double the amount of rent sought for a similar property outside of Dublin (€878 per month).

While high rents have been a characteristic of the Dublin private rental market for many years, other counties are also experiencing affordability issues. The RTB index shows that eight counties have standardised average rents above €1,000 euro per month. These are Cork, Dublin, Galway, Kildare, Limerick, Louth, Meath and Wicklow.

Leitrim experienced the highest rent inflation annually (11.4%), while Waterford experienced the largest fall (-8.3%).⁴

A brief overview of the key figures show:



303,023 private tenancies and 169,960 private landlords registered (RTB annual report 2019)



number of private renters doubled from 2006-2016



standardised average rent is €1,256 nationally (RTB Index: Q4 2020)



rent increased nationally by 2.7% year-on-year - (RTB Index: Q4 2020)



rent arrears and the validity of termination notices are two of the most common disputes referred to the RTB – (RTB annual report 2019)

⁴ RTB. (2021). Rent index report for Q4 2020.

Rent arrears in the PRS

Prior to the emergence of Covid-19, rent arrears was the most common reason for landlords to serve a Notice of Termination (in cases where the RTB made a determination). Affordability in the private rented sector (PRS) is particularly challenging, compared to other tenures. It is generally accepted that households should not spend more than 30% of their income on housing costs. A 2019 ESRI paper found that, using this definition, 33% of households in the PRS faced high housing costs in 2016, compared with fewer than 15% of mortgaged households.⁵

Likewise, the European Commission (2020) finds that rental prices have increased faster than disposable income for tenants since 2013 and that the affordability index for tenants (a measure which looks at the rental price to income ratio), was 22% above its pre-crisis level in 2019.⁶

Mortgage arrears among landlords

The Central Bank [Residential Mortgage Arrears and Repossession Statistics Q4 2020](#) report⁷ shows that at the end of December 2020, there were 96,415 residential mortgage accounts for buy-to-let (BTL) properties in Ireland, with an outstanding balance of €15.4 BN. Of these 15,138 (16%) BTL accounts were in arrears. Of the total number of BTL accounts in arrears:

- 19% (2,951 accounts) were overdue by 2 - 5 years;
- 30% (4,469 accounts) were in arrears by 5 -10 years; and
- 13% (2,039 accounts) were in arrears over 10 years.

The report shows that rent receivers were appointed to 177 BTL accounts during Q4 2020, bringing the total number of BTL accounts with rent receivers to 4,469.

Further reading – property rights and the Constitution

The [L&RS Bill Digest on the Residential Tenancies and Valuation Bill 2020](#) examines property rights and the Constitution in detail.

⁵ ESRI. (2019). Policy paper: exploring affordability in the Irish Housing Market

⁶ European Commission. (2020). [Housing Affordability in Ireland](#).

⁷ Central Bank. (2021). [Residential Mortgage Arrears & Repossession Statistics – Q4 2020](#).

Contact:

Houses of the Oireachtas
Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie

Tel: +353 (0)1 6183000 or 076 1001700

Twitter: @OireachtasNews

Library & Research Service

Tel: +353 (0)1 6184701

Email: library.and.research@oireachtas.ie

