

July 2014



# landlord & tenant basic rights & duties



## Introduction

The rights and obligations of landlords and tenants are based on law and on any written or oral agreement made between the two parties. This leaflet sets out the law, highlights several issues that may arise during the course of a tenancy and explains how to follow the correct legal procedure to resolve any disputes. Tenancy is an agreement between two parties, where one party (the tenant) undertakes to occupy a property owned by another party (the landlord) for a specified length of time (lease/tenancy period) and for a specified amount of money (rent).

The main law in this area is the Residential Tenancies Act 2004

**Important:** If you rent a room in a house where the house-owner is resident, you are not covered by landlord/tenant legislation in Ireland. The information in this leaflet will not apply to you. In such cases, you can take a case to the Small Claims Court if your deposit is withheld or for breach of contract.

## What state body is responsible for landlord and tenant matters?

Established in 2004, the main role of the **Private Residential Tenancies Board (PRTB)** is to provide a dispute resolution service for landlords and tenants of the **private rented housing sector** and to operate a national tenancy registration system. Any disputes that arise in a tenancy that cannot be resolved

informally by the parties must be referred to the PRTB through their online facility or by post. The registration of a tenancy agreement is a legal requirement on the landlord. Landlords must be registered in order to avail of the PRTB dispute resolution service. Tenants will have access to the service regardless of whether or not the tenancy is registered.

### **Are there minimum standards for private rented accommodation?**

Yes. All privately rented properties **must meet the minimum standards** set out in the Housing Regulations. There are new minimum standards which include private bathroom facilities, private cooking and food storage facilities and control over the heating of the property for all tenancies as well as other matters.

Housing  
(Standards  
for Rented  
Houses)  
Regulations  
of 2008 &  
2009

There are also minimum legal standards for the property's structural condition, ventilation, lighting and fire safety. There are further standards set for the provision of waste disposal facilities as well as electricity and gas. Responsibility for enforcing these standards rests with the relevant local authorities.

### **What do I do if the dwelling doesn't meet these standards?**

If your landlord fails to ensure that the dwelling complies with the minimum standards, this is a breach of the Residential

Tenancies Act 2004. If you are unsure as to whether the property meets minimum standards, you can request an inspection from your local authority to verify it. The local authority may issue an Improvement Notice, where appropriate, setting out exactly what the landlord must do to bring the property up to the required standard. If the landlord does not comply, the local authority may issue a Prohibition Notice that orders the landlord not to re-let the property until the breach of the regulations has been rectified. You can get a copy of the local authority report, using the Freedom of Information Act, if necessary.

The landlord must maintain the dwelling to the standard it held at the start of the tenancy (except for any damage caused by the tenant). If there is deterioration in the condition of the property, and the landlord fails to maintain it, you can raise this with the landlord and refer the matter to the Private Residential Tenancies Board if necessary.

**Note:** You are strongly advised to always **take photos** of the dwelling at the start of your tenancy; then if there is a problem later, you can take fresh photographs as evidence of any changes.

### **Security of Tenure: The right to stay in a dwelling**

If you have been living in rented accommodation for longer than 6 months, you automatically gain the right to stay ('security of tenure') in the property for a

further 3.5 years. This is known as a 'Part 4 Tenancy'. When a tenant has Part 4 security of tenure, the landlord can only terminate the tenancy on certain grounds, such as the tenant failing to meet the conditions of the tenancy, an intention to sell the property, the landlord needing the property for his or her own use, or where substantial works/refurbishment need to be carried out. However, if there is a fixed-term lease, a landlord cannot avail of these statutory grounds to end the tenancy.

Part 4 of the Residential Tenancies Act 2004

These conditions are listed in full in Section 34 of the RTA 2004

**Important:** If you are on a Part 4 tenancy, you are not obliged to sign a new lease during this tenancy. If you are requested to, make sure you are able to meet the requirements of the lease, as you will be bound by them. You should be sure, for example, that you intend staying until the end of the fixed term.

If you have a fixed-term lease which is coming to an end and you wish to remain in the property under the rights acquired under Part 4, you must notify your landlord of your intention to stay in the property between 3 months and 1 month before the end of the fixed-term. If you do not notify your landlord, you cannot be denied Part 4 security of tenure, but you may have to compensate the landlord for any financial loss incurred because you did not notify them of your intention to remain in the tenancy, such as advertising costs to re-let the property.

### **My landlord is telling me I have to leave. What can I do?**

In order to properly and legally terminate a tenancy, a landlord must serve a **valid notice of termination** on the tenant.

For a notice to be valid it must:

- Be in writing.
- Be signed by the landlord or his or her agent.
- Specify the date the notice is served to the tenant. (The day the notice starts is the day after it is served).
- State the reason for termination (where a tenancy has lasted more than 6 months).
- Specify the termination date, stating that the Tenants have a full 24 hours to vacate.
- State that an issue as to its validity may be referred to the Private Residential Tenancies Board.

Section 34 of the Residential Tenancies Act 2004. Grounds for ending a tenancy include where the landlord is moving back in to the dwelling, is selling the property or is substantially refurbishing it

If a tenant does not vacate the dwelling by the end of the valid notice period, the landlord can refer this to the Private Residential Tenancies Board, as the tenant is then what is known as 'overholding'.

If the landlord or tenant is in breach of obligations under the Residential Tenancies Act or the tenancy agreement, you should notify them of the problem and if it is not rectified within a reasonable period, you can

serve notice for 28 days. The notice period can be reduced to seven days in some limited circumstances.

What kind of notice must I give for ending a tenancy?

Duration of Tenancy	Notice by Landlord	Notice by Tenant
Less than 6 months	28 days	28 days
6 months to 1 year	35 days	35 days
1-2 years	42 days	42 days
2-3 years	56 days	56 days
3-4 years	84 days	
4 or more years	112 days	

A landlord can **never** forcibly remove a tenant or compel him or her to leave a dwelling. This means no changing of the locks or turning off utilities. While you are living in the property,

your landlord cannot remove your possessions. The Gardaí also cannot assist in removing a tenant from the property.

- If a landlord demands that you leave, you need to clearly inform him or her that you have a legal entitlement to stay; write a letter or send an email.
- If you are being physically evicted, you should attempt to record the eviction discreetly.
- **Seek legal remedies:** Lodge a complaint with the PRTB using its online facility or by asking it to post you out a dispute resolution application form. When lodging the application to the PRTB, ask for priority status. Also seek help from any non-governmental agency sources available (see end of leaflet).

### **My tenant is not paying her rent – what can I do?**

If a tenant does not pay the rent, a landlord can give a **written** warning notice to the tenant informing him/her of the amount of rent that is due. If the rent due has still not been paid **14 days after written notification**, the landlord can serve a 28-day **notice of termination**, asking the tenant to leave.

**Important:** If a tenant does not pay the rent and the tenancy is a Part 4 Tenancy (that is, the tenancy has lasted for more than 6 months), the landlord has to take an extra



step before issuing a 14-day written warning. The landlord must first notify the tenant that he or she:

1. Is in arrears of rent;
2. Is allowed a reasonable time to remedy that breach of obligation (what “a reasonable time” actually means can vary depending on individual circumstances); and
3. That the landlord is entitled to terminate the tenancy if the tenant fails to remedy that breach of obligation within the period specified.

This first notification does not need to be in writing. However, because you may need to give evidence that you as a landlord have communicated this to the tenant, it is a good idea to give this notice in writing. If the situation has still not been rectified by this stage, you can then issue the 14-day written warning notice as outlined above.

If the tenant does not vacate by the end of the notice period, the dispute should be referred to the Private Residential Tenancies Board. Following a hearing, the PRTB will issue a Determination Order which is legally binding. If a party does not comply with a Determination Order, the landlord may seek enforcement through the Circuit Court or, alternatively, request that the PRTB seek enforcement.

If a tenant does not leave following a Determination Order, possession of the

dwelling can only be obtained via court order, which is executed by the Sheriff.

### **I want to leave my house but I have a fixed-term lease – can I terminate it?**

A tenant cannot avail of the notice periods above when he/she has signed a fixed-term lease. They can, however, end the tenancy where

- (i) the landlord is in breach of an obligation under the Act and has not remedied it within a reasonable time and despite written notice – in this case, 28 days' notice will suffice no matter what the length of tenancy, or
- (ii) there is a break clause in the lease which can be relied upon, or
- (iii) both the tenant and the landlord agree among themselves at the time to end the tenancy, or
- (iv) the tenant offers to replace him/herself and the landlord refuses this offer..

Section 186 of  
Residential  
Tenancies Act  
2004

For iii) and iv) above, you will have to give in writing the appropriate notice terms as listed in the previous table, specifying the reason for termination. In all cases, you are entitled to have your deposit back provided you follow these steps and where the issues around deposit retention discussed below do not arise.

### Deposits

#### What is a deposit?

A deposit is a sum of money (usually a month's rent) paid over by the tenant to the landlord before or on commencing a tenancy. The landlord holds the deposit as a kind of guarantee until the end of the tenancy.

#### When can a landlord withhold a deposit?

A landlord may **only** withhold a deposit (or part of a deposit) in the following circumstances:

- If the tenant has not given proper notice when leaving and the landlord has, as a result, suffered a loss;
- If the tenant has left any outstanding bills such as gas or electricity, or owes any rent; or
- If the tenant has caused damage to the property beyond normal wear and tear.

#### How does a tenant avoid a dispute about deposits?

A deposit might be withheld because of an issue at the start, in the middle or at the end of a tenancy.

- **Inventory:** Both landlords and tenants need to have an accurate record of the contents and condition of a dwelling at the start of the tenancy. Both landlords and tenants should take photographs!

- **Lease conditions:** Ensure your lease complies with legislation and be clear about the length of the lease, who is involved and who pays for what.
- **Wear and tear:** The law allows “normal wear and tear”, taking account of the duration of the tenancy and the nature of the occupation. Therefore a tenancy lasting a number of years is entitled to more wear and tear than a short one. A household with children would also be afforded a higher degree of wear and tear. Tenants need to think ahead – if an issue arises during the course of the tenancy, will you be able to show that it is normal wear and tear? This makes it essential to take photographs, especially at the start and end of the tenancy, and to keep receipts for repairs or records of undertakings promised.
- **Rent payments:** Keep a careful record of rent payments using a Rent Book, bank statements or receipts provided by the landlord. Tenants have a legal entitlement to a Rent Book or to receive receipts for rent paid. This is a document that records details about the tenancy and notes all payments of rent that you have made to the landlord. Your Rent Book or lease should also contain the following information:

Your right to a rent book is set down under section 17 of the 1992 Housing (Miscellaneous Provisions) Act and in SI 146/1993 Housing (Rent Book) Regulations 1993

- ✓ The address of the flat or house.
- ✓ Your landlord's name and address and that of the landlord's agent (if any).
- ✓ Your name.
- ✓ The date the tenancy started.
- ✓ The length of the tenancy.
- ✓ The amount of deposit paid.
- ✓ The amount of rent and how it is to be paid.
- ✓ Details of any other payments for services, such as heating or cable television.
- ✓ A statement on the basic rights and duties of landlords and tenants.
- ✓ A list of furnishings and appliances supplied by the landlord.
- **Part 4 security of tenure – do tenants need to sign more than one lease?** If a tenant has been renting the property for six months, they have the right to stay in the property for a further three and a half years. He or she does not need to sign another lease – see above.
- **Fixed-term leases:** If you break the lease without a valid reason, you will not automatically lose the deposit, but your landlord may be able to make deductions from or keep the deposit to cover expenses such as re-advertising. You may also be

liable for any losses the landlord suffers during the void period until it is re-let. However, the landlord is obliged to try to reduce their losses by re-letting the property as soon as possible. If a dispute arises, therefore, the tenant should investigate when/whether the dwelling was re-let.

- **Notice periods:** You should serve notice of termination in writing, giving the correct amount of notice. The day the notice starts is the day after it is given. It is always a good idea to give a little more than the required notice to avoid any potential disputes about notice periods. A tenant does not need to give notice if vacating the dwelling at the end of a fixed term lease, however it is always a good idea to do so.
- **Holding deposits:** Tenants are sometimes asked to pay a 'holding deposit' before entering into a tenancy contract, which then goes towards the actual rental deposit. Holding deposits are not covered by the PRTB, as there is essentially no tenancy yet – they are intended to 'hold' a potential tenancy for a person until the tenancy can actually commence. Disputes over holding deposits can be referred to the Small Claims Court. (See the online procedure at <http://bit.ly/smallclaimscourt> )

You can download the notice form from the PRTB at [www.prtb.ie](http://www.prtb.ie) or from Threshold at [www.threshold.ie](http://www.threshold.ie)

### **What can I do if my landlord withholds my deposit?**

If your landlord withholds your deposit on the grounds that there are rent arrears, outstanding utility bills that you have created or damage to the property, you should request documentary evidence from him/her to back up such claims.

If you cannot get your deposit back by yourself, you can make a complaint to the Private Residential Tenancies Board. The cost of making a complaint is currently €25.

### **I don't know who my landlord is or where he/she lives. Can I take a case to the PRTB against the letting agent instead?**

When contacting the Private Residential Tenancies Board, it is up to the tenant to provide the landlord's address, as the PRTB will not be able to process the case without this information.

Tenants should note that a case can only be taken against a landlord, not his or her letting agent. Tenants should seek the landlord's details from their lease and the letting agent. Tenants are entitled to obtain this information under the Rent Book Regulations mentioned above, which are enforced by the relevant local authority. Tenants can make a complaint to the Housing Department of their local authority. If an agent does not give you the contact details so that you can pursue a case then you may complain to the National Property Services Regulatory Authority, the supervisory body for agents.

### Other issues

#### **A receiver has been appointed to the property I am renting – what does this mean?**

If your landlord/ property owner defaults on mortgage repayments, his/her lending institution may appoint a receiver (often referred to as a 'receiver of rent' or 'rent receiver') to collect the rental income from the property and pay it over to the bank or lending institution. This will be done by Deed of Appointment, which is a document signed by the landlord's bank and confirms the bank has appointed a receiver.

Once you have been given a copy of the Deed of Appointment and you are happy that they have been properly appointed, the rent must now be paid to the receiver. You should get receipts for all payments made. You should also get clarification that the receiver will be responsible for carrying out any necessary repairs. Unless otherwise agreed, the landlord remains responsible for returning your deposit at the end of your tenancy.

It is hoped that existing legislation will be amended so that it clearly states that where appointed, a receiver steps into the landlord's shoes and all rights and obligations arising under the Act are preserved. In the meantime, the independent housing rights organisation Threshold has put together some helpful points for when a receiver is appointed to your rented accommodation:



1. Your tenancy continues and you have the right to remain in the property.
2. If you have a current lease, the receiver should honour the pre-existing tenancy terms and conditions.
3. There is no legal obligation on you to sign a new lease if you do not wish to do so.
4. Your tenancy can only be ended by the serving of valid notice in accordance with the Residential Tenancies Act 2004.
5. The receiver must provide you with a deed of appointment for your accommodation.
6. Get the receiver to confirm whether they will take on the responsibility of returning your deposit at the end of the tenancy.
7. Get confirmation from the receiver that in addition to accepting the rent, that they will take on responsibility for ongoing tenancy issues such as maintenance and repairs.
8. If the receiver will not confirm that he/she has become the landlord, and/or the original landlord continues to demand rent or indicate that the receiver is to be ignored, seek further guidance from Threshold, FLAC or other body.

### **What is rent supplement?**

Rent Supplement is a type of social welfare payment to help tenants who are already in receipt of a welfare payment to meet the cost of rented accommodation. The tenant must

make a contribution alongside the social welfare payment. Rent Supplement can be paid directly to the landlord.

There are maximum rent levels over which Rent Supplement will not be awarded. It will only be provided if the accommodation is suitable for your needs and the rent is below the maximum rent limit set for your county. You will not qualify for Rent Supplement if you are in full-time employment (30 hours or more a week). To apply, you should contact the Department of Social Protection's representative (previously the Community Welfare Officer) at your local health centre.

### **Can I get Legal Aid for my tenancy problem?**

If you are a person of modest means, civil legal aid may be available from a Legal Aid Board Solicitor on a landlord and tenant issue. Generally, the Legal Aid Board does not provide legal aid (representation before a court) on rights or interests over land however, there are certain limited exceptions:

Civil Legal  
Act 1995.  
Section 28  
(9) (c) (iii) (I)

- Where a subject matter of the dispute is the applicant's home (or what would be the applicant's home but for the dispute) and
- Where the Legal Aid Board considers that the applicant
  - ▼ suffers from an infirmity of mind or body due to old age or to other

circumstances, or

- ▼ may have been subjected to duress, undue influence or fraud in the matter, and
- Where a refusal to grant legal aid would cause hardship to the applicant.

Everyone granted civil legal aid must pay a fee (called a contribution) to the Legal Aid Board. Its offices are called Law Centres and are located around the country. The minimum contribution for legal information is €30 and for legal aid is €130 but each fee is calculated on a sliding scale based on your income – the law centre staff will advise you of the contribution in your case. For further information, call 1890 615 200 or go to [www.legalaidboard.ie](http://www.legalaidboard.ie) to find your local centre (see also FLAC's guide to the civil legal aid system at [bit.ly/CLAflacsheet](http://bit.ly/CLAflacsheet) ).

### What is anti-social behaviour?

Tenants have an obligation to not behave, or allow occupiers or visitors to behave in a manner that is anti-social within the rented dwelling or its vicinity. Anti social behaviour is where a tenant or that tenant's occupiers or visitors engage in behaviour which:

Anti-social behaviour is defined in section 17 of the Residential Tenancies Act 2004

- a) Constitutes an offence, which is reasonably likely to have an impact on the well-being or welfare of others;

- b) Causes or could cause fear, danger, injury or damage to any person living, working or otherwise lawfully in the vicinity, including violence, harassment, intimidation, coercion or obstruction of, or threats to, any such person; or
- c) Persistently prevents or interferes with the peaceful occupation by another person in the vicinity of their dwelling.

Examples of anti-social behaviour include drug-dealing, intimidation or harassment, assault, vandalism, joyriding, excessive noise and verbal abuse.

### **I am a landlord with tenants engaging in anti-social behaviour. What should I do?**

As a landlord, you are required under the Residential Tenancies Act 2004 to enforce the obligations of a tenant, which includes not behaving in a way that is anti-social. If you, as a landlord, do not take steps to enforce this obligation, any person that is affected by your tenant's anti-social behaviour can bring a complaint against you to the PRTB.

You can terminate the tenancy due to anti-social behaviour by the tenants. As mentioned above, a landlord can serve a 28-day notice of termination on the tenants, or a seven-day notice where the anti-social behaviour comes under either a) or b) above.

Landlord's duties around anti-social behaviour of tenants are in section 15 of the Residential Tenancies Act 2004

## Discrimination and equality

### Do tenancies come under equality law?

The provision of rented accommodation is considered a service under the Equal Status Acts. These prohibit discrimination, directly or indirectly, on nine grounds:

Equal Status  
Acts 2000-8

- Gender
- Family status
- Race
- Age
- Membership of the Traveller community
- Sexual orientation
- Religion
- Civil status
- Disability

### I feel I have been discriminated against by my landlord or an agent. What should I do?

If you feel you have been discriminated against by a landlord or an agent, you should contact the Equality Authority, an independent State body which works to ensure that discrimination on certain grounds does not occur – more information at [www.equality.ie](http://www.equality.ie)

## Useful contacts:

### PRTB

The Private Residential Tenancies Board is a state body that operates a national tenancy registration system and offers a dispute resolution service for landlords and tenants of the private rented housing sector.

Address: PO Box 11884, Dublin 2

Tel: 0818 30 30 37

Web: [www.prtb.ie](http://www.prtb.ie)

E-mail:

For disputes: [disputes@prtb.ie](mailto:disputes@prtb.ie)

For registering a tenancy: [registrations@prtb.ie](mailto:registrations@prtb.ie)

### **Threshold**

Threshold is an independent charity that provides a free advisory and advocacy service to landlords and tenants as well as up to date information on all aspects of the private rented sector.

Address: Head Office, 21 Stoneybatter,  
Dublin 7.

Tel: 1890 334 334

Web: [www.threshold.ie](http://www.threshold.ie)

E-mail: [advice@threshold.ie](mailto:advice@threshold.ie)

### **IPOA**

The Irish Property Owners' Association is an organisation offering advice and information to property owners.

Tel: 01 - 827 6000

Web: [www.ipoa.ie](http://www.ipoa.ie)

E-mail: [info@ipoa.ie](mailto:info@ipoa.ie)

### **NPSRA**

National Property Services Regulatory Authority. The main function of the Authority is to control and regulate Property Services Providers (i.e. Auctioneers/Estate Agents, Letting Agents and Management Agents).

Tel: 046-903 3800

Web: [www.psr.ie](http://www.psr.ie)

E-mail: [info@psr.ie](mailto:info@psr.ie)

### **Citizens Information**

Run by the Citizens Information Board, this state service provides information online, over the phone and via its extensive countrywide network of offices on public services and entitlements in Ireland.

Tel: 0761 07 4000

Web: [www.citizensinformation.ie](http://www.citizensinformation.ie)

### **Legal Aid**

For further details on financial eligibility requirements or for details of other allowances, contact your local Law Centre. A full list is available at [www.legalaidboard.ie](http://www.legalaidboard.ie). FLAC has prepared a guide to the state legal aid system which you can download at [bit.ly/CLAflacsheet](http://bit.ly/CLAflacsheet).

### **Need more information?**

Legal information leaflets are also available from FLAC on a variety of other areas of law. They are free to download as PDFs from the FLAC website or in print from your local FLAC centre or Citizens Information Centre.

## FLAC Mission Statement

FLAC (Free Legal Advice Centres) is a human rights organisation which exists to promote equal access to justice for all.

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While every effort has been made to ensure the accuracy of this leaflet, it is provided for general legal information only and is not intended as a substitute for legal advice. The information it contains is correct as of date of publication. FLAC does not accept any legal liability for the contents of this leaflet. People with specific legal problems should consult a solicitor.

FLAC is indebted to Kevin Baneham BL on whose work this leaflet is primarily based, and to Threshold for its comments and assistance, particularly Bob Jordan, Chief Executive and Andrew Guy, Project Support Worker.

FLAC offers free, confidential basic legal information via its lo-call telephone information line at 1890 350 250 and one-to-one legal advice through its network of voluntary advice centres countrywide – [www.flac.ie/help](http://www.flac.ie/help)



**promoting access to justice**

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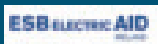
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