

20th November 2021

IPAV Lettings Conference

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Bord um Thionóntachtaí Cónaithe
Residential Tenancies Board

Agenda

- Summary of Recent Legislative Changes
- Revised Rent Arrears Process – a Recap
- Residential Tenancies (No. 2) Act 2021
 - Deposits, Rent Reviews, Advance Payment of Rent
- Investigations & Sanctions Overview
- RTB Order Enforcement
- Case Studies

Summary of Emergency Legislation since March 2020

The aim of this leaflet is to breakdown the new pieces of legislation enacted since March 2020.

Below is a timeline of when each emergency legislation applied from and its main points. This document is intended to provide a high-level overview of each Act introduced, as such it should be read in conjunction with the relevant Government Guidance and FAQ documents.



2020 | 2021



1 Emergency Measures in the Public Interest (Covid-19) Act 2020

27 March to 1 August 2020

- A new NoT could not be served until the end of the Emergency Period.
- Rent increases were prohibited but a rent decrease could be implemented.
- Pause on NoTs and rent increase notices already served.
- If a NoT had already expired, the tenant was only required to leave on foot of a DO.
- Warning notices could be served but could not be followed by NoT.
- Tenants were still required to pay rent throughout Emergency Period.

2 Residential Tenancies and Valuation Act 2020 (RTVA)

1 August 2020 to 10 January 2021

- New 8-step process for landlords ending a tenancy due to rent arrears.
- Warning notice period increased to 28 days from 14.
- Tenants financially impacted by Covid-19 and who met criteria of 'relevant person' could serve a Self-Declaration form and avail of protections.
- Tenants who were a 'relevant person' could remain in their tenancy until 10 January 2021 (inclusive), had to receive a minimum 90 day notice to vacate, and were not required to pay a rent increase until 11 January 2021.
- Tenants were encouraged to request a referral to MABS, but this was not compulsory.

3 Residential Tenancies Act 2020 (RTA 2020)

22 October 2020 to 1 December 2020
31 December 2020 to 12 April 2021

Applies whenever the Minister of Health introduces restrictions on travel outside of a 5-kilometre radius of a person's place of residence.

- Pause on most tenancy terminations, with exceptions.
 - NoTs can still be served but notice period paused.
- Exceptions for: ASB, invalidation of insurance, threat to dwelling or unauthorised use of property where a NoT served during emergency period and rent arrears.
- 10-day grace period for ending tenancies when the Emergency Period ends.
- **Example:** if Emergency Period due to end on 5th April 2021, plus 10-day grace-period, means earliest someone can be made to leave their accommodation is 15th April 2021.
- Does not impact on the provisions relating to rent arrears or the protections available under RTVA/PDRTA.
- As such, rent review rules continue as normal if tenant not in rent arrears.

4 Planning and Development, and Residential Tenancies Act, 2020 (PDRTA)

11 January 2021 to 12 January 2022

- Replaces and expands on certain protections in the RTVA.
- Introduced exemptions to tenants being afforded the protections e.g. rent arrears of 5+ months, amongst others.
- Compulsory for tenant to request referral to MABS and for tenant to request a consultation with landlord to pay back rent arrears.
- Updated Self-Declaration form for tenants.
- Introduces Self-Declaration form for landlords if they can demonstrate they would be negatively impacted by their tenant availing of protections, amongst other criteria.
- On 30 March 2021, the Residential Tenancies Act 2021 introduced an amendment to the PDRTA to extend the application of the tenancy protections for a further three months from 13 April 2021 to 12 July 2021. On 9th July 2021, the PDRTA was further extended until 12 January 2022.

Rent Arrears Process



New Rent Arrears Measures (applies from 1st Aug 2020)

- Legislation was introduced on 1st August 2020 which brought in new procedures related to ending a tenancy due to rent arrears.
- 28-day warning notice must be provided for rent arrears.
- Warning notice must be sent to the RTB on same day sent to the tenant.
- NoT must be sent to the RTB on same day sent to the tenant.
- Tenant may identify as a 'Relevant Person' and gain protections under the PDRTA 2020.
- More information on this found at www.rtb.ie.



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Extension of the Planning and Development, and Residential Tenancies, Act 2020*

Updated Guidance for Landlords and Tenants



Extension of rent arrears measures until 12 January 2022*
Frequently Asked Questions (FAQs) for Landlords and Tenants

Part 3 (Residential Tenancies) of the
Planning and Development, and Residential Tenancies, Act 2020 (the PDRTA)

What you need to know about the extension of the rent arrears measures?

- The PDRTA was enacted on 19 December 2020 to provide for temporary modifications to the operation of the Residential Tenancies Act 2004 to provide, subject to certain conditions, that during the period from 11 January to 12 April 2021 a 90-day (rather than the usual 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. In July 2021, the Residential Tenancies (No.2) Act 2021 introduced an amendment to the PDRTA to extend the application of the tenancy protections for a further six months from 13 July 2021 to 12 January 2022.
- The earliest termination date now allowed in such circumstances is 13 January 2022.
- Rent increases are now prohibited for relevant tenancies until 13 January 2022, with no backdating allowed. Rent reviews can proceed as normal but only a rent decrease can take effect prior to 13 January 2022.
- The extended protections under the PDRTA will be available from 11 January 2021 to 12 January 2022 inclusive or, if later, upon the expiry date of any 90-day notice of termination served under that Act.
- The protections under Residential Tenancies and Valuation Act 2020 (the RTVA) expired on 10 January 2021 or, if later, upon the expiry date of any 90-day notice of termination served under that Act. Guidance on the RTVA is available [here](#).
- The PDRTA aims to further assist tenants financially impacted by Covid-19, while recognising and balancing the rights of landlords who may be equally in financial difficulty during this unprecedented period.


The PDRTA provides protections for landlords to end a tenancy on the grounds of rent arrears during the emergency period from 11 January 2021 to 12 January 2022 inclusive under exceptional and limited circumstances, as set out below.

Residential Tenancies (No.2) Act 2021



Residential Tenancies (No.2) Act 2021

- Signed into law on 9 July 2021;
- HICP rules 16 July 2021;
- Deposit & advance payment of rent limits 9 August 2021;
- Applies mostly to private rental sector and Student Specific Accommodation sectors (leases and licenses), with some exceptions.



The Residential Tenancies (No.2) Act 2021 (RTA(2) 2021)
New Information for Landlords and Tenants

The RTA(2) 2021 was enacted and apart from section 6, came into operation on 9 July 2021. Section 6 which deals with rent setting came into operation on 16 July 2021.

The RTA(2) 2021

What do landlords & tenants need to know?


1. THERE ARE NEW RULES AS TO THE AMOUNT LANDLORDS CAN SEEK FOR A DEPOSIT AND/OR ADVANCE RENT PAYMENTS TO SECURE A TENANCY.

- There are now limits on the amount landlords can require anyone to pay to secure a tenancy:
 - A deposit cannot exceed more than one month's rent; and
 - An advance payment of rent cannot exceed one month's rent.

In other words, landlords cannot ask anyone to pay more than the equivalent of 2 months' rent in total to secure a tenancy.

- There is an exception to these new rules for students who occupy Student Specific Accommodation (SSA). A student is defined as a person registered as a student with a relevant provider (within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012). They may pay more than one month's rent in advance if they wish to do so and with the agreement of the accommodation provider.
- If a landlord seeks from a person the payment of an amount which is more than the equivalent of 2 month's rent, that person can take a case to the RTB for dispute resolution. Information on the RTB Dispute Resolution Service can be found on [page 8] and on www.rtb.ie.
- During a tenancy, any advance rent payment cannot exceed an amount equivalent to 1 month's rent.
- The RTB has an Investigations and Sanctions unit dedicated to investigating certain potential breaches of the Residential Tenancies Act 2004 by a landlord. The breaches of the law that the RTB can investigate are referred to as

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Residential Tenancies (No.2) Act 2021:

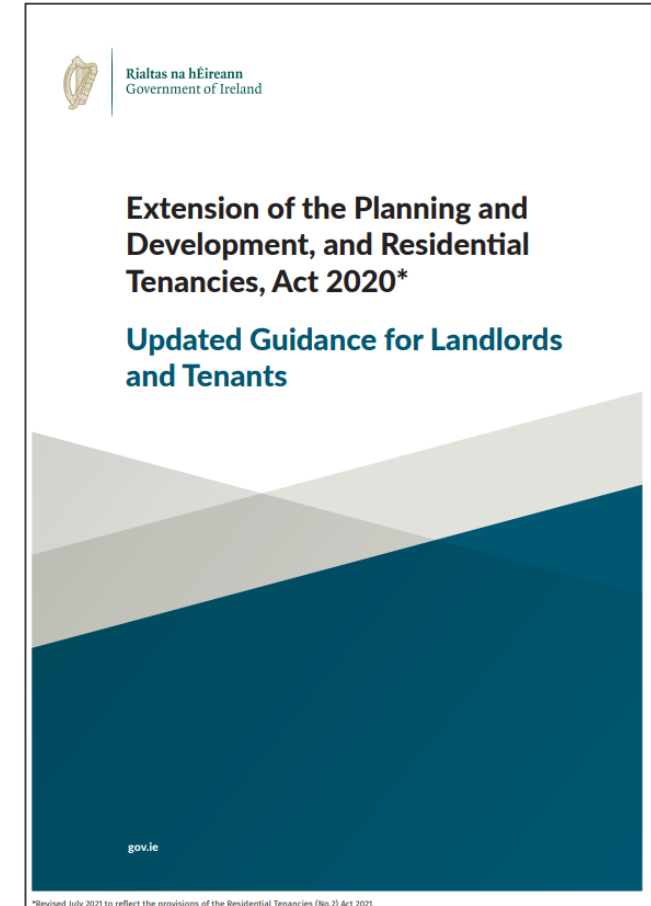
What this Means for Landlords and Tenants

gov.ie

Version 2, Updated 16 July 2021

Planning & Development and Residential Tenancies Act 2021

- The RTA(2) 2021 extends the protections given to tenants under the Planning and Development and Residential Tenancies Act 2020 (PDRTA) until 12 January 2022.
- These protections apply to qualifying tenants whose tenancies are at risk of being terminated because they cannot pay their rent as a result of Covid-19.



Deposits & Advance Payment of Rent

- For tenancies that commenced **on or after 9 August 2021**:
 - A deposit cannot exceed more than one month's rent; and
 - An advance payment of rent cannot exceed one month's rent.
- In other words, landlords cannot ask a person to pay more than the equivalent of 2 months' rent in total to secure a tenancy.
- Any ongoing advance rent payment during a tenancy cannot exceed one month's rent.
- **'Improper Conduct'** has been extended to include:
 - Seeking a deposit in excess of one month's rent, this applies to tenancies created from 9 August 2021 onwards.
 - Seeking an advance payment of more than one month's rent, this applies to tenancies created from 9 August 2021 onwards.

RPZs & Rent Review Rules

- The rules around the frequency of how often landlords can serve rent review notices have been extended for a further 3 years (until 31 December 2024), e.g. every 12 months for tenancies in RPZs and every 24 months for tenancies outside RPZs.
- All Local Electoral/Local Authority that have been previously designated as a Rent Pressure Zone (RPZ) remain designated until 31 December 2024.

RPZ Calculator

- The RTB is required by law to establish and maintain a RPZ calculator and publish a table of HICP values.
- www.rtb.ie/calculator/rpz / www.rtb.ie/calculator/hicp-index
- Calculator processes a % increase in HICP values between the date the rent was last set and the date the new rent is set to produce maximum rent permissible, in line with any HICP inflation (difference between x and y).

RPZ Calculator

- The calculator may indicate that no rent increase is allowed. No obligation to increase the current rent amount and no obstacle to a rent reduction.
- A rent increase cannot be greater than the amount determined by the calculator.
- Print off the calculations with a date stamp included. Calculations should be confirmed and verified on the same date that the notice is served.
- The old RPZ calculator will remain on the website www.rtb.ie/calculator/rpz-legacy



Rent Pressure Zone Calculator



RENT PRESSURE ZONE CALCULATOR

Use this calculator to:

- 1. Determine if your dwelling is in a Rent Pressure Zone by inputting your address or Eircode
- 2. If the dwelling is in a Rent Pressure Zone to calculate the maximum rent increase permitted, if any, for that dwelling. Please note that where the calculator indicates that an increase is permissible, the imposition of such an increase remains subject to the requirement under section 19(1) of the Residential Tenancies Acts 2004-2021 that 'in setting, at any particular time, the rent under the tenancy of a dwelling, an amount of rent shall not be provided for that is greater than the amount of the market rent for that tenancy at that time.
- 3. Rent setting occurs either at the commencement of the tenancy or as part of a review of the rent.

Note: Landlords are strongly advised to serve the notice of rent review on the tenant on the same day as they use the Rent Pressure Zone calculator to avoid any potential invalidation of their rent review, as calculations can vary from day-to-day in line with any change in HICP values.

Further information on Rent Pressure Zones available [here](#)

HICP Index Table:- Source All-Items Harmonised Index of Consumers Prices in relation to Ireland, as published in the RTB Table of HICP values

| YEAR | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC |
|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 2016 | 98.7 | 99.1 | 99.4 | 99.7 | 100.2 | 100.9 | 100.6 | 100.4 | 100 | 99.6 | 99.5 | 99.4 |
| 2017 | 98.9 | 99.4 | 100 | 100.4 | 100.2 | 100.3 | 100.4 | 100.8 | 100.2 | 100.1 | 100 | 99.9 |
| 2018 | 99.2 | 100.1 | 100.5 | 100.3 | 100.9 | 101 | 101.4 | 101.7 | 101.4 | 101.2 | 100.8 | 100.7 |
| 2019 | 100 | 100.8 | 101.6 | 102 | 101.9 | 102.1 | 101.9 | 102.3 | 102 | 101.8 | 101.6 | 101.8 |
| 2020 | 101.1 | 101.7 | 102.1 | 101.7 | 101.1 | 101.5 | 101.3 | 101.2 | 100.8 | 100.3 | 100.6 | 100.8 |
| 2021 | 101 | 101.3 | 102.2 | 102.8 | 103 | 103.1 | 103.5 | | | | | |

Example of an RPZ Rent Review

- Current Rent €1,500
- Date Rent last **set** 01/08/2019 – this is the date the rent review notice was last served on the tenant **not the date the rent was payable**
- Date new rent is **set** 01/08/2021 – This new rent becomes payable 90 days from date of setting
- Rent Increase 1.9% or €29 – New Rent €1,529
- **NEXT YEAR**
- Current Rent €1,529
- Date Rent last **set** 01/08/2021 – This is the date the rent review notice was last served on the tenant **not the date the rent became payable**
- Date new rent is set 01/08/2022 – This new rent becomes payable 90 days from date of setting

RTA(2) 2021: In a Nutshell

- Signed into law on 9 July 2021 / HICP rules 16 July 2021 / deposit & advance payment of rent limits 9 August 2021;
- Applies to private rental sector and Student Specific Accommodation sectors (leases and licenses), with some exceptions;
- Limits on the amount of rent in advance and/or a deposit that landlords & SSA providers can ask people to pay to secure a tenancy. Landlords/SSA providers cannot ask a person to pay more than the equivalent of 2 months' rent in total & some exceptions apply to SSA;
- Breaching the limits for deposits and rent in advance is now an Improper Conduct;

RTA(2) 2021: In a Nutshell Cont.

- Introduces a provision that provides that students do not have to give more than 28 days' notice to end their rental arrangement;
- For SSA providers, once a tenancy lasts more than 6 months, notice periods in line with the private rental sector;
- Rent increases in RPZs cannot exceed general inflation, as recorded by Harmonised Index of the Consumer Price (HICP);
- Extends RPZ designations and rent review frequency rules;
- Extends the PDRTA protections until Jan 2022.

RTB Investigations & Sanctions



RTB Investigations & Sanctions

- On 1 July 2019, the RTB was given new powers to proactively monitor the rental sector and to investigate and sanction landlords who engage in certain breaches of rental law, defined as **Improper Conduct**.
- The RTB can commence investigations both on information received from members of the public as well as by using open-source data and data available to the RTB.
- Landlords found to have committed Improper Conduct can have a sanction imposed of up to €15,000 and €15,000 in costs.

RTB Investigations & Sanctions

Rent Related

- Setting rent higher than RPZ formula after 1st July 2019 / HICP since 16th July 2021
- Failure to notify RTB if claiming an RPZ exemption
- Falsely relying on an RPZ exemption

Registration Related

- Not registering a tenancy w/in 1 month of commencement
- Failure to update RTB with any changes to rent/particulars within one month of a change in the rent

RTB Investigations & Sanctions

End of a Tenancy

- A reason for termination that the landlord knows to be false/misleading reason cited in a notice of termination served after the 1st July 2019
- Failing to offer tenancy back if contact details provided to the landlord in writing by the tenant within 28 days of the service of the Notice

Deposit Related (New)

- Seeking a deposit in excess of one month's rent for tenancies created on or after 9 August 2021 onwards.
- Seeking an advance payment of more than one month's rent for tenancies created on or after 9 August 2021 onwards.

RTB Order Enforcement



If it is reported to OE that the Terms of a Determination Order (DO) are not complied with, then a case-party to the Dispute may approach Order Enforcement to:

1. Seek Legal Assistance from the RTB:

If granted, the RTB will cover the costs of providing an approved Solicitor to bring enforcement of the DO in the District Court

2. Seek Case Papers to take their own enforcement:

The OE team prepares case papers and issues them to requesting case-parties allowing them to bring their own enforcement. Case-Parties incur their own legal costs if they choose this option.

3. Seek Assistance with Settlements:

Order Enforcement process settlement offers and settlement cheques in cases where the DO has issued. Settlements and securing Full compliance is a growing aspect of OE work.

Order Enforcement

- If the terms of a Determination Order are not complied with, a party can request that the RTB provide them with Legal Assistance, providing a solicitor to take enforcement proceedings in Court on the requesting party's behalf.
- The RTB will cover the costs incurred by this solicitor as per the Solicitor's Panel T&Cs.
- Decisions on whether to grant Legal Assistance is based on the Board's Policy on Enforcement.
- Pre Feb 2018, when in the Circuit Court, enforcement proceedings were brought by one law firm.
- As there are far more District Court Sitzings & it is more economical than the Circuit Court, the decision was made to move to a Panel model of enforcement in the District Courts which was done in Feb 2018.
- A panel of 70+ Solicitors were approved to take enforcement proceedings in District Courts nationwide for cases that were approved for Legal Assistance.
- In July 2021, a new Panel of 10 firms took over Legal Assistance enforcement.

Case Studies



Case Study 1 – Validity of NoT

- Tenants took a case to determine the validity of a NoT issued to them, claiming it was in breach of their obligations.
- Tenants claimed that the rent has always been paid every month and they were not in arrears. Bank statements were submitted showing that payments were made each month.
- The landlord explained that he had a mortgage to pay and each time the tenants were late he incurred charges and submitted evidence of these charges.
- The landlord had issued a warning notice advising the tenants not to be late with the payments and later issued a NoT.
- The Adjudicator found the bank statements showed that, although the payments were up to date, they were consistently late every month, that the tenants had been issued with a warning notice and as a result of their own non-compliance had received a NoT.

Outcome: The notice was deemed valid with the tenants ordered to give up vacant possession within 72 days of receipt of the Determination Order.

Case Study 2 – Breach of Obligation

- The landlord took a case for breach of tenant obligations. After requesting access to the dwelling, the tenant had not allowed the landlord to inspect the gas and electricity supplies.
- The landlord submitted letters sent to the tenant requesting access and gave evidence of numerous calls made to the tenant and also submitted all the warning letters that were sent. The tenant did not engage further with the landlord.
- Under the Act, a landlord is entitled to request access to the dwelling and the tenant should be reasonable in allowing access.
- The Adjudicator held that the tenant was in breach of her obligations in not providing access, the landlord had made several attempts to arrange a suitable time without any success.

Outcome: The tenant was ordered to grant the landlord access within 14 days of receipt of the Determination Order.

Case Study 3 – Anti-Social Behaviour

- The landlord served a 7-day anti-social behaviour (ASB) NoT following a Garda Emergency Response Unit raid on the rented dwelling.
- The tenant's neighbours had alleged that the tenant had pointed what was believed to be an air gun at children in the area. There was a further allegation that the tenant broke a window getting back into the dwelling as they did not have a key.
- The Adjudicator noted at the hearing there is a high onus of proof on the person making the allegation of serious ASB. They found there was insufficient evidence to support the serious allegation of ASB made:
 - The landlord's representative did not witness any of the alleged events and was relying on third-party statements to substantiate the claim in question.
 - No witnesses to above events were present at the hearing to provide first-hand evidence.
 - No Garda report was submitted into evidence to clarify the allegations made against the tenant.

Outcome: The 7-day Notice of Termination for ASB was not upheld.

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Thank you

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