

Rent Arrears and Notice of Termination

**Gerard Nicholas Murphy, Barrister
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gmurphy@lawlibrary.ie

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Residential Tenancies Board – Statement of Strategy 2023-2025

- Recently published in October 2023 –
[Statement of Strategy 2023-2025](#)
- Following a Public Consultation which recognised difficulties identified by Stakeholders
[Public Consultation Report](#)
- Greater emphasis on mediation and reducing waiting times for dispute resolution going forward

Recent Amendments

- Residential Tenancies Act 2021
- Residential Tenancies (No. 2) Act 2021
- Residential Tenancies (Amendment) Act 2021

- “Secret” amendments to the Residential Tenancies Act under Part 11 Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022
- Important amendments here from **6 July 2022** onwards when terminating Part 4 Tenancy

Terminating a Tenancy

- Detailed information on Termination procedures and notices available on RTB website
- www.rtb.ie/ending-a-tenancy
- [Ending a tenancy | Residential Tenancies Board \(rtb.ie\)](#)

Rent Arrears

- Current Procedure to Terminate for Rent Arrears (since 6 July 2022)
 1. Tenant in arrears of rent
 2. Landlord serves a Warning letter giving at least 28 days to pay and warning the tenancy may be terminated if arrears not paid
 3. Warning is copied to RTB on same date (rentarrears@rtb.ie)
28 days commence when RTB and Tenant receive Warning Notice
 4. If the rent arrears not paid, the Landlord may serve a Notice of Termination giving at least 28 days to move out.
 5. The NoT must be copied to the RTB
(NoticeofTermination@rtb.ie and rentarrears@rtb.ie)

Terminating a Tenancy

- Make sure you are using the latest updated forms for Notice of Termination and Warning Letters available on the RTB website

<https://www.rtb.ie/ending-a-tenancy/sample-notices-of-termination>

Service of Notices and Warning Letters etc

- Section 6 of the Act applies to Notice of Termination and other documents, such as warning letters
- Must be addressed to the person concerned by name (unless the names are not known to the Landlord upon reasonable inquiry)
- Avoid addressing the Notice to “the Tenant”, or “the occupiers”, or “Mary Murphy and all person residing at ...” etc, unless you genuinely do not know the names
- Mary Murphy (otherwise known as Mary Prendergast)
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Service of Notice etc

- Check the spelling of the names of the Tenants as per the RTB Registration and/or the Original Lease, especially if the name is unusual. (Orla or Orlaith or Orfhlaith! ...)
- Avoid mis-spelling the Tenant's name
- If more than one Tenant the Notice of Termination should be addressed to all adult Tenants by name and ideally a separate copy Notice of Termination should be addressed in an envelope to each adult Tenant living at the Dwelling
- One Notice of Termination addressed to all Tenants by name
- Separate copies / envelopes for each Tenant at Dwelling

Service of Notices etc

- The Notice should be served on the Tenant in person (hand delivered)
- Or left at the dwelling (letter box / under the door)
- Or by post, (section 6)
- But not by email alone
- Email or text message alone will be invalid at adjudication hearing
- Landlord must also send a copy of the notice to the RTB on the same day they serve it on the tenant (no matter how long the tenancy lasted)
- You can serve the Warning Notice or NoT by email or text message, but you will also need to serve it by hand or by post as well.

Service of Notices etc

- Section 64 of the Act, the Landlord must take every step to serve the Notice on the same day.
- Important the Notice is dated and served by hand or by post on the Tenant and the RTB on SAME DAY to avoid confusion
- Avoid dating the Notice and posting it the next day etc
- The date on Certificate of Posting should correspond with the date of the Notice of Termination
- Easy to draft a Notice today and leave it in the post to go out tomorrow, but this should be avoided (however it often happens)

Service of Notices etc

- Registered Post can cause delays if the letter is not collected, or returned to sender. Registered Post is not required.
- Express Post may be a better option
- Certificate of Posting

- Personal service by the Landlord or Agent at the Dwelling (hand delivered) is acceptable provided the Landlord or Agent can give evidence at the adjudication or Tribunal hearing they served the notice by hand etc.
- Consider if you need an Affidavit of Service, or Statutory Declaration from the person who served the Notice on a definite date and time, to prove service.

Service of Notices etc

- A Company is deemed to be ordinarily resident at the address of its registered office (not the address of the Dwelling).
- Sometimes the Tenant might be a Company, e.g. if you are renting your property to a business for the residential use of its staff.
- Technically, the Tenant could be the Company rather than the occupiers. (Usually the staff would come and go).
- Serve the Notice on the Tenant Company at its registered office address (check Companies Registration Office – www.cro.ie)
- Also serve the Notice on the Company at the address of the rented property and on the occupiers by name to be on the safe side.

Service of Notices etc

- Section 6(6)
- Where, in proceedings under Part 6 (adjudication/ Tribunal hearings), it is shown that a notice was served or given in accordance with the provisions of section 6 and on the date that it is alleged it was served or given, the onus shall be on **the recipient** to establish to the Board, the adjudicator or Tribunal's satisfaction that the notice was not received in sufficient time to enable compliance with the relevant time limit specified by or under this Act.
- If the Landlord can prove service in accordance with section 6, it is for the Tenant to prove he or she did not receive the Notice, or received the Notice too late to comply with it.

Service of Notices

- Section 7
- The Landlord can sign and serve the Notice or agent can do so (Estate Agent or relative or employee).
- Usually this does not cause any problems in rent arrears cases
- The NOT should always be copied to the RTB (on the SAME DAY).
- This can be done by email: NoticeofTermination@rtb.ie (and/or post – consider using both methods)

[RTB Notice of Termination Return Form Nov 2022.pdf](#)

Service of Notices

- **Section 61**
- Any time period runs from the day after the Notice of Termination is served
- If you serve the Notice on Monday 26 September, the Notice Period etc runs from Tuesday 27 September
- There is no need to refer to this expressly in the Notice of Termination as it can cause some confusion.
- The DATE of the NOTICE is the date it was served
- The Notice Period runs from the next day ... (this follows automatically by law, no need to be expressly stated in the notice)

Service of Warning Notice

- Note: Section 67 (as amended) provides the 28 day warning period for rent arrears runs from the date the Tenant RECEIVED the warning (and the RTB received it also, whichever is the later date).
- If the Warning Letter is sent by post, the 28 days period to pay rent arrears runs from the day the letter is received by the Tenant
- Give as much warning as possible, before a Notice of Termination is served (at least a calendar month to avoid confusion)

Service of Notice etc

- The Notice should specify the DATE of Service
- This should be the exact same date the Notice is posted or hand delivered or left at the Dwelling etc by the Landlord (not the date it is received by the Tenant for example)
- Sometimes, Notice is dated 26 Sept and not posted until 27 Sept **X**
- Sometimes the Notice says it is dated 26 Nov but “served on 27 Nov”, to mean the notice period runs from the date it is received. This is **WRONG X!** Don't use this wording.
- This causes a lot of confusion at the hearing and should be avoided!
- **ONLY ONE DATE OF SERVICE!**

Notice of Termination

- Section 62
- A valid notice of termination shall—
- (a) be in writing,
- (b) be signed by the landlord or his or her authorised agent
- (c) specify the date of service of it (the date it is served)
- (d) be in such form (if any) as may be prescribed (use the templates on www.rtb.ie)
- (e) state the reason for the termination,
- (f) specify the termination date, that is to say, the day, month and year
- (ff) indicate tenant has whole of the 24 hours of termination date to vacate possession,
- (g) state that any issue as to the validity of the notice or the right of the landlord to serve it must be referred to **the RTB** under Part 6 within **90 DAYS** (28 days if rent arrears) from the date of receipt of it.

Rent Arrears

- [Rent arrears and Notices of Termination | Residential Tenancies Board \(rtb.ie\)](#)

Rent Arrears – How to Avoid Delays

- The procedure to terminate for rent arrears can be bureaucratic.
- It is better to give the tenant slightly more time to pay rent arrears than the minimum 28 days. The time periods are applied strictly under the legislation. (Give a calendar month, or longer if possible).
- Similarly, Notice of Termination should give the Tenant slightly more time to move out of the Dwelling. (Give a calendar month, or longer if possible)

Rent Arrears – How to Avoid Delays

- **You can refer a dispute to the RTB immediately once the Tenant falls into rent arrears.** For example, to request telephone mediation.
- After the dispute has been referred to the RTB, you can continue with the formal steps of serving a Warning Notice, and Notice of Termination
- (you may need to refer a separate dispute to the RTB concerning overholding and ask for all disputes concerning rent arrears and overholding to be heard together, but this may not be necessary either)

Rent Arrears – How to Avoid Delays

- Send the Warning Notice and Notice of Termination to the RTB by email rentarrears@rtb.ie and NoticeofTermination@rtb.ie as well as by post if possible
- Same dates as you serve them on the Tenant
- And/Or by Post

Residential Tenancies Board, PO Box 47, Clonakilty, County Cork

- Check the RTB website to make sure using the most up to date forms
- [Sample Notices of Termination | Residential Tenancies Board \(rtb.ie\)](#)

Rent Arrears – How to Avoid Delays

- The Notice should be served on the Tenant in person, left at the dwelling or by post, but not by email alone (section 6).
- Email alone will be invalid at adjudication hearing.
- You can serve the Warning Notice or NoT by email to tenant, but you will also need to serve it by hand or by post as well.
- Registered Post can cause delays if the letter is not collected. Registered Post is not required. (Express Post or Certificate of Posting)
- Personal service by the Landlord or Agent at the Dwelling is acceptable provided the Landlord or Agent can give evidence at the adjudication or Tribunal hearing they served the notice by hand etc.

Rent Arrears – How to Avoid Delays

- Have a clear Statement of Rent Account for Adjudicator or Tribunal
- Simple column sheet or excel sheet showing exactly when rent was paid on what dates

1 January 2022 – Deposit paid €1,000

1 January 2022 – First months rent paid €1,000

6 February 2022 – Second month's rent paid €1,000

1 March 2022 – Third month's rent due but not paid (rent arrears €1,000)

Total Paid €XX

Total Due €YY

Total Arrears €ZZ

Rent Arrears – How to Avoid Delays

- Even if there was a mistake in serving the Warning Notice or Notice of Termination ask the adjudicator or Tribunal to make a finding on the **amount** of rent arrears due and owing up to the date of the hearing.
- Usually, if the Tenant does not appeal the decision there cannot be any dispute about the amount of rent arrears as per the Determination Order
- If the Determination Order for rent arrears is not satisfied, discuss with your tax or financial advisor if are entitled to write-off this as a loss. Otherwise, how would you prove you didn't collect the rent?

Rent Arrears – How to Avoid Delays

- Calculate rent arrears due to date of Adjudication or Tribunal hearing
- The daily rate should be calculated as follows
- €1,000 per month x 12 months / 365 days
= €32.87 per day

Rent Arrears – How to Avoid Delays

- If the Tenant complains the Warning Notice is invalid or the Notice of Termination was invalid, assume for the moment they are correct.
- Refer a dispute to the RTB in respect of rent arrears, and serve another Warning Notice or another Notice of Termination to be on the safe side.
- It will be up to the adjudicator or Tribunal to decide whether to consider the fresh Warning Notice or Notice of Termination at the hearing
- Landlord can always refer separate disputes concerning rent arrears or notice of termination / overholding, if appropriate to do so.

Some Practical Tips for Adjudication Hearings

- Submit all your paper work in advance of the hearing within the time limit before the hearing, if possible.
- All documents will be put into PDF format by the RTB
- Email a word document of your submissions to the RTB for the attention of the Adjudicator / Tribunal shortly before the hearing
- Let the Adjudicator / Tribunal know you can provide a word document of the submissions already submitted for convenience
- If you wish to rely on additional information shortly before the hearing, email this to the RTB in advance of the hearing, rather than having it on the day of the hearing.

Some Practical Tips

- If you wish to rely on documents that you have not submitted within the time limit before the hearing, explain your reasons clearly to the RTB for the delay and ask for an adjournment of the hearing, if necessary, to allow the other party to consider those additional documents. (e.g. if you were on holidays or illness etc).
- If the hearing is in person, physical hearing, consider having bound hard copies of your casefiles / submissions for the adjudicator and the other party for use at the hearing, for everyone's convenience.

Some Practical Tips

- When presenting your case, have a short chronology available so the Adjudicator / Tribunal can clearly follow and understand the context of the dispute. Submit this in advance of the hearing with your documents etc.
- Ask the Tenant at the hearing if they agree with that chronology.

1 January 2022 – Parties signed lease & Tenant paid deposit & month's rent

1 March 2022 – Warning Notice served on Tenant and copied to RTB

15 April 2022 – Notice of Termination served on Tenant and copied to RTB

Some Practical Tips

- If your submissions are very lengthy, and you have a lot of evidence consider summarising your submissions / case in 10 bullet points
- Adjudication Hearings are normally allocated 90 minutes.
Tribunal Hearings 2 hours, but may take longer.
- If you feel your case is complicated, ask the RTB how long you will have for your hearing, and make it clear if you might require more time to present your case and/or cross-examine the opposing party and witnesses.

Some Practical Tips

- Adjudication and Tribunal hearings are being conducted remotely / online
- However, anyone is entitled to an in-person, physical hearing upon request being made to the RTB
- Online Tribunals with 3 members can be challenging, so consider if an in-person hearing would be more appropriate in your case

Issues Arising on Insolvency and Receivership

- If a Receiver has been appointed s. 24 of Conveyancing Act 1881 normally allows a Receiver to demand the tenant pay rent to the Receiver directly.

(See also s. 108(5) of Land and Conveyancing Law Reform Act 2009)

- Section 24(4) provides the Tenant does not have to inquire as to whether the Receiver was properly appointed
- Normally, the Receiver is deemed to be the agent of the borrower / landlord, even if the Receiver is appointed by the Bank

“(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorize the receiver to act.”

Issues Arising on Insolvency and Receivership

- A number of cases have also considered if the Receiver (or the Bank) has the right under the Mortgage to lease and/or sell the Property. Some mortgages provide the Receiver is only entitled to collect the Rent.
- Always ask your solicitor for legal advice as to whether the Receiver can legally lease the property, rent it out, or indeed sell the property
- See for example *Charleton v. Hassett* [2021] IEHC 746 and *Tyrrell v. Mulligan* [2022] IEHC 311 where the High Court refused injunctions sought by a Receiver
- *O'Connor v Promontoria* [2022] IEHC 616 – High Court placed some emphasis that the Receiver was appointed over rented residential property which was part of a pension fund, and the Landlord had a relationship with tenants for a number of years.
- The High Court granted an interlocutory injunction in that case in favour of the Landlord prohibiting the Receiver from taking possession or selling the property pending the determination of the proceedings.

Any Questions?

- Thank you for your attention
- Any Questions?
- Contact Details: gmurphy@lawlibrary.ie
087-8680081