

Residential Tenancies Board

# Guidance Note on Recent Legislative Changes

Review of the Planning and Development  
(Housing) and Residential Tenancies Act 2016

12 January  
2017



## **Note on the Planning and Development (Housing) and Residential Tenancies Act 2016**

<b>No.</b>	<b>Title</b>	<b>Page</b>
1.	Rent Predictability Measures	2
2.	Rent Pressure Zone Designation	3
3.	Rent Predictability Formula and Examples	4-6
4.	Security of Tenure and Removal of Probationary Period for Further Part 4 tenancies ( <i>to be commence shortly</i> )	6-7
5.	Additional Landlord Obligations	7-8
6.	Notices of Termination and 'Tyrrrelstown' amendments ( <i>to be commenced shortly</i> )	8-9
7.	Changes to Appeal Time Periods ( <i>to be commenced shortly</i> )	9
	Appendix 1	10-11

**For Further Information contact: [disputes@rtb.ie](mailto:disputes@rtb.ie)**

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This document should be used as a guide only. The RTB take no responsibility for inaccuracies,  
errors or omissions**

## **1. Rent Predictability Measures**

1.1 Rent Predictability Measures are new provisions that have come into force when the Planning and Development (Housing) and Residential Tenancies Act 2016<sup>1</sup> (the "2016 Act") was signed into law. The measures are intended to moderate the rise in rents in the parts of the country where rents are highest and rising. In these areas, called Rent Pressure Zones ("RPZ"), rents will only be able to rise according to a formula<sup>2</sup>. The measures have been applied immediately to the four Dublin local authorities (Dublin City Council, South Dublin County Council, Dun Laoghaire/Rathdown County Council and Fingal County Council) and Cork City Council.

### 1.2 Who decides what areas are Rent Pressure Zones?

The Housing Agency, following consultation with the relevant local authority, may propose an area to the Minister for consideration. Within 1 week the Minister will request the RTB, which monitors data on rents, to assess whether the criteria (see below) apply to the area. The RTB will respond within a period of 2 weeks and if the criteria apply, the Minister will make the relevant order.

### 1.3 Are all rental properties covered?

No, there are certain exemptions for properties within an RPZ (discussed further below). Properties that are new to the rental market, that is, properties that have not been the subject of a tenancy at any time in the previous two years or properties which have been substantially refurbished can be exempted from the measures. However, the existing requirement that the rent be set in line with local market rent remains.

1.4 A '*substantial refurbishment*' is not defined in the Act but it must be a significant change to the dwelling resulting in an increased market value of the tenancy. For example, simple redecoration or replacement of white goods would not be sufficient. Substantial refurbishment should involve significant alterations or improvements which add to the letting value of the property.

### 1.5 If I want to raise the rent on my dwelling in an RPZ, what do I need to do?

Where a landlord is setting the rent in an RPZ, the amount cannot be greater than the amount determined by the formula (discussed in detail below). Additionally it cannot be set above the local market rents for similar properties in the area and three comparable examples for similar properties in the locality must be presented to demonstrate this.

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<sup>1</sup> Enacted 23 December 2016

<sup>2</sup> Section 19(4) of the Residential Tenancies Act 2004 - 2016

## 2. Rent Pressure Zones

### 2.1 Rent Pressure Zone Designation

For an area to be designated an RPZ, the following criteria is applied:

- The annual rate of rent inflation in the area must have been 7 per cent or more in four of the last six quarters, that is, over the previous 18 months,
- The average rent for those tenancies registered with the Residential Tenancies Board ("RTB") in the previous quarter must be above the average national rent in the quarter (the National Indicative Rent as contained in the RTB's Rent Index Report)

2.2 The 2016 Act amends certain market rent and rent review sections of the Residential Tenancies Act 2004 (the "Principle Act"). The amendments<sup>3</sup> provide a definition of a '*rent pressure zone*' as meaning an *area* set by the Minister by order<sup>4</sup> as an RPZ. The 2016 Act also confirms that where a *local electoral*<sup>5</sup> *area* is prescribed by order as an RPZ, the original designation order remains effective even where the *local electoral area* is subsequently (geographically) amended.

2.3 The RTB are now obliged<sup>6</sup> to publish notice of the making of an RPZ order by the Minister. This will confirm whether a particular dwelling is located within an RPZ.

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<sup>3</sup> Section 19(7), Residential Tenancies Act 2004 to 2016

<sup>4</sup> Section 24A, Residential Tenancies Act 2004 to 2016

<sup>5</sup> Section 24A(6), Residential Tenancies Act 2004 to 2016

<sup>6</sup> Section 24A(9), Residential Tenancies Act 2004 to 2016

### 3. Rent Predictability Formula

#### **R x (1 + 0.04 x t/m)**

*calculate working from right to left*

- R** = The amount of rent last set under a tenancy (current rent)  
**t** = The number of months between the date the current rent came into effect and the date the new rent amount will come into effect.  
**m** = you must enter 24 or 12 (see below)

#### Landlord has not reviewed the rent in previous 24 months

For existing tenancies a review is only permitted 24 months after the tenancy started or 24 months from the date the rent was last set. In this scenario **m = 24**. For this initial rent review a maximum rent increase of 4% will apply. This amounts to 2% per annum applied pro-rata for the period since the rent was last increased. Following on from this review, a landlord will be entitled to review the rent in an RPZ every 12 months.

#### New tenancies from 24<sup>th</sup> December 2016

Landlords of all new tenancies, including Further Part 4 tenancies, within an RPZ which started on or after 24<sup>th</sup> December 2016 are entitled to review the rent annually. In this instance **m = 12**.

If rent reviews take place annually the permissible rent increase in each case will be 4%. If, for example, a landlord opts to review the rent after 18 months the allowable increase will be 6% (4% per annum pro-rata for 1½ years).

Please see the RTB website for a sample Rent Review Notice

<http://www.rtb.ie/dispute-resolution/dispute-resolution/rent-reviews>

#### **Example 1 (new tenancy)**

Tenancy commenced 29 December 2016; the landlord is entitled to serve a rent review notice on 29 December 2017 providing a minimum of 90 days notice. The new rent will come into effect on 5 April 2018.

- R** = €1300, the current rent amount  
**t** = 15 months (29/12/16 to 5/04/2018)  
**m** = 12 months, as this tenancy commenced after 24/12/2016 this landlord is entitled to review the rent annually.

Therefore:

- 1300                    x        (1 + 0.04 x 15/12)
- 15/12                    =        1.25 then
- x 0.04                    =        0.05 then
- + 1                        =        1.05 then
- x 1300                    =        1365

Therefore, €1,300 x (1 + 0.04 x 15/12) = €1,365

### Example 2

Tenancy commenced 1 November 2014, over 24 months ago. The rented dwelling is located in an area which has been designated as an RPZ. The landlord intends to serve a rent review notice on 1 January 2017, providing a minimum of 90 days notice and indicating that the change will take effect from the 3 April 2017. The following formula is used to ascertain the permitted increase:

**R** = €1,200.00 (the current rent amount)  
**t** = 29 months (period between 1/11/14 to 3/04/2017)  
**m** = 24 months, as the tenancy was already in existence prior to 24 December 2016 this landlord was only entitled to review the rent 24 months from the date the rent was previously set.

Therefore:

• 1200                    x        (1 + 0.04 x 29/24)  
• 29/24                    =        1.21 then  
• x 0.04                    =        0.05 then  
• + 1                        =        1.05 then  
• x 1200                    =        €1,258

Therefore,  $1,200 \times (1 + 0.04 \times 29/24) = €1,258$  (the new rent)

### Example 3 (future rent review)

Tenancy commenced 1 January 2015; the landlord served a rent review notice on 1<sup>st</sup> January 2017, with the new rent coming into effect on 3 April 2017. The landlord will now be entitled to serve a new rent review notice on 1 January 2018 by serving a minimum 90 days notice of rent review indicating that the change will take effect from the 3 April 2018.

**R** = €1050, the current rent amount  
**t** = 12 months (3/04/17 to 3/04/2018)  
**m** = 12 months; as initial 24 month rent review had already taken place the landlord is now entitled to review the rent annually.

Therefore:

• 1050                    x        (1 + 0.04 x 12/12)  
• 12/12                    =        1 then  
• x 0.04                    =        0.04 then  
• + 1                        =        1.04 then  
• x 1050                    =        1092

$€1,050 \times (1 + 0.04 \times 12/12) = €1,092$

### Example 4 (future rent review)

Tenancy commenced 1 January 2015; the landlord served a rent review notice on 1<sup>st</sup> January 2017, with the new rent coming into effect on 3 April 2017. The landlord will now be entitled to serve a new rent review notice on 1 January 2018 by serving a minimum 90 day notice of rent review. The landlord decides

to **not** serve the rent review notice until 1 June 2018 indicating that the change will take effect from the 3 October 2018.

**R** = €1100, the current rent amount  
**t** = 18 months (3/04/17 to 3/10/2018)  
**m** = 12 months, as initial 24 month rent review had already taken place the landlord is now entitled to review the rent annually.

Therefore:

- 1100                    x        (1 + 0.04 x 18/12)
- 18/12                   =        1.5 then
- x 0.04                   =        0.06 then
- + 1                      =        1.06 then
- x 1100                  =        1166

$$€1,100 \times (1 + 0.04 \times 18/12) = €1,166$$

#### **4. Security of Tenure and Changes to Probationary Period**

4.1 Landlords can currently terminate a tenancy within the first six months without giving a reason. Once a Part 4 tenancy comes into existence it can only be terminated by using one of the grounds<sup>7</sup> specified in the Act. In summary those grounds are:-

- The tenant has failed to comply with the obligations of the tenancy (having first been notified, in writing, of the failure, and given an opportunity to remedy it.)
- The landlord intends to sell the dwelling within the next 3 months
- The dwelling is no longer suited to the needs of the occupying household
- The landlord requires the dwelling for own or family member occupation
- Vacant possession is required for substantial refurbishment of the dwelling
- The landlord intends to change the use of the dwelling

**More Information regarding Notices of Termination can be found here <http://www.rtb.ie/dispute-resolution/dispute-resolution/sample-notices-of-termination>**

If a fixed term lease or tenancy agreement is in place, the termination of a Part 4 tenancy, which also has the benefit of a fixed term lease, can only occur where:-

- 4.1.1 There has been a breach of obligations by either the landlord or tenant;
- 4.1.2 The landlord has refused a sublet or assignment request from the tenant;
- 4.1.3 The fixed term lease provides for specific grounds for termination and those grounds comply with the terms of the Act.

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<sup>7</sup> Section 34, Residential Tenancies Act 2004 to 2016

- 4.2 The 2016 Act extends the Part 4 tenancy cycle from 4 years to 6 years<sup>8</sup>. This will apply to all new tenancies that commence on or after 24<sup>th</sup> December 2016, including a Further Part 4 tenancy coming into existence on or after this date. The amendments aim to move the sector towards a situation where longer term tenancies are the norm.

For example, on 1 January 2017 a tenant has been residing in a dwelling for a period of 4 years. At this point in time they have entered a Further Part 4 tenancy which, subject to a landlord terminating the tenancy in accordance with the Act, allows them to remain in the dwelling for a further six year period.

- 4.3 As the law currently stands, if a landlord wishes to stop a Further Part 4 tenancy coming into existence they may serve a termination notice during the Part 4 tenancy with the notice period given to the tenant expiring on or after the end of the tenancy. A notice served in this way should provide a reason for termination but the reason does not need to be one of the specific grounds above. If a landlord wishes to terminate during the first six months of the Further Part 4 tenancy they may serve a termination notice during the first six month period without providing a reason or needing to rely on one of the specific grounds above.
- 4.4 However, this method of terminating a Further Part 4 tenancy will change very soon. The effect of these changes<sup>9</sup> will mean that where a landlord is seeking to terminate a Further Part 4 tenancy in the first six months (the *probationary* period), a landlord will no longer be able to terminate without a reason but will be required to rely upon one of the grounds above when terminating (the fixed term lease termination *restrictions* continue to apply).

## **5. Additional Landlord Obligations**

- 5.1 A new landlord obligation has come into force with the passing of the 2016 Act. The new obligation<sup>10</sup>, requires a landlord to provide certain information to a tenant where a tenancy commences on or after 24<sup>th</sup> December 2016 and is located in an RPZ. The landlord is obliged to furnish written information to the tenant on:-
- 5.1.1 the amount of rent that was last set under a tenancy for the dwelling;
  - 5.1.2 the date the rent was last set under a tenancy for the dwelling;
  - 5.1.3 a statement as to how the rent set under the tenancy of the dwelling has been calculated having regard to the new rent predictability formula.
- 5.2 There are two scenarios to be considered. The first is where the dwelling was previously the subject of a tenancy. The second is where no tenancy existed

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<sup>8</sup> Section 28(2), Residential Tenancies Act 2004 to 2016

<sup>9</sup> Sections 41, 42 and Part 2 of the Schedule to the 2016 Act will commence these changes.

<sup>10</sup> Section 12(1)(i), Residential Tenancies Act 2004 to 2016



in the dwelling for a period of at least two years prior to the area being designated as an RPZ.

- 5.3 Where a prior tenancy existed the landlord is required to provide the information at 5.1.1 and 5.1.2 above and also to provide a statement under 5.1.3 above relating to the new formula.
- 5.4 Where a new tenancy comes into existence in an RPZ on or after 24<sup>th</sup> December 2016, the landlord will have to show that the rent applicable to this new tenancy complies with the maximum increase allowable under the legislation. As this is a new tenancy the information supplied will not be in the form of a rent review notice but it will be necessary for the landlord to set out, in a formal fashion, how the *new* rent differs from the previous level having regard to the formula (see samples at Appendix 1).
- 5.5 Exemptions and No Prior Tenancy  
There are exemptions to the rent certainty measures introduced and these will apply in respect of this new landlord obligation. The rent review formula under the Act does not apply to a dwelling in an RPZ where a prior tenancy did **not** exist in the previous two years, or if there was a **substantial change** to the nature of the accommodation which would affect the level of market rent. However, a landlord remains obligated to comply with section 12(1)(i) in respect of a tenancy that comes into existence on or after 24<sup>th</sup> December 2016.
- 5.6 In circumstances where there has been a substantial change in the nature of the accommodation, the landlord is required to provide a new tenant with the information at 5.1.1 and 5.1.2 above. In respect of 5.1.3 above, the landlord will have to state that the formula does not apply as there has been a substantial change in the nature of the accommodation affecting the level of market rent last set for the tenancy.
- 5.7 Where no prior tenancy existed for a period of two years prior to RPZ designation, a landlord will be entitled to rely on the exemptions but will still be required to comply with their obligation under section 12(1)(i). To address the obligation under 5.1.3 above, the landlord is required to confirm that the formula under section 19(4) does **not** apply. The landlord will be entitled to do this under section 19(5) of the Act, that is, the landlord should simply confirm, in writing, that the dwelling has not been the subject of a tenancy at any time during the two years previous to an area being designated as an RPZ and therefore the formula does not apply.

## **6. Notices of Termination and the 'Tyrrelstown' amendment**

- 6.1 The 'Tyrrelstown' amendments in respect of a restriction on the sale of 10 or more units, the subject of tenancies, in a development will shortly be commenced. The content of the Notice of Termination has not changed but a slightly different statutory declaration is required under these circumstances.

- 6.2 We have provided a draft statutory declaration (see Appendix 1) which will be used where a landlord seeks to sell 10 or more units in a development and is relying on the 20% below market value exemption. An individual statutory declaration will have to accompany each individual notice of termination.
- 6.3 Relevant Sections of the 2016 Act  
The 2016 Act confirms that a Part 4 tenancy shall not be terminated on the grounds of an intention to sell where the landlord is seeking to sell 10 or more dwellings within a development during the relevant time. The section defines a development as being a building or buildings comprising a unit or units where it is intended that amenities, facilities and services are shared (emphasis added). The section also defines '*relevant time*' as meaning any period of 6 months within the period beginning with:-
- 6.3.1 the offer for sale of the first dwelling, and  
6.3.2 ending with the offer for sale in the development of the last dwelling.
- 6.4 The restriction on the selling of 10 or more units is subject to a market value exemption. The restriction does not apply where the landlord can show, to the satisfaction of the RTB, that the price to be obtained by selling the dwellings at market value is more than 20 per cent below the market value that could be obtained if sold with vacant possession, and, that applying this restriction would, having regard to all the circumstances, be unduly onerous on the landlord, or would cause undue hardship on the landlord.
- 6.5 The reference to *market value* is a reference to the estimated amount that would be paid by a willing buyer to a willing seller in an arms-length transaction.
- 6.6 It should be noted that a notice of termination on the grounds of an intention to sell, which is served prior to the commencement of the relevant sections, will operate under the previous rules.
- 6.7 It should also be noted that the provisions, once commenced, will apply to all tenancies, including those created before the commencement of the relevant sections.

## **7. Appeal Periods – changes to time period in appeals to a Tribunal**

- 7.1 This amendment will shortly be commenced. Section 43 of the 2016 Act amends section 100 of the Principle Act in respect of the time period to lodge an appeal to a Tribunal of the RTB against a determination of an Adjudicator.
- 7.2 The current position is that a party has a period of 21 days from the date the RTB serves on the party the Adjudication report in which to lodge an appeal with the RTB. Upon commencement of this amendment, the period of 21 days will be reduced to a period of **10 working days**.

## APPENDIX 1

### Sample Statement to be given by a landlord where a tenancy commences in a rent pressure zone on or after 24 December 2016 and a prior tenancy existed

To: [Insert Name of Tenant(s)]

1. The amount of the rent for the dwelling at [insert dwelling address] is [state amount of the rent].
2. I, [insert name of landlord], confirm that the previous rent applicable to this dwelling was [insert previous rent amount] and last came into effect on [insert date].

*[Delete as appropriate]*

- *In setting the rent under this tenancy **I have applied** the formula contained in section 19(4) of the Residential Tenancies Acts 2004 – 2016.*
  - *In setting the rent under this tenancy **I am not required to apply** the formula contained in section 19(4) of the Residential Tenancies Acts 2004 – 2016 as I am relying on a rent pressure zone **exception** in circumstances where there has been a substantial change in the nature of the accommodation provided under the prior tenancy and that change has affected the level of market rent.*
3. Date: [insert date that statement is signed]
  4. Signature: [to be signed by landlord/authorised agent]

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### Sample Statement to be given by a landlord where a tenancy commences in a rent pressure zone on or after 24 January 2016 and no prior tenancy existed

To: [Insert Name of Tenant(s)]

1. The amount of the rent for the dwelling at [insert dwelling address] is [state amount of the rent].
2. I, [insert name of landlord], confirm that in setting the rent under this tenancy **I am not required to apply** the formula contained in section 19(4) of the Residential Tenancies Acts 2004 – 2016 as I am relying on a rent pressure zone **exception** in circumstances where the dwelling has **not** been the subject of a tenancy in the two years prior to the area being designated as a rent pressure zone.
3. Date: [insert date the statement is signed]
2. Signature: [to be signed by landlord/authorised agent]

**Sample Statutory Declaration for Landlord intending to sell 10 or more units in a development and relying on the exemption**

I/we, [**Insert Name / Corporate Identity**], do solemnly and sincerely declare that I/we intend, within a period of three months after the termination date, to enter into an enforceable agreement to transfer to another, for full consideration, the whole of my/our interest in the dwelling or the property containing the dwelling and I/we make this solemn declaration conscientiously believing the same to be true and accurate.

I/we declare that section 35A(2) of the Residential Tenancies Acts 2004 to 2016 does not apply to the notice of termination as the price to be obtained by selling at market value the dwelling that is the subject of an existing tenancy to which Part 4 applies is more than 20 per cent below the market value that could be obtained for the dwelling with vacant possession, and that the application of section 35A(2) would, having regard to all the circumstances, be unduly onerous on or would cause undue hardship on the landlord.

**[Declarant to Sign Here]** .....

**Declared** before me ..... a [practising solicitor] [notary public] [[commissioner for oaths](#)] [peace commissioner] [person authorised by [insert authorising statutory provision] ..... to take and receive statutory declarations] by [**Insert Name of Declarant**]

Who is personally known to me / who has been identified to me by ..... who is personally known to me and who has certified to me his/her personal knowledge of the declarant.

**Or**

The identity of the declarant has been established by me by reference to a [**Insert Identifying document\***] containing a photograph of the declarant.

This ..... day of ..... 2016 at ..... [insert place of signature]

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**[Signature of Witness]**

**\*Approved Identifying Documents**

1. Passport issued by the authorities of an issuing State that is recognised by the Irish Government [passport number, date of issue and issuing State must be inserted]
2. National Identity Card issued by the authorities of an issuing State which is an EU Member State, the Swiss Confederation or a Contracting Party to the EEA Agreement [national identity card number, date of issue and issuing State must be inserted]
3. Aliens Passport issued by the authorities of an issuing State that is recognised by the Irish Government [passport number, date of issue and issuing State must be inserted]
4. Refugee Travel document issued by the Minister for Justice, Equality and Law Reform [document number and date of issue must be inserted]
5. Travel document (other than a refugee travel document) issued by the Minister for Justice, Equality and Law Reform [document number and date of issue must be inserted]