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IPOA News

Official Newsletter of the Irish Property Owners' Association,
the National Landlords' Representative Organisation

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Editorial

Recent media reports are suggesting that the Minister for the Environment, Alan Kelly (Labour) is moving to a position where rent control will be introduced in one guise or another, no doubt given added encouragement by certain left wing elements on the periphery of central Government. This move, if it takes place, is in direct conflict with a commitment given by his Junior Minister, Paudie Coffey (Fine Gael) at a meeting last October with the IPOA, which could be seen as a symptom of a possible Coalition bust-up in the coming months. To put it in a simple context, Minister Kelly also happens to be Deputy Leader of the Labour Party, and he wants to be re-elected by Labour supporters at the General Election. But the reports, if accurate, are all the more surprising due to both Minister Kelly and Minister Coffey being private landlords themselves.



The European Commission document Rental Market Regulations in the European Union concluded that an efficient, fair and swift judicial system is necessary, while rent control destabilises the rental market and has a negative effect on labour mobility. Even raising the issue has an unintentional consequence of increased rents. Often, landlords with good tenants do not raise the rent and keep the rent at below market cost, but Minister Kelly is in danger of undermining this. A fear of restricted rents leads to increased rents.

Assar Lindbeck, economist and expert in housing, stated that "rent control appears to be the most efficient technique presently known to destroy a city - except for bombing". Professor Lorcan Sirt, talking on Newstalk recently, said that rent control in Ireland is not the answer.

Supply is the fundamental issue and more housing is the fundamental answer to the problem. People in need of social housing are being forced into the private rental market, pushing up demand. The Government needs to increase the amount of housing being built as a matter of urgency, and provide social housing for those in need. The Government strategy, Construction 2020, is a grandiose plan which looks great on paper, but does not solve the fundamental problem. It is an attempt to make it seem that the Government has the matter in hand in the run up to a General Election between now and April 2016. If the State wants a working rental market, as shown on paper in Construction 2020, it has to stop its policy of punishing private property investors.

It needs to treat the sector as a business and:

- **Allow expenses to be deducted like every other sector.**
- **Allow 100% of mortgage interest against tax, similar to commercial investment.**
- **Review the overall tax treatment of the sector.**
- **Allow improvements in the tax year they are carried out.**
- **Review the closure of bedsits.**
- **Pay market rent under its various schemes.**

A Red C poll carried out last summer indicated that 30% of landlords intend to leave the market, and if the current punitive situation with landlords paying tax in loss making situations is not addressed as a matter of urgency, the rental situation will get worse. It will not be solved by the so-called vulture funds buying up distressed properties with the tacit connivance of elements of the State. They are in it for a profit, not for social or philanthropic reasons.

We will continue to lobby on behalf of members, but urge you to contact your representatives, particularly TD's, Senators and General Election candidates, and outline the situation as you experience it. Remember that in the present Dail, 53 out of the 166 TDs are private landlords (including nine Ministers), and in the Seanad, there are 24 private landlords out of the 60 members.

Next Bombshell by Minister Kelly, "lead in water" watch this space!

Stephen Faughnan
Chairman



Meeting with Senator Mary White

Senator White met an IPOA delegation on 28th January in Leinster House.

The discussion centred around rent control, the shortage of accommodation, the issue of the prohibition on bedsits, taxation, and the expiry of the Home Renovation Incentive at the end of December this year. Having listened to the case made by the delegation, she expressed gratitude for clarification on the issues affecting the private rental sector and agreed to bring the case to the Fianna Fail Spokesman on the Environment, Barry Cowen TD, for further analysis and policy decisions in the run up to the Budget and the General Election.



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Meeting with Minister for the Environment, Alan Kelly TD

Minister Kelly met a delegation from the IPOA on the 24th February in Leinster House. The difficulties in the sector were explained and discussed. The unfair tax treatment of the sector was detailed and the difficulties that have resulted.



The Minister stated that he would bring up the issues with the Minister for Finance. He basically glossed through the situation and appeared to be of the opinion that investors were to blame for overextending. He did not want to listen to the situation that Government changed the allowable expenses after people invested. He just stated "move on".

He listened to the situation on the bedsits, and the issue around how many were closed. He wanted statistics that are unfortunately not available. He took on board the situation around units closed where the bathroom was directly outside and exclusive to the unit. He said that he would organise a meeting between the Department of Environment, Dublin City Council and the IPOA to see if the situation could be progressed.

The IPOA advised him that there were 10 houses closed between Hanlon's Corner and the Phoenix Park in Dublin, and that if incentives were given to refurbish, properties closed up could be renovated and help alleviate the homeless problem. These properties are particularly suitable to single people, in view of their proximity to all amenities.

The incentives could also be used to make existing property more energy efficient.

The water charges situation was talked about, and IPOA asked the Minister to leave the current legislation in place and not to make landlords liable for the charges. He stated that he was bringing proposals to Government and ended the discussion.

The problems with the Residential Tenancies Act were aired and the difficulties and delays around it. The IPOA requested amendments be made to the Act to deal with non-paying tenants and anti-social tenants in a more effective way. We also requested that the PRTB be allocated more staff to help increase the processing time of disputes. The Minister stated that he was giving them more staff and that amendments were in train for the Residential Tenancies Act.

The delegation outlined their objections to a Custodial Deposit Protection Scheme. The figures from the PRTB reports show the lack of necessity for this type of scheme.

The IPOA explained their proposal for a compensation scheme instead and the advantages of this were discussed. The Minister was very interested in this and said he would look into it.

Rent control was discussed and the reasons it would not work explained. The Minister stated that he was looking at a form of rent certainty that he would bring before his cabinet colleagues.

Meeting with Senator Gerard Craughwell

Senator Craughwell met with a delegation from the IPOA on the 14th January in Leinster House.



The Senator is very concerned around increased rents and tenants losing accommodation. He had been outspoken in the Senate around these issues. He outlined that his areas of interest were security of tenure, deposit protection, rent control and the difficulties around rent allowances.

The IPOA explained the difficulties being faced by landlords and increased costs associated with letting property. The issues of concern around the private rental sector and the difficulties that were being faced by landlords as a result of the tax treatment and the delays with cases going through the PRTB, were discussed.

The result of the problems in the sector is the reduction in the supply of rental accommodation. The sustainability of the sector is fundamental to maintaining adequate supply and if the tax treatment is not reviewed, there will be less accommodation for rent available.

DKM

In the Autumn of 2014, two reports were issued by DKM on behalf of the PRTB; **Rent Stability in the Private Rented Sector and the Future of the Private Rented Sector.**

These reports contain extremely useful statistical and general information on the sector and are available on www.prtb.ie.

The following information is taken from the **Future of the Private Rented Sector** report:

- * 70% of landlords have debt and 71% of them state that the rental income received does not cover the mortgage or loan payment.
- * 29% of landlords intend to sell as soon as they can.
- * Approx. 70% of estate agents hold the view that tenants are not aware of their responsibilities and 35% are not aware of their rights.
- * 65% of landlords are working full time.
- * 36% of landlords could be classed as 'accidental landlords'
- * 40% of tenants do not know if their tenancy is registered with the PRTB.

- * 32% of PRTB tenancies are on State Support Schemes
- * 62% of rented housing stock is 20 years or younger
- * Rent arrears (35%) and deposit retention (32%) were the two most common issues raised in dispute applications in 2013.
- * The fiscal changes between 2007 and 2014 increased substantially the tax burden on private residential landlords. The restriction on deductions and increased tax (including USC and LPT) may justify increases in gross rents of approximately 20-24%.
- * The Irish private rented sector differs significantly from many of its counterparts elsewhere, with the exception of the UK, in that the tax treatment of the sector does not encourage investment of long term holding of stock; there is high reliance on capital growth by landlords and the fragmented structure of the stock is not attractive to institutional investors.

De-register Tenancies

Remember to de-register your tenancy when it ends. A landlord recently raised an issue particularly around student letting, he was worried that Revenue would take details from the PRTB of a tenancy and an assumption would be made that the tenancy continued and rent had been received. It may be prudent to ensure that the tenancy is de-registered to avoid any confusion.

Understanding Part 4 Tenancies

1. Once a tenant has remained in occupation of a dwelling for a period of 6 months, and no notice of termination has been served, he or she acquires the benefit of a Part 4 tenancy under the Residential Tenancies Act 2004 (the "Act").
2. A Part 4 tenancy entitles the tenant to remain in occupation for a period of four years in total, unless a valid Notice of Termination is served.
3. A landlord has the right to terminate a tenancy in the first six months without giving a reason. This cannot be done where a fixed term IPOA lease is in place for a year, because the fixed term gives a right greater than the Act.
4. An IPOA lease put in place month to month with no fixed term may be terminated in the first six months, provided that a valid Notice of Termination is served. Contact the IPOA office for Notice of Termination document.
5. A Part 4 tenancy which is not a fixed term tenancy can be terminated at the end of the 4 years, and to do so, a valid notice must be served. If no notice is served ending the Part 4, a further Part 4 tenancy is commenced.
6. Any tenancy can be terminated for breach of contract, but written warnings must be given compliant with the Residential Tenancies Acts depending on the breach prior to the service of the Notice of Termination.

Where a tenancy is on a monthly basis, the tenancy can be terminated under Section 34, provisions of which include:

- Breach of lease
- Unsuitable for tenants needs having regard to number of beds
- Need it for landlord, or family member of landlord
- Selling
- Refurbishment (tenant has a right to return)
- Change of use

Forms for the appropriate Notice of Termination for the above are available from the IPOA office - some notices have more requirements than others to be valid. Ring the office prior to serving to ensure the course of action followed is the correct one.

Terminating A Fixed Term Tenancy

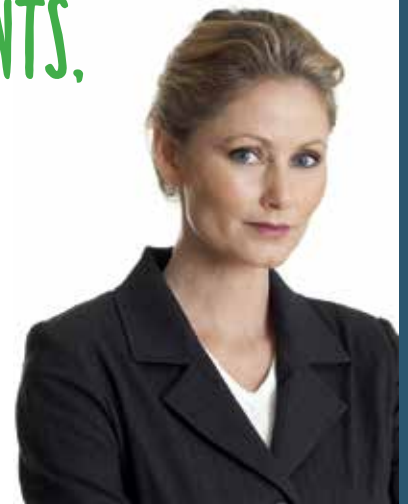
Fixed term tenancies can only be terminated for breach of lease. If a landlord wanted to sell a property, or needs it for a member of his family etc, a Notice of Termination can only be served after the fixed term has ended. If a landlord wants to hold the right in the first six months to terminate without giving a reason, a periodic month to month lease may be put in place.

If a six month lease is put in place, a Part 4 tenancy is entered into and can only be terminated under Section 34. The IPOA office can advise on the correct procedure.

IF I'M LETTING
A FLAT, WHAT
IF THE RENT'S
NOT PAID?



IF I DISAGREE WITH
MY TENANTS,
WHO CAN
MEDIATE
BETWEEN
US?



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Is this the future?

Minister Kelly's actions appear to want to drive investors out of the private rental sector, despite Government policy on housing. Issues possibly facing landlords:



- Deposit Protection Scheme
- Landlords responsible for collecting Water Charges
- Rent control
- Lead in water legislation
- Minimum BER requirements
- Indefinite Leases

Existing Investor's confidence is at an all-time low, Governments change rules, eg refusing to allow 25% of interest paid to the bank as an expense, when it is a legitimate expense.

This was done to investors after they invested, as entering into long term leases with this uncertainty should be carefully considered.

Abandoned Rental Property

Section 37 of the act deals with deemed termination of a tenancy by tenants. If the tenant has abandoned the property and the rent is in arrears for more than 28 days, it may be deemed terminated by the tenant.

- * Try to contact the tenant to ascertain if they have moved.
- * Talk to neighbours to see if they saw the tenant move out or if the tenant talked to them.
- * Leave a note to ask them to contact you.
- * Check if the electricity is still in their name.
- * Make a visual inspection from the exterior of the property to ascertain if they have left.
- * If you are seriously concerned about the tenant's welfare, consider contacting the Gardai.
- * If the property has been abandoned, take photos, organise to take possession, and re-let.

Section 37 of the Residential Tenancies Act

37.—(1) Subject to subsection (3), a Part 4 tenancy shall be deemed to have been terminated by the tenant on his or her vacating the dwelling if—

- (a) before or on or about that vacating, he or she serves a Notice of Termination in respect of the tenancy that does not give the required period of notice,
 - (b) before or on that vacating, the rent has fallen into arrears.
- (2) Subject to Sub-Section (3), a Part 4 tenancy shall also be deemed to have been terminated by the tenant upon any rent owed by him or her being in arrears for a period of 28 days, or more, if—
- (a) whether before or after the end of that period, the tenant has vacated the dwelling, and
 - (b) no Notice of Termination has been served by the tenant in respect of the tenancy.
- (3) Sub-Sections (1) and (2) do not apply if the Part 4 tenancy has been sub-let or assigned.
- (4) Nothing in the preceding Sub-Sections affects the liability of the tenant for rent for the period that would have elapsed had a Notice of Termination giving the required period of notice been served.

Home Renovation Incentive (HRI)

Section 5 of Finance (No. 2) Act 2013 introduced a new Section 477B into the Taxes Consolidation Act 1997. The Section initially provided for tax relief for homeowners by way of an income tax credit equal to 13.5% of qualifying expenditure incurred on repair, renovation or improvement work carried out on a homeowner's only or main residence. Section 13 of Finance Act 2014 extended the relief to include rental properties. The work must be carried out by a qualifying contractor.

The principal features of the HRI are as follows:

- For landlords, the HRI is due to run from 15 October 2014 to 31 December 2015.
- In order to avail of the relief, landlords must register tenancies in respect of their properties with the PRTB.
- Qualifying expenditure is expenditure which is subject to the 13.5% VAT rate.
- The income tax credit is calculated by reference to the VAT exclusive cost of work.
- The work must cost a minimum of €4,405 excluding VAT (€5,000 including VAT). This would give rise to a credit of €595.
- Qualifying expenditure up to a maximum of €30,000 excluding VAT (€34,050 including VAT) will qualify for relief. Where the cost of the work exceeds €30,000 excluding VAT, only qualifying expenditure up to €30,000 excluding VAT will qualify. Therefore, the maximum credit per qualifying residence is €4,050;
- If work is grant aided, or if any form of insurance or compensation is received in respect of the work, the amount of relief will be reduced.
- The credit is granted over the two years following the year in which the work is paid (or deemed to be paid) for, with half the credit being allowed in each of the two years. Where full use of the credit cannot be made in those two years, the credit will be carried forward to subsequent years.
- Building contractors must be VAT registered and tax compliant to carry out the work.
- The HRI will be administered through Revenue's Home Renovation Incentive online system.
- Contractors will be required to inform Revenue in advance of details of work to be carried out and will also be required to notify Revenue in relation to any payments received in respect of the work.
- Homeowners/landlords will be able to view the information provided to Revenue by the contractor through the Home Renovation Incentive online system and will also claim the relief through that system.
- Where works have been successfully notified to the Home Renovation Incentive online system, the homeowner/landlord can be satisfied that the contractor is a qualifying contractor.

From 15 October 2014, a qualifying residence also includes a rental property where the landlord is subject to income tax on the rental income. The property must be situated in the State, owned by an individual and occupied under a tenancy registered with the PRTB. Where the property is not occupied by a tenant, the landlord must intend it to be so occupied, and it must be occupied by a tenant under a tenancy registered with the PRTB within 6 months of completion of the qualifying works. It is important to note that where a property is converted into more than one rental unit, each rental unit would be deemed a qualifying residence for the purposes of the HRI provided the tenancy for each rental unit is registered separately with the PRTB. If a rental property is in 6 units prior to qualifying work being carried out, but following the carrying out of such work is converted into 4 rental units, the HRI will be available in respect of each of the 4 final units, and not each of the initial 6 units.

More information at www.revenue.ie/en/about/foi/s16/income-tax-capital-gains-tax-corporation-tax/part-15/15-01-43.pdf

Seeking Rental Properties to Support People Building Lives in their Own Community



St. Margaret's is a capacity based service, supporting people to integrate back into their community. We work with people who have lived in institutional residential settings where they have been isolated from building a life in their community, from having the opportunity to have a life of their choosing.

St. Margaret's Vision is of communities where all citizens live socially inclusive lives, occupy valued social roles and receive the services and supports that they require according to their individual needs.

St. Margaret's is seeking properties that provide long-term sustainable homes for people moving to their own home in their community. Having a home provides the bedrock for any of us to build relationships and to give to our community. At St. Margaret's we are working with Housing Agency to source funding for our housing.

Our Property Requirement:

- A variety of properties, apartments, houses, currently but not exclusively, across South & West Dublin (minimum 2 beds) Ground-floor apartments & single-storey dwellings especially welcome.
- Properties for a minimum period of 7-10 years
- Rent: 80% of the rental market value.
- Periodic rent reviews.
- St. Margaret's pays the rent directly to the landlord.
- The Tenancy is in the person's name – their home.
- Properties may be unfurnished/part furnished as each person may have specific furnishing requirements.
- Modifications (e.g. kitchen, bathroom, etc), St. Margaret's will agree same with landlord, undertake works and reinstate to former standard.
- Maintenance: St. Margaret's will maintain (house & garden) in good condition, and repairs to leaks, etc. by our maintenance team during the period of the tenancy – painting, upgrade, etc.
- White Goods: Breakdown of white goods, after a period of 5 years of tenancy will be replaced.
- Staff Support: Each person moving to their own home has their support staff who stay in the person's home to support them (this is why we require a minimum of 2 bed for a person moving on their own).

- Landlord responsible for the structural safety
- Landlord insurance

Landlords who are interested in letting for shorter periods may:

1. 92% of current market value
2. Landlord responsible for maintenance of property
3. Furnished
4. Tenancy in person's name
5. St. Margaret's will be responsible for payment of rents, etc.
6. St. Margaret's will agree modifications and reinstatement at the end of the lease.

Interested Landlords can contact :

Breda O'Neill (Chief Executive)
01-2603630 / 087-2201586
bredaconeill@stmargaretscentre.ie

PRTB Tribunals

Tribunals are open to the public; contact the PRTB to organise to attend. If you or your tenant have appealed an adjudication, it would be wise to sit in on one in advance to understand the process and what is required.



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Deals with Banks may have Tax Implications

Landlords and financial institutions are entering into debt settlement arrangements with more frequency lately and those often involve the agreed or forced disposal of property by the landlord. All commercial transactions have a tax consequence. Property owners should be cautious that in reaching settlements with the bank, they don't create unforeseen tax liabilities.

It is pointless to settle debts with the Bank, but in so doing, create debts with Revenue.

The disposal of a property may give rise to various tax consequences:

Capital Gains Tax

Where a property has been held for investment purposes, landlords need to consider if they have an exposure to Capital Gains Tax (CGT) upon disposal. The CGT that arises is determined by the proceeds received as reduced by the price paid for the property on its original purchase, together with any enhancement expenditure incurred in improving the property, over the course of the period of ownership. It is important that landlords are aware that the amount which is borrowed in respect of that property has no bearing on any CGT liability arising. This can be an acute problem in circumstances where individuals have re-financed property over the period of ownership. This could result in a situation where a property which was purchased years ago for a relatively low purchase price had been re-financed, leading the borrower to mistakenly believe that because all of the proceeds are being paid to the Bank, and because they are not receiving any proceeds, no tax liability arises to them.

Example 1:

John purchased a pre 63 in 1992 for IR£50,000. He refinanced this property in 2004 to acquire a holiday home. He now owes €275,000 on the pre 63. The pre 63 is being sold for €250,000.

Capital Gains Tax as follows:-

Proceeds:	€250,000.00
Base cost: IR£50,000 x .78764	€63,487.00
Index:	1.356
Deductible base costs	(€86,088.00)
Gain:	€163,911.00
Annual exemption:	(€1,270.00)
Taxable gain	€162,641.00
Tax @ 33%	€53,671.00

John sells the property and gives the full €250,000 proceeds to the Bank. He meets with his tax adviser to file his returns later in the year, and it is identified that a disposal took place and that he has to deal with a CGT liability, when he has no funds to do it. John should agree with the Bank that the property is only sold where the Bank is agreeable to his tax liability being paid out of the proceeds received.

Losses

If a property owner is in circumstances whereby they are negotiating with banks around the agreed or forced disposal of property, it is likely

that losses will have arisen somewhere within the portfolio. Landlords should be aware that losses, from a CGT point of view, cannot be carried back. Borrowers should give priority to crystallising losses prior to crystallising gains. The date a contract is signed is relevant for CGT purposes in terms of when a loss will arise, and on the basis that the sale eventually closes, that loss will be available from the date the contract was signed. If due consideration is not given to these matters, a gain could arise upon which tax will be chargeable prior to crystallising a useful loss in circumstances where the loss will not be available for offset.

Example 2:

John had purchased an office building in 2006 for €1,000,000. The building is now worth €400,000. If John sells this building before he sells the Pre 63 property in Example 1, he will have crystallised a loss. This loss can be set against the gain arising above, eliminating that €53,671 tax liability. If John delays the disposal of the office until the following year in anticipation of obtaining a better price, the loss will not be available to carry back against the gain, and the tax will be payable.

Connected party transactions

Some debt settlement arrangements will involve inter family transfers of properties if a second generation are taking on properties together with some level of debt. This can have reasonably serious tax consequences from a CGT point of view, whereby the loss which may arise on the transfer of a property to a connected party will be restricted. Landlords should consider trying to plan around this problem by arranging for the disposal of any gain bearing property to the same connected party if possible.

Example 3:

John agreed to transfer the office to his son and the Bank agreed to lend the son €400,000. The loss available to John is now restricted and is not available for offset against the gain under Example 1. The loss can only be used against gains arising to the same connected party.

Value Added Tax

VAT will often be a consideration on the disposal of property and if any VAT is being reclaimed in respect of a property acquisition, it is likely that VAT will be charged on its disposal. Ultimately, care should be taken to ensure that any VAT which may arise on the disposal is remitted to the Revenue prior to any proceeds being remitted to the Bank.

Dealing with Bank

Financial institutions can be difficult to deal with at the best of times, particularly in regard to fraught discussions around debt settlement arrangements; however, they tend to be realistic in circumstances where amounts are owed to Revenue and in that context, they tend to be agreeable towards ensuring that any tax consequences which are arising by reason of an unwinding of a situation are remitted to the Revenue Commissioners in priority to their own debt. However it is imperative that this matter is brought to the bank's attention and agreement is reached on how tax is handled prior to the disposals taking place. Ultimately, the tax exposures arising will be a liability of the investor and Revenue will pursue them for it.

Write down of debt

In circumstances where an individual successfully manages to secure a general write down of any debt settlement arrangement with the bank, they should be aware that there may be tax consequences in this regard also. The tax effect is to ensure that the loss which is available for offset

against gains arising is restricted to the economic loss that is suffered, as distinct from the loss that may have ostensibly been incurred prior to write down. This can have the effect of actually crystallising gains in circumstances where it might not have been anticipated or identified, and for the same reasons, they need to be considered carefully prior to entering into any concrete decisions around the disposal of assets.

Example 4:

John sells office to an unconnected third party for €400,000. This generates a loss of €600,000. He uses some of this loss to offset the gain on the disposal of the Pre 63 property as above. Sometime later, the Bank writes off €600,000 that was outstanding on loan. This has the effect of reducing the loss that arises on the disposal of the office block by the same amount - €600,000. The effect will be that no gain will arise on the disposal of office, but the loss that was used to shelter the Pre 63 gain will no longer be available and a charge will arise.

Conclusion:

Arriving at a debt settlement with the bank should be a positive point for a borrower in dealing with matters substantively. While a borrower may not be happy with the arrangement and may have plenty of regrets around the circumstance giving rise to it, the agreement should offer some type of solution which one would expect will give the borrower some certainty and stability on their own situation into the future. It is therefore crucial that one does not overlook these tax issues as it would be catastrophic to reach agreement with one debtor while creating another. Ultimately, we would recommend that any debt settlement arrangement is subject to a tax review to ensure that any potential liabilities which may be crystallised on foot of disposals, which are forced or otherwise, are identified early and can be remitted out of the proceeds achieved prior to payment to the bank. Landlords should also consider requesting that the professional fees in respect of this review are paid out of the proceeds arising, in the same manner in which conveyancing fees, auctioneers fees, etc. will be paid out of those proceeds.

Cathal Lawlor B Comm, AITI Chartered Tax Adviser, TEP.

Lawlor Partners Solicitors and Chartered Tax Advisers
4/5 Arran Square, Arran Quay, Dublin 7

NESC Report: Ireland's Rental Sector - Pathways to Affordable Secure Rental Housing

This report is available on the NESC website. While it is a comprehensive report, we have been here before in the context of the Commission Report which was issued in July 2000. A balanced package of measures were recommended. The measures to benefit tenants were implemented, but the fiscal measures in respect of landlords were not implemented. The report recommended that the business of providing rental accommodation should be taxed in the same manner as any other business. Instead, the tax treatment was changed, to the detriment of the sector, at a time when income was already down by over 20%. Rather than produce discussion documents, there is a real need that the underlying problem -lack of supply, is addressed. The solution is fair tax treatment. Expenses should be allowable as expenses, the Local Property Tax is an expense and needs to be allowable as an expense. Long leases can be encouraged with incentives, but it is a considerable risk to enter these when the state is untrustworthy and changes the rules, increasing costs resulting in unsustainability in the sector. The IPOA met with the NESC during the consultation process; outlined the difficulties facing the sector, and provided workable solutions.

Extract from the NESC report

"This vision and analysis provides the basis for a strategic approach on five interrelated fronts. Secure Occupancy; in international housing analysis and policy, the concept of secure occupancy is used, rather than traditional forms of rent control. In a number of the most successful market economies there are well-established, balanced forms of rental sector regulation that create secure occupancy. Drawing on these examples, we identify four elements of a secure occupancy model for Ireland:

- Introduce a system of rent regulation to provide greater certainty for tenants and landlords through a mechanism for disciplined market-sensitive rent adjustment;
- Change the existing system of four-year leases to a regime in which leases are effectively indefinite;
- Remove sale of the property as a reason for vacant possession; and
- Improve the existing dispute resolution procedures.

We emphasise that these provisions are proposed as part of an overall reform package that includes more favourable tax treatment of rental income and measures to enhance the supply of affordable rental accommodation.



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Social Housing Leasing Initiative

In order to increase the availability of properties for social housing provision, the Department of the Environment, Community and Local Government (DECLG), launched the Social Housing Leasing Initiative in 2009. This involves housing authorities leasing properties from private property owners for the purposes of providing accommodation to households on social housing waiting lists.

Access to housing stock will be achieved through:

- Local authorities leasing properties from private property owners for periods of 10-20 years.

- Approved Housing Bodies leasing from property owners, purchasing on the market or constructing properties and making them available for social housing provision through direct agreements with the DECLG.
- Local authorities temporarily utilising unsold affordable housing stock.

More information is available from the Local Authorities Website or by contacting them directly.

Rental Accommodation Scheme (RAS)

The Local authorities enter into contractual arrangements on behalf of tenants with accommodation providers, primarily in the private rented sector to secure medium to long-term availability of rented accommodation.

- The local authority pays the full rent to the landlord providers on behalf of the tenant.
- The landlord must be tax compliant and produce a Tax Clearance Certificate from Revenue Commissioners.
- The property must meet minimum standards for private rental accommodation.
- The landlord must register the tenancy with the Private Residential Tenancies Board.
- The landlord is contractually obliged to maintain the property in good condition and deal with any repair issues in a timely manner.

There are two types of contractual arrangements which may be entered into between landlords, housing authorities and tenants, one is a Tenancy by Tenancy Agreement and the other called an Availability Agreement.

In simple terms, a Tenancy by Tenancy Agreement is based on a standard tenancy agreement which sets out the Landlord and Tenant's obligations. Essentially, the Housing Authority guarantees to pay the landlord the agreed rent on behalf of the tenant and guarantees the payment only for the duration of the tenancy.

The tenant remains the tenant of the Landlord and the Landlord retains all his/her responsibilities e.g. insurance, maintenance etc.

Under Availability Agreement, the Housing Authority has exclusive availability of the property for a fixed term and has nomination rights to tenant the property. The arrangement involves a three-way legal structure governed by both Contract Law and Landlord and Tenant Law for residential tenancies as set out in the Residential Tenancies Act 2004.

If you are considering making your property available for RAS or under SHCEP (Social Housing Current Expenditure Programme, formerly known as Leasing) where dwellings are leased by housing authorities on long term (up to 20 year) leases from private owners, you need to contact the RAS or SHCEP Section within the local authority in whose area the dwelling is located, as they are responsible for the administration of the above schemes.

Housing Assistance Payment

HAP is a new form of rental assistance which will be paid by local authorities directly to landlords for households with a long term housing need. An applicant who is eligible for HAP will find a suitable property in the private rental sector. As part of their application process the landlord of the property will be required to submit certain information to the local authority. This information will include:

- The monthly rent amount
- The landlord's bank account payment details
- An undertaking regarding the property's compliance with standards for rental accommodation
- An undertaking regarding the landlord's tax compliance

Where the application is approved, the local authority will commence making HAP payments in respect of the agreed rent amount directly to the landlord's bank account subject to certain conditions. In general, HAP payments to the landlord in respect of the rent will be made on a monthly basis.

Similar to the Rent Supplement scheme, limits will apply regarding the maximum payment for different household types in different areas. The Residential Tenancies Act 2004 (RTA) will govern the relationship between the landlord and the tenant. There is no contractual relationship between the local authority and the landlord. The local authority is making a payment on behalf of the HAP tenant.

HAP tenants will be required to pay a weekly rental contribution to the local authority in accordance with the local authority's differential rent scheme. Payment of this contribution is a condition for the continued eligibility of the tenant to benefit from the local authority making HAP payments, on their behalf, to the landlord. If this payment is not made by the tenant, the HAP payment may not be paid to the landlord.

Consider Letting Unfurnished

Traditionally in Ireland, we let properties furnished; however, there is a growing demand for unfurnished property. Ireland lags behind a number of our European neighbours who provide both furnished and unfurnished accommodation. Properties let unfurnished will typically have tenants who stay longer, and make them a home. The tenants will furnish to their own taste, comfort and to their family requirements.

The benefits for landlords are that the tenant is more likely to maintain it well. The landlord is not responsible for furnishings, which reduces the cost, and refurbishment time between lettings is quicker. A difficulty in this situation is the Housing Standards for Rented Houses which state that certain items should be provided in a house eg 4 ring cooker, fridge-freezer, washing machine, and microwave and the responsibility for maintenance "shall rest with the landlord". The law basically states that these items have to be provided even if the tenant does not want them, and that the landlords is responsible even where the tenant owns them. A ridiculous situation which has been raised with Government, but remains in place 7 years later.

The Residential Tenancies Act 2004 covers furnished and unfurnished letting and a tenant and landlord have the same rights and obligations in both cases.

A large, realistic-looking shark is breaching the roof of a traditional brick house with a tiled roof. The shark is angled upwards towards the sky, with its tail and dorsal fin visible above the roofline. The house has multiple chimneys and a gabled roof. The sky is blue with scattered white clouds. In the foreground, a blue car is partially visible on the left, and a green fence is at the bottom.

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are some things you
just can't predict.***

***Your rental income
shouldn't be one
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MALLIN O'TOOLE LAW FIRM. 30 Upper Pembroke Street Dublin 2 Ireland.



We are a client focused practice committed to the prompt delivery of effective legal representation in respect of both contentious and transactional property related issues including:

Landlord & Tenant (PRTB related issues - Court Enforcement of PRTB Determination Orders – Representation at PRTB Adjudication & Tribunal Hearings) / Inheritance Disputes / Rights of Way / Trespass / Conveyancing.
 Commercial Property (Lease Renewal & Assignment – Breach of Covenant, Forfeiture & Re-Entry) /
 Bank Security Enforcement related issues / Dilapidations / Rent Review Disputes / Recovery of Rent Arrears.

Telephone 01-2342563, web www.mot.ie or e-mail info@mot.ie to request a call back.

Court Enforcement of a Determination Order made by the Private Residential Tenancies Board.

Section 124 of the Residential Tenancies Act, 2004 (the "Act") makes provision for the circumstance where a party has a Determination Order (a "DO") made in their favour, but the other party fails, neglects or refuses to comply with the terms of the DO. A common example of such a breach of a DO would be where a tenant refuses to vacate a rented dwelling within the time allowed in the DO.

The Act allows a landlord to take the initiative and pursue a prompt application to the Circuit Court to enforce the DO so that the relevant loss of rental income can be mitigated in the shortest possible period of time.

The following points should be borne in mind in securing the Enforcement of a Private Residential Tenancies Board DO (the "Application"):

- (i) The Application should only issue after the breach of the DO has occurred. In this regard, it is important to note that the date of the DO is the date of the cover letter issuing the DO from the PRTB, and not the date of the Adjudication or Tribunal Hearing.
- (ii) The Application must issue in a specified and prescribed format and be grounded on an Affidavit which sets out clearly and precisely the relevant history of the breach of the DO. The Grounding Affidavit must also exhibit original or certified true copies of particular documents, including the DO itself.
- (iii) Upon issue of the Application, it is given a hearing date which is usually a period of 3-5 weeks from the date of issue (this period may be slightly longer or shorter depending on which particular Circuit Court the Application is made within).
- (iv) In order for the Application to proceed before the Circuit Court on the morning it is listed for hearing, the Applicant must be in a position to prove service of the Court papers on the Respondent, with the adequate period Notice having been provided to the Respondent.
- (v) The hearing of the Application is Affidavit based, though the Court may, in its discretion, hear oral evidence from the parties where it is required.
- (vi) The Act provides that the Circuit Court shall make an Order directing the Respondent to comply with the DO unless it considers, or the Respondent shows to the satisfaction of the Court, that the process followed in making the DO was not procedurally fair, or a material consideration was not taken into account, or an erroneous decision in relation to a legal issue was made in the processing of the dispute.
- (vii) All Applications can proceed, and a Court Order made, on the first day in Court (subject always to the discretion of the Court) as long as all of the prepared papers are in order, the relevant proofs are set out, and proof of service of the Application is provided (especially in circumstances where the Respondent does not appear in Court).

(viii) Once the Court Order has been made, it should then be taken up and served in a specified manner on the Respondent.

(ix) In a small minority of cases, the Respondent may persist in breaching the Court Order, at which point it will become necessary to establish proof of service of the Court Order, by Affidavit, so that a further Order can be made through the Office of the Circuit Court (without requiring a further Application to Court) which will allow for Execution of the Court Order.

(x) Execution of the Court Order is a matter for the Sheriff (or the County Registrar of the local Circuit Court exercising that function) who will attend at the property for the purpose of securing possession for the landlord, who must be present personally or through their agent, to receive possession.

Enda O'Toole

(The information provided in this note does not constitute Legal Advice and should not be relied upon as such.)

Inspections and Housing Standards

Rental property must be compliant with the Housing Standards for Rented Houses regulations. Ensure that you inspect your property regularly - we recommend at least every six months with these standards in mind. Minor issues found can be dealt with quickly and efficiently.

If there are problems with the tenants maintenance of the property, discuss it with them and note this in your records. Follow this up with written correspondence outlining the items that need to be addressed and the consequences of not dealing with the items. Warn the tenant that not dealing with the items is a breach and could lead to termination of tenancy. Organise to re-inspect.

UIPI Update

The UIPI office in Brussels continue to fight for the property rights of member organisations. Their work and presence is of the utmost importance and ensure that our voice is heard in Europe. Proposed EU directives are read, digested, analysed and difficulties pinpointed. Meetings, submissions and correspondence are then entered into to outline the perceived difficulties from the practitioners' point of view.



This is essential or EU Directives may be formulated without consultation with landlords. In recent times the UIPI proposed amendments to the parliamentary report on Energy Union, the report on Energy Security, resource efficiency in Buildings and the Commission workshop on heat metering and billing. Their work is extensive and critical. The 43rd UIPI Congress will take place in Oslo, Norway, on 27th and 28th June 2015. The focus of this year event will be on "Young people entering the European Housing Market".

Rent Certainty Lease

There is currently a lot of talk around rent certainty leases. The Minister for Environment would like to introduce these, and is to bring proposals in this respect to Cabinet, but how he would like this to work is not yet in the public arena.

This is another form of rent control. This may be a situation where a longer term lease would be put in place with the rent increases agreed in advance, or linked to the Consumer Price Index, as part of the contract.

This should be voluntary in nature, and landlords and tenants would have to agree. The lease period could vary, but rent should go back to market rent at the end of the lease. A number of issues could arise in this situation:

- * The existing 4 year cycle could cause difficulties if the lease term was not aligned with it.
- * Complications could arise around house shares in this situation.
- * Concern around subletting rights may prevent the take up of these leases.

Rent control causes a reduction in available accommodation, reduces the flexibility of the workforce and leads to reduced standards in accommodation. Lack of supply is the issue and this needs to be addressed in a fair and equitable way.

Rent Arrears – What to do

There is a growing level of rent arrears being experienced by landlords. Do not delay in this situation, act immediately. The following steps should be adhered to:

1. Contact either verbal, or in writing, should be made with the defaulting tenant and they should be advised that they are in rent arrears, detailing the amount outstanding and further advising that in the event of the arrears not being brought up to date, the tenancy will be terminated (such communications need to be recorded in your diary; the date needs to be noted for use in support of any case that may need to be taken). We recommend that you do this in writing.
2. Issue the Notice for Non-Payment of Rent, 14 days notice.
3. Serve a Notice of Termination for rent arrears.

Ensure that you keep identical copies of each Notice for your records – you may need them if a case has to be taken to the PRTB.

The IPOA office has drafts and can provide them, to ensure compliance with the Residential Tenancies Act.

Thank You

We very much appreciate the work of the people who made contributions to the various aspects of the newsletter, and would like to thank them for their articles. We would also like to thank our advertisers for their support and ask members to consider supporting them.



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Water Charges

THE IPOA met with Irish Water on a number of occasions and while the situation is still evolving, the current position on water charges is as follows:-

The occupier is responsible for the water charge. The owner of a property may be billed for the water charge unless Irish Water have been made aware of the name of the occupier. As the landlord of the property, you can contact Irish Water on 1890 448 448 and provide the name of your tenant. Irish Water will then write to your tenant to invite them to register. This will ensure that you are no longer liable for water services charges whilst the tenant continues to be the occupant of the property. If you have a number of properties, Irish Water can email you a pro-forma document that you can fill in and email back, which may be faster than phoning in the information.

The personal data to be provided by landlords or their authorised agents is limited to the tenants' names only, and is to be used solely by Irish Water in the performance of its statutory functions under the Water Services Acts 2013, to identify who is the customer at a premises to which Irish Water is providing water and wastewater services. The provision of such names is necessary both for Irish Water to perform its statutory functions, and for Irish Water and the landlords' legitimate interests in ensuring the correct customer is identified. As such, its processing is in accordance with the Data Protection Acts. The occupier can contact Irish Water to provide this information, and there is no cut-off date for them to apply.

Water Charges - Tenant Leaving - What tenant can do

What your tenant should do on leaving a rental property and wants to close their account:

1. The tenant should call Irish Water on 1890 448 448 (lines are open from 8am-8pm, Monday to Friday and 9am-5.30pm on Saturdays).
2. Irish Water will ask your tenant to provide their name, address and/or account number.
3. The tenant and Irish Water will agree a meter reading if the property is metered. Irish Water can generate an estimated meter reading or alternatively a meter reading can be provided to them.
4. The tenant should provide the address of the property that they are moving into so that Irish Water can transfer their account.
5. The tenant should give a forwarding postal address so that Irish Water can send them their final bill.

Who pays water charges when property is empty?

If your rental property is not occupied, you are responsible for the water charge. €125 per annum for both services (water supply and wastewater services). If you are between tenants, you are responsible for that period and it will be a pro-rata amount of the €125 eg. if it was empty for ten days and you have mains water service and wastewater service, it would be €125 divided by 365 days and then multiplied by 10 days.

Should a landlord refund the deposit or should they check that the water bills are paid?

Whilst there has been a recent Government announcement regarding their intentions for deposits, legislation detailing how such arrangements would operate is required before any obligations on landlords would come into effect.

How does the landlord know if charges are outstanding on a tenant moving out?

There is currently no requirement for a landlord to know the balance on their tenants account.

What may be coming down the pipe - extract from Taoiseach's Statement - but not law as yet:

The Department of the Environment will strengthen the regulatory regime around the payment of water charges through measures not involving court proceedings.

- i. The liability for the water charge will transfer automatically to an owner of a property where the owner has not provided Irish water with the necessary details in respect of a tenant.
- ii. There will be a deemed obligation, in all new tenancy agreements, for the occupier to pay water charges, other than short-term lets where the landlord may retain this liability. It would already be standard in the majority of leases that tenants have responsibility for utility payments, including water.
- iii. There will be a further requirement for a landlord to retain a tenant deposit until the tenant provides evidence that they have paid their water charges; this is a temporary role for landlords until such time as the PRTB take over deposit protection whereby tenants will have to demonstrate that the domestic water bill is settled to recoup all or part of the deposit.
- iv. Furthermore, there will be an obligation to confirm that water charges are paid before the completion of the sale of a dwelling to include a requirement to discharge arrears of water charges. A yearly domestic water bill represents a minor proportion of the proceeds of a house sale.

Are you a landlord or a tenant?

If you are a landlord or a tenant of a residential property, please call us to confirm if the property is registered, if you haven't already done so.

Remember, as a tenant, if you have registered with us, you qualify to apply for the **€100** water conservation grant.

LoCall **1890 448 448** or visit **www.water.ie** for more information.

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