

LANDLORD AND TENANT

Law guide - Landlord and tenant disputes

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Rights of a landlord

Termination for breach of tenancy obligations

If a tenant breaches his or her obligations under the Act, then 28 days' notice need only be given by the landlord, regardless of the duration of the tenancy. This should be preceded by a warning notice allowing a reasonable opportunity to remedy the breach if it is a tenancy of more than 6 months. The Act does not define 'reasonable' for this purpose.

If the breach concerns non-payment of rent and the tenant is in the property six months or more, a prior notification of arrears must have been sent to the tenant with 14 days having passed before a valid notice of termination giving 28 days' notice is served.

Irrespective of the type or duration of a tenancy a landlord can serve a notice of termination giving just seven days' notice, and no other warning, where the behaviour of the tenant is either anti-social or is threatening to the fabric of the dwelling or the property containing the dwelling.

A reason for termination must always be given where the tenancy has lasted for more than six months or is a fixed term tenancy. See section on 'Termination of a tenancy and eviction' for further details.

Additional rights under the Residential Tenancies Act 2004

In addition to terminating the tenancy the landlord also has the right to:

- set the rent, once a year, according to the current market rent (but see Law Guide 'Setting up a tenancy', section 'Reviewing rent' for amendments to this right)
- receive the rent from a tenant on the date it is due
- pay any charges related to the property e.g. taxes and duties
- end the tenancy without reason within the first six months of the lease agreement (however, care should be taken when dealing with fixed term tenancies as a reason will always have to be given)
- be informed of who is living in the property
- decide whether to allow sub-letting by the tenant
- be informed of any repairs needed and granted access to fit them
- refer any disputes to the RTB

Obligations of a landlord

The law protects tenants and it is vital that landlords are aware of their legal obligations to tenants. In particular, there are special laws and procedures that govern health and safety and occupation of the property by the tenant.

In addition, when a tenant fails to pay rent on time or at all, certain steps and procedures should be followed. Landlords should not take the law into their own hands, irrespective of the circumstances; otherwise they may risk a fine or conviction.

Deposits

When the tenancy ends, you are obliged to return the deposit to your tenant. A landlord may withhold a deposit, part or in total, from a tenant if any of the following have occurred:

1. Your tenant has not given proper notice of termination of the tenancy resulting in loss.
2. Your tenant left outstanding bills or rent when leaving the accommodation.
3. Your tenant has damaged the accommodation beyond usual wear and tear.

You should note that there is a general duty on the landlord to mitigate any losses.

Landlord registration

By law a tenancy must be registered with the Residential Tenancies Board (RTB) under the Residential Tenancies Act, 2004. Registration forms are available from their website, www.rtb.ie. If you do not register then you will not be able to avail of the RTB's dispute resolution service and you may be prosecuted. Also an investor that rents out his property but does not register the tenancy with the RTB may not be able to offset mortgage interest on the investment property as an expense for tax purposes.

Each application will be contained in the Register of Tenancies which is maintained by the RTB. The information on the register is used to provide aggregate data on the private rented sector. Personal details such as the tenant name, landlord name, rent, etc. will not be made public.

The following information is required by the RTB in order to register a tenancy:

- rented dwelling address
- dwelling type (i.e. Whole of House/Apartment/Flat)
- bed spaces & number of occupants
- approximate floor area in square meters
- BER Certificate rating (if applicable)
- local authority in which rented dwelling is located
- tenancy commencement date
- landlord name/address/PPS number

- tenant name/PPS number
- authorised agent (if applicable) name/address/CRO number/PPS number
- management company (if applicable) name/address/CRO number

Registration can be done online on www.rtb.ie. A fee is payable to register the tenancy and the completed application to register must be received by the RTB within one month from the tenancy commencement date. A late fee applies where an application to register a tenancy is received more than one month from the tenancy commencement date.

A composite fee is payable for multiple tenancies in the one building being registered at the same time by the one landlord within one month of the commencement date of the first tenancy. If, in the 12 months following the payment of a composite fee, one of the tenancies included in the set of multiple tenancies ends and a new tenancy is created, the application to register that new tenancy does not have to be accompanied by a fee provided it is made within one month of the commencement of that tenancy.

No fee is payable where two payments in respect of the tenancy have been made to the Residential Tenancies Board in the previous 12 months. No fee is payable to update details of a tenancy already registered.

Structure, and health and safety

Landlords are generally responsible for the maintenance of and major repairs to a property. This includes repairs to the structure and exterior of the property.

A property must be 'fit for habitation' and therefore a landlord is obliged to make sure that water, electricity, gas supplies and sanitation (for example, drains, basins, sinks, baths and WCs) are in working order and that the property is free from any damp that could damage the health of the occupier. There are also further structural obligations upon a landlord.

If the property being let does not satisfy these criteria and there is a health risk to the tenant, then he or she may be able to take legal action against the landlord.

Gas safety

Gas appliances and installations that are supplied with the property should be maintained in good order and should receive an annual safety check by a professional registered gas appliance servicer or installer. A copy of each safety certificate should be retained and upon request issued to new or existing tenants.

The local authority may also inspect the property where there is a public safety risk and random inspections are typically carried out where the property is rented to a person on the housing list or someone in receipt of rent supplement or rent allowance.

Fire safety

If a landlord supplies furniture or furnishings with the property, these need to be fire resistant and compliant with fire safety standards.

Fire safety for any home is important, but if a property has multiple occupants, there are further precautions that should be taken since the risk of fire is greater. For example, consideration will need to be given to the use of fire extinguishers, fire blankets, multiple fire alarms and multiple escape routes.

Electrical safety

Electric appliances and installations that are supplied should be maintained in a good order and should be safe. There is a legal obligation on a landlord to ensure all electrical appliances provided or fitted by the landlord are free from danger and safe to use.

Energy performance certificates

Before you can market a property for rent you have to have a valid BER Certificate and energy rating available for prospective tenants. The certificate provides a rating for the building showing its energy efficiency. The ratings are similar to those found on products such as fridges and are standardised, so that the energy efficiency on one building can be easily compared to the energy efficiency on another building.

Each rating is based on the performance of the building itself and its services (such as heating and lighting), rather than the domestic appliances within it. This is known as an asset rating. The certificate also lists the potential rating of the building if all the cost-effective measures were installed. The ratings will vary according to the age, location, size and condition of the building. The potential rating on the certificate will take these factors into account, and the suggested measures will be tailored so that they are realistic for the particular building.

Rent

If the tenant falls into rent arrears and has not paid, you must act immediately, otherwise the situation will get out of control. In most cases, initial non-legal action will be sufficient. You should make contact with the tenant by sending a letter demanding that the rent be paid. Most tenants will respond when reminded and remedy the situation.

Tenancy deposits

Deposit

You may ask the tenant to pay a deposit before moving into your property to act as security in case he or she leaves the property owing rent or, to pay for any damage or unpaid household bills at the end of the tenancy. You should negotiate the amount with the tenant.

You should state clearly in the tenancy agreement the circumstances under which part or all of the deposit may be withheld at the end of the tenancy.

Deposit refund

To help prevent disputes at the end of the tenancy when it comes to the issue of the return of the deposit, it is advisable to agree an inventory providing a description and the condition of any furniture, kitchen equipment and other items in the property with the tenant at the outset of the tenancy. Tenants can sometime leave a rented property before the end of a fixed period or alternatively they can cause damage to the contents or furniture or fail or refuse to pay rent. This can lead to disputes and disagreement between the landlord and the tenant,

Tenants are entitled to a refund of the deposit paid at the commencement of the tenancy where there is no rent owing in respect of the tenancy and there is no damage to the dwelling beyond normal wear and tear at the end of the tenancy. Landlords are required to refund the deposit promptly less any deductions in respect of outstanding rent and damage in excess of normal wear and tear.

If a tenant ends a tenancy by giving a landlord less than the required period of notice, or only verbal notice, or a written notice that does not comply with the Act, it is at the landlord's discretion whether to make a deduction from the deposit in respect of the outstanding rent appropriate to the notice period to which he/she was entitled by way of a valid notice of termination. Equally, a tenant who has entered into a tenancy for a fixed term is bound by the terms of the contract entered into and may not terminate the tenancy before expiry of the fixed term unless the contract so allows or there has been a breach of the landlord's obligations. Therefore if a tenant ends a 1-year lease tenancy 4 months before the term is due to expire, the tenant is liable under that contract for the rent as it falls due for the remainder of the term unless the landlord succeeds in re-letting the dwelling (although a landlord is required to mitigate his/her loss by re-letting the dwelling as speedily as possible). In such circumstances it is at the landlord's discretion whether or not to retain from the deposit any outstanding rent due under the lease tenancy.

If a tenant does need to get out of a fixed term tenancy and wants to ensure that there are no grounds for retention of the deposit in respect of outstanding rent, the tenant should seek the landlord's written consent to assign or sub-let the tenancy. If the landlord refuses consent, the tenancy may then be terminated by the tenant by serving a valid notice of termination with the required amount of notice. If the landlord consents to assignment, then the tenant's tenancy will end and the assignee will commence a new periodic tenancy. If the landlord consents to a sub-letting, then the tenant becomes a landlord ('head-tenant') to the new subtenant occupant and the tenancy continues but the tenant may be in a position to obtain the deposit refund by ending his/her

own head-tenancy on expiry of the original term, depending on the then status of the sub-tenancy and the deposit arrangements the head-tenant entered into with the sub-tenant.

Deposit disputes

The RTB was set up with a view to moving disputes between landlords and tenants from the remit of the courts so as to reduce the pressure on the courts system. The RTB has a dispute resolution system in place and has heard thousands of disputes since its formation in late 2004. A lot of the disputes heard have centred on the issue of returning deposits at the end of the tenancy.

Please note that in order for landlords to avail of the dispute resolution procedure they must have registered the tenancy with the RTB, however tenants may avail of the procedure irrespective of whether or not the tenancy has been registered.

A dispute may be referred to the RTB for the purposes of mediation or adjudication, or if the dispute is not resolved by either of the aforementioned then a full tribunal hearing may well be necessary. If you are considering submitting a dispute to the RTB, then it is important to check what time limits apply to that particular type of dispute, for example a dispute concerning a proposed rent increase must be referred to the RTB before the increased rent is due to take effect, or within 28 days of the tenant receiving the notice of the proposed rent increase.

Disputes are resolved by means of adjudication (oral and paper based) and mediation.

Mediation is a process where a mediator will attempt to facilitate and encourage the parties to come to their own agreement in respect of the issues under dispute. The mediator will have no decision-making or advisory role in resolving the matter. Both parties must consent to entering the mediation process in order for a mediation to take place

Adjudication is a form of dispute resolution where an adjudicator will enquire fully into all matters relevant to the dispute raised by either party and will either facilitate agreement between the parties, or will make their own determination based on the evidence before them.

Tribunal is the RTB's appeal process to either the decision of an adjudicator, or where no agreement is reached at mediation, either party can refer their case to tribunal. A Tribunal is slightly more formal than either adjudication or mediation. The cases are heard by a three person panel and the hearings are open to the public.

Rent arrears

Despite your best efforts, there may be times that your tenant falls into rent arrears. This possibility can never be entirely eliminated and there is always a risk that your tenant will lose control of their finances. When considering methods of payment it is best to insist that your tenant pays by standing order so that the amount is directly debited from their bank accounts. This ensures that the money arrives regularly and allows you to effectively monitor whether the rent has been received. Arrangements where the tenant pays by cheque entail an anxious wait around the due date and permit the tenant to delay payment and make excuses.

Monitor your bank account regularly to make sure that payment has been made. It is best to do this via internet banking rather than relying on statements so that you are always aware of missed payments. Remember to keep full and accurate rent records in a form a court would be able to understand as the burden of proving rent arrears is on the landlord.

If the tenant falls into rent arrears and hasn't paid, you must act immediately, otherwise the situation will get out of control. In addition, you need to ensure that you don't create an impression that you are willing to overlook the fact that the tenant hasn't paid, for instance by contacting the tenant to discuss other matters related to the tenancy without mentioning the rent arrears. First establish why the rent has not been paid. There may be a legitimate reason for the missed payment such as the tenant switching accounts or forgetting to post the cheque.

You should make contact with the tenant by sending a letter demanding that the rent be paid.

Most tenants will respond when reminded and remedy the situation. If the letter is ignored the problem may be a serious one and you will have to take further measures. It is wise to mediate with the tenant to try and establish why the rent has not been paid. It may be that the tenant has lost his job or is having debt problems. In this situation it may be possible to come to a mutually beneficial arrangement with payment timescales and back payments that the tenant is better able to meet. It is best to set this course of action out in writing so that the terms are clear. Do not include the security deposit as a rent payment since this is the only security in the situation.

Termination of a Part 4 tenancy by a landlord for rent arrears cases

A Part 4 tenancy is a tenancy with a duration longer than six months which entitles the tenant to remain in occupation for a period of six years unless a valid notice of termination is served by either the landlord or tenant. Where a landlord seeks to terminate a Part 4 tenancy because the tenant has failed to pay rent, the following two-step procedure must be followed:

1. Service of a warning notice for failure to pay rent on **BOTH** the tenant and the RTB giving the tenant up to 28 days to clear the arrears.
2. Service of a 28-day notice of termination of the tenancy.

It is also important to be aware that the 28 day warning notice period only begins to count down when both the tenant and the RTB have received the warning notice. Further explanation of each of these crucial steps is available on www.rtb.ie.

Avoiding disputes with tenants

The following checklist may help a landlord to avoid or at least minimise disputes with tenants:

- check prospective tenants' references before renting out the accommodation
- when accepting deposits, provide a receipt for the tenant
- if a lease agreement is used, give a copy to the tenant and explain the contents
- create a list of the contents and condition of all items in the property and get the tenant to sign this to confirm their agreement
- show new tenants around the property and make sure they know how the appliances work and are familiar with the arrangements for disposing of the household and garden rubbish
- provide a rent book for the tenant and make sure that all payments are recorded in it whether rent or other charges, if there is no written lease
- every three months, ask the tenant if everything is satisfactory and if so, have them to sign a statement confirming this, dated accordingly
- if a tenant reports a problem, deal with it as soon as possible and give them regular updates about the efforts you are making to resolve it
- if a problem does arise, first try to settle differences directly with the tenant
- if you need further advice contact a local Citizens Information Centre (check phone book for local contact details)
- if you are unable to resolve the dispute then you may have to take your case to the RTB (www.rtb.ie)

Termination of a tenancy & eviction

It is vital that landlords know what to do when they need to evict a tenant, so that they are on the right side of the law. The law on private residential tenancies requires landlords to follow certain procedures before asking a tenant to leave rented accommodation. Failure to follow procedure properly could result in you being unable to recover possession of your property or facing criminal or civil proceedings.

Tenancies not covered by the Residential Tenancies Act 2004

If you are living in your landlord's home or renting from a local authority or a social housing organisation (such as housing association accommodation or student accommodation let by a recognised educational institution) you are not covered by this legislation. In such circumstances visit www.rtb.ie for further information. A Notice to Quit and Eviction will be required and if necessary a Court Order for possession may be obtained.

The advice contained in these pages concerns private residential tenancies under the Residential Tenancies Act. It will give you the information you need to help you successfully, and legally, evict a tenant and regain possession of your property. The advice contained in these pages is a guide only. Further advice should be sought relevant to the situation.

Termination of a tenancy by the landlord by valid notice (see section 62 of the Residential Tenancies Act 2004)

In order to be valid, a notice of termination must:

1. be in writing
2. be signed by the landlord or his or her authorised agent or, as appropriate, the tenant
3. specify the date of service
4. state the reason for termination (where the tenancy has lasted for more than 6 months or is a fixed term tenancy)
5. specify the termination date and also that the tenant has the whole of the 24 hours of this date to vacate possession
6. 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 PTRB within 28 days from the receipt of the notice

Notice periods for the termination of a tenancy by the landlord

The minimum notice period to terminate a tenant's tenancy is determined by the duration of the tenancy and is set out in the Residential Tenancies Act 2004 as per next panel.

The terms of a letting agreement in place may provide for greater periods of notice to be given to the tenant. The table below applies where the termination is not due to breaches of tenant obligations.

Duration of Tenancy	Notice Period
Less than 6 months:	28 days
6 or more months but less than 1 year:	90 days
1 or more years but less than 3 years	120 days
3 or more years but less than 7 years	180 days
7 or more years but less than 8 years	196 days
8 or more years	224 days

It is also possible for the landlord and tenant to agree a shorter period of notice, but this can only be agreed at the time the notice is given (see section 69 of the Residential Tenancies Act 2004).

Reasons to be given in the notice (see section 34 of the Residential Tenancies Act 2004)

In general, where a tenancy has lasted more than 6 months and less than 6 years, the reason for the termination must be stated in the notice and the termination will not be valid unless that reason relates to one of the following:

- the tenant has failed to comply with the obligations of the tenancy (having first been notified of the failure and given an opportunity to remedy it) the landlord intends to sell the dwelling within the next 9 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*

**For these grounds, the termination notice must contain certain additional details as specified in the Act as well as informing the tenant that they have first refusal to resume the tenancy should the dwelling become available for re-letting.*

Where a landlord intends to sell the dwelling or requires the dwelling for their own use or that of a family member a sworn statutory declaration is also required to be attached to the termination notice. For the latter purpose a 'family member' includes a spouse, civil partner, child, stepchild, foster child, grandchild, parent, grandparent, step parent, parent-in-law, brother, sister, nephew, niece or a person adopted by the landlord under the Adoption Act.

In the case of a 'substantial refurbishment' the termination notice must also be accompanied by a health and safety certificate confirming that vacant possession of the property is required to enable works. If planning permission is required the relevant permission must be attached – this is also a requirement where the reason for termination is a proposed change of use of the dwelling.

Under certain circumstances, in a time period measured from the end of the notice period, the tenant must be offered the opportunity to re-occupy the dwelling:

1. if it is not sold within nine months where a sale was intended;
2. if it is vacated within a period of twelve months where dwelling was needed for own or family member uses;
3. when works are completed where dwelling was substantially refurbished or renovated;

4. where the dwelling again becomes available for letting within twelve months where a change of use was intended.

Termination for breach of tenancy obligations (see section 67 of the Residential Tenancies Act 2004)

If a tenant breaches his or her obligations under the Act, then 28 days' notice needs only be given, regardless of the duration of the tenancy. This should be preceded by a warning notice, allowing a reasonable opportunity to remedy the breach if it is a tenancy of more than 6 months or over. Generally no preliminary notice needs to be served in respect of a fixed term tenancy.

If the breach concerns non-payment of rent, a prior notification of arrears must have been sent to the tenant with 14 days having passed before a valid notice of termination giving 28 days' notice is served.

If termination is required for serious anti-social behaviour (as defined in section 17(1) of the Act), then a notice of termination may be served giving a 7-day notice period.

Termination of fixed term tenancies by the landlord

A fixed term tenancy should last for its duration and should only be terminated if:

- The tenant or landlord has breached one of the conditions of the lease and/or their obligations under the Act.
- The landlord has refused a request by the tenant for assignment of the lease, allowing the tenant to serve a notice (see section 186 of the Residential Tenancies Act 2004).
- There are provisions incorporated into the agreement allowing for early termination (i.e. a break clause).

Regardless of the duration of the letting, the notice of Termination must specify the reason for the termination. If the reason is for arrears of rent, then the 14 day warning letter above must still be sent in advance of the notice. Unless it is specified as a condition of the letting agreement, the tenant is generally not entitled to an opportunity to remedy the breach prior to service of the notice.

Generally, the reasons under section 34 are not valid grounds for terminating a fixed term tenancy. They can only be used if they have been incorporated as conditions in the fixed term letting agreement.

Termination of tenancy by tenant

The same criteria for the notice content apply if a tenant is serving it on the landlord. However no reason needs to be stated if terminating for reasons other than breach of landlord obligations. The longest notice of period that needs to be given by a tenant is 56 days as per below:

Notice period	Duration of tenancy
28 days	Less than 6 months
35 days	6 months or more but less than 1 year
42 days	1 year or more but less than 2 years
56 days	2 years or more but less than 4 years
84 days	4 years or more but less than 8 years
112 days	8 years or more

It is also possible for the landlord and tenant to agree a shorter period of notice, but this can only be agreed at the time the notice is given (See Section 69 of the Residential Tenancies Act).

Termination for breach of landlord obligations

A tenant may give 28 days' notice owing to a landlord's breach of his/her obligations under the Act/letting agreement, regardless of the length of the tenancy. However, the tenant will have to notify the landlord of the failure to comply with his/her obligations in writing, allowing reasonable time for the landlord to remedy the failure. If the situation is not remedied within this time, the notice may be served.

If the landlord's behaviour is such that it poses imminent danger of death or serious injury or imminent danger to the fabric of the dwelling, then a seven day notice may be served. No prior notice need be served in this situation.

Termination of a fixed term tenancy by the tenant

The same considerations apply here as for termination by the Landlord above. However, the tenant must give prior warning of the failure by the landlord to comply with tenancy obligations with a reasonable period for the landlord to remedy this. If the failure persists outside this period, then the 28 day notice may be served.

If the landlord refuses consent to a request to assign or sublet the tenancy, section 186 of the Residential Tenancies Act 2004 will apply and a notice of Termination may be served by the tenant. The notice should specify the reason and give the appropriate period of notice required to be given by a tenant as per the chart in this section.

What to do at the end of the tenancy

Tenancies are lawfully terminated either on expiry of the fixed term or for breach of the letting conditions, or for periodic tenancies, upon the expiry of a valid notice of termination, subject to a dispute re validity of the notice or over holding being referred to the Board.

When the tenancy is due to terminate you should:

- arrange a time with the tenant for a final inspection of the dwelling
- you may wish to arrange a prior inspection before the notice period expires to identify any issues (such as damage/breakages) the tenant may need to address before the tenancy ends; and then on the day of termination carry out a final inspection
- if an inventory/condition report on the dwelling was provided to the tenant at the commencement of the tenancy, you should go through this with the tenant and indicate any damage/breakages over and above normal wear and tear
- if the dwelling is not in a reasonably clean and tidy condition then you should agree with the tenant how the cleaning is to be done; the tenant can undertake to carry out the cleaning or you can undertake this and the cost to be deducted from the deposit

- seek confirmation that the tenant will close any accounts with utilities, such as ESB, Gas etc., on leaving
- if possible seek the tenant's new address and new telephone number (so you can forward any correspondence)
- arrange for the return of the keys and the refund of the deposit

If a Notice of Termination is not complied with and the tenant over holds (continues in the property), the only recourse is to refer a dispute to the RTB about the tenant's failure to comply with a valid Notice of Termination. A dispute case referred to the RTB about an illegal eviction will be given priority and there are procedures in the Residential Tenancies Act under which the RTB may apply to the Circuit Court for an interim or interlocutory injunction to restrain the landlord and re-instate the tenant pending the Board's determination of the dispute.

If a tenant has vacated a dwelling and the rent is at least 28 days in arrears, the tenant's tenancy is deemed terminated under section 37 of the Residential Tenancies Act 2004 and the landlord (if satisfied that these conditions are met) is free to recover possession.

Illegal evictions

If a landlord locks out or physically evicts a tenant, the tenant may be able to apply for an injunction to force him/her to let you back into the property or you may apply to the RTB to do so on your behalf. Similarly if a landlord cuts off water, gas or electricity, you may be able to take legal action to restore the supply. In either case, you should get legal advice and assistance before you proceed. A landlord cannot remove your possessions from your flat or house property while your tenancy is still in existence (though after a tenancy has ended, a landlord is under no legal obligation to store or maintain belongings).

If a landlord is going to refer a dispute to the RTB, you should get advice about your situation from Threshold or a solicitor. The Free Legal Advice Centres (FLAC) operates a network of legal advice clinics throughout the State. These clinics are confidential, free of charge and open to all. Contact your nearest Citizens Information Centre for information on FLAC services in your area. FLAC also runs an information and referral line during office hours for basic legal information.

Delivery of the initial letter/notice of termination

If the landlord wants a tenant to leave, he/she must serve you a notice of termination on the tenant. The notice can be posted or handed to the tenant, or be left for the tenant at the property.

You should record the date when the letter was sent to the tenant, who the letter was given to and how it was sent (e.g. by hand, registered post). You should make a note of what is called the 'deemed date of delivery'. This term refers to the date which the RTB or a court will say that the letter has been served on the tenant, which is not necessarily the same day that you wrote/sent the letter and is determined by the method you used to send the letter. We recommend that, whenever possible, you give the letter to your tenant by hand and get them to sign a copy of the letter to confirm that you have given it to them.

Conversations with the tenants regarding rent arrears

Although you should inform your tenant of the rent arrears in writing, you may also have spoken to the tenant about the arrears. If you have, then as soon as possible after having the conversation you should make a record of it and any other conversations you have had with the tenant as well as the outcome. Your record should include the time, date and location, as well as the name of anyone involved in the conversation and a summary of what was said and/or agreed. This information may prove valuable in case you have to take your tenant to court.

Rent arrears and financial hardship

You should start to keep a record of the rent payments due and received from the tenants, including a running balance of any arrears.

If the arrears are causing you any financial hardship then you should also retain any records or documents that you have to prove this, such as letters from your mortgage provider regarding arrears of mortgage payments, threats to repossess etc.

Giving assistance in paying rent

In your letter to the tenant informing him/her of the rent arrears, you may want to offer assistance in making their payments by allowing him/her to repay the arrears in weekly or monthly instalments. If your tenant has fallen into hard times, e.g. made redundant or recently divorced, making such an arrangement may help them pay the rent and avoid the problem escalating. If you do have to take the matter to court, showing that you have offered assistance in such a way may also help your case in court.

If the tenant does not pay they are in default of their obligations and the landlord will be entitled to issue a Notice of Termination giving 28 days' notice. Should the tenant refuse to vacate the property following the expiry of the notice period you should contact the RTB and serve the proper notice etc..

Under no circumstances should you attempt to evict the tenants yourself without a court order, for example, by changing the locks.

Dispute resolution before the RTB

A landlord or tenant can submit a case to the RTB for dispute resolution whether the matter concerns non-payment of rent, notice of termination of tenancy or any other matter. Disputes are resolved by means of Adjudication (oral and paper based) and mediation.

Mediation is a process where a mediator will attempt to facilitate and encourage the parties to come to their own agreement in respect of the issues under dispute. The mediator will have no decision-making or advisory role in resolving the matter. Both parties must consent to entering the mediation process in order for a mediation to take place

Adjudication is a form of dispute resolution where an adjudicator will enquire fully into all matters relevant to the dispute raised by either party and will either facilitate agreement between the parties, or will make their own determination based on the evidence before them.

Tribunal is the RTB's appeal process to either the decision of an adjudicator, or where no agreement is reached at mediation, either party can refer their case to tribunal. A Tribunal is slightly more formal than either adjudication or mediation. The cases are heard by a three person panel and the hearings are open to the public

A Determination Order will issue by the RTB to the landlord and tenant once the dispute resolution process is complete. A Determination Order sets out the terms to be complied with, including for example payments owing, eviction and the length of time given to comply (compliance period).

The compliance period runs from the date of issue of the Determination Order. Specifically, this refers to the date on the cover letter enclosing the Determination Order and not to the date the Order was made by the Board.

Parties are obliged to deal with compliance/payment arrangements directly between each other and neither party will ordinarily receive a notice or reminder from the RTB in this regard. (Further involvement by the RTB will only occur on receipt of a request to consider taking enforcement proceedings on behalf of a party, where the matter cannot be settled directly between parties.)

A party who fails to comply with one or more terms of a Determination Order is open to having either criminal or civil proceedings taken against him/her in the Courts.

The party in favour of whom the Determination Order is made (or the RTB on their behalf) may commence enforcement proceedings through the Courts where satisfied that there has been non-compliance with the terms of an Order.

Taking a matter to court

Unenforceability of RTB determination orders

In the absence of a Court order it is not possible to physically remove or “evict” a non-compliant tenant from a property or, for example, to appoint a sheriff to seize goods in satisfaction of payment of a debt. Court proceedings must be issued to enforce RTB orders unless the RTB is prepared to enforce a determination order itself.

The RTB’s enforcement policy concerning its determination orders is available for viewing on www.rtb.ie. The information below provides some information about how a landlord can approach enforcing a RTB order himself, through his own solicitor.

Circuit Court civil proceedings

If a tenant refuses to comply with the RTB determination order then it is open to the landlord to issue proceedings in the Circuit Court under Section 124 of the Residential Tenancies Act.

You can initiate the proceedings by issuing and serving a notice of motion and grounding affidavit seeking relief under Section 124 of the Residential Tenancies Act 2004. The landlord can seek an order to recover possession together with an order to recover all rent arrears up to the hearing date and any damages as the circumstances may require.

If the tenant does not contest the application it is likely, although never certain, that a landlord would succeed in obtaining a court order enforcing the RTB order as the court will be simply affirming the order of the RTB. Landlords should be aware, however, that if the tenant fails to attend the court hearing on the day, there is a possibility that the judge could adjourn the matter to allow the tenant a further opportunity to respond to the motion. In this way, even if a non-compliant tenant does not contest a landlord’s application in some cases it may take a few court appearances to obtain a Court order.

This application would have to be funded by the landlord. However, a landlord could seek a Court order to recover costs. Although there is no guarantee that an award of costs would be made in the landlord’s favour, generally costs follow the event.

The sheriff

If the tenant fails to comply with the terms of the Circuit Court order to deliver possession of the property and/or pay all sums owing, the landlord can apply to the Circuit Court office for an execution order directing the Sheriff’s Office to obtain vacant possession and to seize the tenant’s goods to satisfy any sums due under the Court order.

If a landlord has secured an order for the costs of the application, generally it is not possible to seek an execution order in respect of these sums without first having the costs taxed by the Taxing Master, which could take several months. The objective is to recover possession of the property and all rent arrears as soon as possible and so your solicitor may recommend that you proceed immediately with the execution of the orders to recover possession and all rent arrears and damages due under the Court order. If the landlord feels the tenant has an ability to pay they could pursue the tenant for the costs at a later stage.

Once the execution order issues the original execution order can be sent to the sheriff to enforce. The sheriff will do its best to facilitate a speedy recovery of possession and we recently came across a case where possession of a property was recovered along with goods in satisfaction of the sums owing to the landlord within one month of the request being made to the Sheriff's Office.

Other enforcement options open to landlords

Once a landlord obtains a Court order directing the payment of all sums owing, if the tenant fails to make payment on foot of that order, there are a number of enforcement options available against an individual debtor other than the sheriff. The right enforcement option will depend on a number of factors, to include the amount of the debt and the profile of the debtor. Some of the most common options include:

1. The sheriff: The sheriff seizes the goods of the debtor in satisfaction of the debt.
2. Judgment mortgage: This is the registration of the debt against the tenant's property. It can sit there and thereby prevent the debtor from selling the property without paying the debt. Alternatively it can be turned into a well charging order and the forced sale of the property can proceed.
3. Well charging: This is where a court orders the sale of the property to pay off the debt.
4. Sequestration: This is similar to a sheriff seizing goods but in this instance it is the creditor who applies to court to seize the goods.
5. Attachment: If the debt is owed by a corporate then it can be attached to a director personally. This is difficult to obtain.
6. Instalment order/Examination procedure: This is where the tenant must attend the court for examination as to his means. If appropriate, the court could order that the debt be paid in instalments and if the tenant defaults on these the landlord could seek a committal order for the imprisonment of the tenant.
7. Committal to jail. The applicant must show that the debtor has funds but that they are not being paid through wilful disobedience. This is very often difficult to obtain.
8. Garnishee order: A debt owed to the debtor by a third party may be garnished by the creditor (for example, a debtor's salary).
9. Receiver: Appointment of a receiver by order of the court (corporate only).
Winding up of corporate debtor.