

LANDLORD AND TENANT

**Law guide - Setting up a private residential
tenancy**

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How to set up a private residential tenancy

Before any private residential tenancy is set up there will be many organisational steps that a landlord needs to take. First and foremost a suitable tenant needs to be found and proper checks should be conducted including getting at least two references. The references can be obtained from a previous landlord, a previous secured lender, an employer, a bank or a building society, for example.

It is important to note that a landlord is obliged to register a new letting of a residential property (known as a 'tenancy') with the Residential Tenancies Board (known as the 'RTB').

Since July 2009 the definition of tenancy under the Residential Tenancies Act 2004 no longer includes tenancies where the term of the tenancy is more than 35 years. If the duration of a tenancy exceeds 35 years then it does not qualify as a tenancy which must be registered with the RTB under the Residential Tenancies Act, 2004.

References

Before any type of tenancy is granted, proper checks should be made on each of the proposed tenants. Those checks should generally include at least two references, one of which should confirm the financial standing of the proposed tenant and whether they can afford to pay the rent. The references can be obtained from a previous landlord, an accountant, an employer or a bank or a building society, for example.

It is highly advisable that landlords make these detailed checks before letting a tenant have possession of a property. References may look good on the surface but they could be forged or be exaggerated, so it is recommended that you should not always take them at face value. Where possible, a landlord should consider speaking with the referees and possibly in some cases ask for bank statements or get a credit report.

Obtaining consent to letting from third parties

If the property being let has a mortgage, there may be a requirement to get the mortgage lender's agreement to let the property before proceeding.

If the property has a lease, for example a 999 year lease as in the case of most apartment or multi-unit developments, it is always good practice to check the terms of the lease to ensure that it is permissible to let the property and, if necessary, obtain the landlord's or the management company's prior agreement to do so.

Tenancies for a fixed term which are greater than 21 years should be registered with the Land Registry.

A landlord should also check with insurers as to whether the building insurance policy will provide cover if the property is let and make arrangements to extend the cover if it does not. Some landlords do not provide for contents insurance cover while other landlords may insist that tenants take out separate contents insurance cover.

Obtaining spousal or civil partner consent

If a landlord is entering into a lease or letting agreement with a tenant to occupy a family or shared home, the consent of a non-owning spouse or civil partner, as appropriate and where relevant, should be obtained in writing.

Under the Family Home Protection Act 1976 and Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 any 'disposition' of the family or shared home (which includes a lease or letting agreement) is void unless the consent of the non-owning spouse or civil partner is obtained in writing.

There is no requirement to obtain the separate consent of the non-owning spouse or civil partner if both husband and wife, or both civil partners agree to, and sign, the tenancy agreement as joint owners and landlords.

Does the tenancy agreement have to comply with certain legislation?

There are many laws that apply to tenancies such as, amongst others, the:

- Landlord and Tenant Acts 1967 to 1974;
- Residential Tenancies Act 2004;
- Residential Tenancies (Amendment) Act 2015;
- Planning and Development (Housing) and the Residential Tenancies Act 2016;
- Residential Tenancies (Amendment) Act 2019;
- Housing (Standards for Rented Houses) Regulations 2019;
- Residential Tenancies and Valuation Act 2020;
- Residential Tenancies Act 2020;
- Planning and Development and Residential Tenancies Act 2020;
- Residential Tenancies (Amendment) Act 2021;
- Residential Tenancies (No 2) Act 2021;
- Residential Tenancies (Miscellaneous Provisions) Act 2026.

Also the accommodation will have to comply with gas and safety regulations and requirements under the relevant Housing (Rent Books) (Amendment) Regulations 1993 to 2010.

General rights of a private tenant

The general rights of private tenants are as follows:

- They are entitled to quiet and exclusive enjoyment of their home. If noise from other tenants or neighbours is disturbing them, they can ask them to stop and also inform the landlord. If this does not work, they can make a formal complaint.
- They are entitled to certain minimum standards of accommodation.
- They are entitled to a rent book.
- They have the right to contact the landlord or their agent at any reasonable times. They are also entitled to have appropriate contact information for them (telephone numbers, email addresses, postal addresses, etc.).

- The landlord is only allowed to enter their home with their permission. If the landlord needs to carry out repairs or inspect the premises, it should be by prior arrangement, except in an emergency.
- They are entitled to be reimbursed for any repairs that they carry out that are the landlord's responsibility.
- They are entitled to have visitors to stay overnight or for short periods, unless specifically forbidden in their tenancy agreement. They must tell the landlord if they have an extra person moving in.
- They are entitled to a certain amount of notice of the termination of the tenancy.
- They are entitled to at least 90 days' notice if the landlord wants to review the rent, and there are rules about how often they can do this.
- They are entitled to refer any disputes to the RTB without being penalised for doing so.
- They have the right to a copy of any register entry held by the RTB about their tenancy.
- All homes for rent must have a Building Energy Rating (BER), stating how energy-efficient the home is. This will help them to make an informed choice when comparing properties to rent.

Finding and managing tenants

Some landlords use letting agents or estate agents to help find tenants for their property and to perform checks on the proposed tenant's credentials. Some will also collect the rent and provide a full management service so that the landlord will not have to deal directly with the tenants at all. They will charge a fee for their services.

Deposits

A landlord 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. This amount can be negotiated with the tenant.

The Residential Tenancies (No. 2) Act 2021 introduced limits on the amount landlords can require anyone to pay to secure a tenancy:

1. A deposit cannot exceed one month's rent; and
2. An advance payment of rent, at any time, cannot exceed one month's rent.

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

Inventory of fixtures, furnishings and fittings

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 fixtures and fittings, and furniture, kitchen equipment and other items in the property with the tenant at the outset of the tenancy. A copy of the inventory should also be attached to the tenancy agreement and include a condition in the tenancy agreement stating that the tenant agrees that all the items listed are in the property and are in the condition stated. It is also advisable to have photographs of the items attached to avoid any disputes as to the original condition when the tenancy agreement

ends.

Rent books

The landlord is obliged to provide a tenant with a rent book for use throughout the term of the tenancy. The landlord must enter the particulars relating to the tenancy in the rent book, and, in the case of a new tenancy, complete the inventory of furnishings and appliances supplied with the house for the tenant's exclusive use.

You should keep a record of rent payments or provide receipts for rent paid for all tenancies to avoid any disagreements later.

Building energy rating certificate

From the 1st of January 2009 a BER (building energy rating) certificate is compulsory for all homes being rented (there are some exemptions - consult the Sustainable Energy Authority Ireland (SEAI) website for further information). A BER is similar to the energy label for a household electrical appliance. The measurement scale runs from A to G - A-rated homes are the most energy efficient and G the least efficient.

Please visit www.seai.ie for more details on BER Certificates and energy rating.

The landlord is responsible for ensuring that there is a valid BER Certificate energy rating available for prospective tenants. The certificate provides a rating for the building showing its energy efficiency. The ratings 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.

The certificate also includes a recommendation report, providing information about ways to improve the energy performance of the property. Recommendations include cost-effective improvements and further improvements (that achieve higher standards but are not necessarily cost-effective). For each improvement, the level of cost, typical savings per year and the performance rating after improvement are listed. The potential rating shown on the certificate is based on all the cost-effective recommendations being implemented.

For homes, two ratings are shown:

- The energy-efficiency rating - this is a measure of a home's overall efficiency. The higher the rating, the more energy-efficient the home is, and the lower the fuel bills are likely to be.

- The environmental impact rating - this is a measure of a home's impact on the environment in terms of carbon dioxide (CO₂) emissions - the higher the rating, the less impact it has on the environment.

The only person who is able to produce a BER Certificate is an accredited energy assessor. Once produced, the BER Certificate is valid for ten years.

Providing the report to a prospective tenant

A landlord must provide any prospective tenant with a copy of the BER Certificate and recommendation report, free of charge, at the earliest opportunity and no later than:

- when any written information about the building is provided in response to a request for information received from the prospective tenant;
- when a viewing is conducted;
- if neither of those occur, before entering into a contract to let.

The BER Certificate or rating does not have to be made available if:

- the landlord believes that the prospective tenant is unlikely to have sufficient funds to purchase or rent the property or is not genuinely interested in renting that type of property
- the landlord is unlikely to be prepared to rent out the property to the prospective or tenant (although this does not authorise unlawful discrimination)

Penalty for non-compliance

Both the local authorities and Sustainable Energy Authority Ireland (SEI) are responsible for enforcing the requirements of the regulations and failure by the owner, or the agent of such owner, to produce without reasonable excuse within 28 days a printed copy of a BER Certificate is an offence which may be punishable by fine on summary conviction not exceeding €5,000.

A failure by a landlord to produce a BER Certificate to a tenant could be used by a tenant to undermine any contract or lease agreement which was entered into with a landlord. It is therefore vital that a landlord produces a BER Certificate and Advisory Report when the property is offered for let, firstly so as not to delay the completion of a letting and secondly to protect against a tenant attempting to avoid contract or lease agreement subsequently entered into. The Advisory Report will identify how you might improve the energy performance of your home.

If you believe that you have been wrongly issued with a penalty you can request a review.

Types of tenancy agreement

A tenancy agreement is a contract between one or more parties ('tenants') who pay a sum to occupy property belonging to another (the 'landlord'). A tenancy agreement may be written or oral, but it is in the interests of both parties to enter into a written agreement so that, if a dispute arises, the terms and conditions of the agreement are clear. A tenancy can be set up by the landlord and tenant agreeing the terms of the tenancy; for example, the length of the tenancy, the rent payable, the obligations and covenants on each party and the rights and entitlements of each etc.

A tenancy agreement gives certain rights to both the landlord and the tenant. For example, the landlord's right to receive rent for letting the property and the tenant's right to occupy the property. The landlord and the tenant will have made specific arrangements about the tenancy, such as its duration, and these will be part of the tenancy agreement as long as they do not conflict with the law.

Which type of tenancy is in place?

Before setting up the tenancy agreement, it is important to remember that there are different types of tenancy arrangements for letting a property to a tenant. There are two broad categories (though other forms of tenancies exist which are not so common) as follows:

- **Tenancy for a fixed term:** This is a tenancy created for any fixed term length of time.
- **Tenancy from year-to-year or other periodic tenancy:** The duration of a periodic tenancy is not specified. A periodic tenancy can be a tenancy from year-to-year or a tenancy for successive periods, such as a monthly or weekly tenancy. In these types of tenancies, each period is automatically renewed and the tenancy will continue indefinitely after the initial period has ended, until the tenancy is eventually terminated. For example, a tenancy under which rent is paid weekly is deemed to be a weekly tenancy, and if paid monthly it would be considered a monthly tenancy etc..
- **Tenancy at sufferance:** A legal tenancy at sufferance can only arise if a tenant continued in possession of a property at the end of a lease or tenancy without paying rent and without the landlord's consent or dissent.
- **Statutory tenancy:** Legislation confers on tenants certain rights with regard to remaining on as tenants in occupation of a property. The Housing (Private Rented Dwelling) Act, 1982 provided that a person who was a tenant immediately before the Act commenced was entitled to retain possession as the tenant of the dwelling during his lifetime. This became known as a controlled dwelling and the right to retain possession ceased where possession was recovered by the landlord under the 1982 Act.

Security of tenure

The type of tenancy that best suits your needs will depend on your individual circumstances. Irrespective, however, of whether or not the tenancy is fixed term or periodic all tenancies become, what is called, a Part 4 tenancy once the tenant is in occupation for more than six months. 'Part Four' refers to the relevant section of the Residential Tenancies Act 2004, as amended, and is concerned with security of tenure for the tenant and the circumstances under which a tenancy can be

terminated (see our law guide 'Landlord and tenant disputes' for further details on termination of a private residential tenancy).

There are some exceptions to the above regulations, for example where:

1. the dwelling concerned is one of two dwellings within a building,
2. that building, as originally constructed, comprised a single dwelling, and
3. the landlord resides in the other dwelling.

Main clauses

A written tenancy agreement should state what kind of tenancy it is. Landlords must always give tenants their name and address, regardless of whether the tenancy is written or not. A tenancy agreement may include any terms that are agreed by both the tenant and landlord so long as they do not conflict with the law. The most important terms to include in a tenancy agreement are:

- the landlord's full name and address
- the full name of the tenant(s)
- the address of the property being rented
- the amount of rent to be paid, when it is due, how it should be paid and what it covers (for example does it include any bills?)
- the length of the agreement
- the amount of the deposit
- whether the tenant has permission to leave before the end of the tenancy, and if so, the notice he or she has to give
- a schedule of contents i.e. inventory
- any other agreed rules, for example, about pets, guests or smoking

Implied terms

There are some terms which will apply to any tenancy agreement automatically. These are known as 'implied terms'.

Some of the most common implied terms are:

- Landlords must carry out basic repairs.
- Landlords must keep the installations for the supply of water, gas, electricity, sanitation, space heating and heating water in good working order.
- Tenants have the right to live peacefully in the accommodation without nuisance from the landlord.
- Landlords must not treat tenants unfairly because of their race, sex, sexuality, disability or religion. There may be some exceptions, for example, if the tenant lives in the same accommodation as the landlord.

- Tenants have an obligation to take proper care of the accommodation.

Taking in a lodger

When someone takes in a lodger they are strongly advised to get a legal agreement in place to protect their rights. If one is letting (or thinking of letting) part of their home it is important to understand one's obligations. Lodgers are not usually seen as tenants in the eyes of the law. However, from time to time a court may be asked to determine whether the relationship of landlord and tenant has been created. To find out more about taking on lodgers see the chapter '*Taking in a lodger*'.

Obligations of a landlord

The law protects tenants and it is vital that landlords are aware of their legal obligations to tenants. In particular, the Residential Tenancies Act 2004, as amended, sets out special provisions relating to the legal obligations of a tenant and landlord. Also, special legal protections and requirements are provided for in various health and safety regulations.

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 be the subject of a civil sanction or even a criminal conviction.

By law, a landlord cannot refuse to rent property to any prospective tenant because of their gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Travelling Community.

A landlord must:

- register the tenancy agreement with the RTB. Registration forms are available from their website, www.rtb.ie. If a tenancy is not registered a landlord will not be able to avail of the RTB's dispute resolution service and may also be prosecuted;
- provide the tenant with a rent book (if no written lease is in place) and receipts of payments;
- make sure that the property is in good condition;
- maintain the property to the standard it was at the start of the tenancy;
- reimburse the tenants for any repairs carried out on the structure;
- insure the property, structurally only (it is usually a requirement that the tenant insure their own contents of the property);
- provide the tenant with any information or contact details of any agent who deals on his or her behalf;
- provide the tenant with his or her contact details if an agent is not used;
- give tenants a minimum of 90 days' notice of a rent review or notice as agreed;
- give tenants a written notice of termination of tenancy;
- return deposits to the tenant at the end of tenancy if appropriate;

- give tenants notice of any impending inspections of the property.

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'. A landlord must ensure a rented property meets the repairing standard (see 'Health and safety' for more information). 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 registered professional. A copy of each safety certificate should be retained by the landlord and a copy provided to the tenant upon request.

For further information on this see our chapter on '*Gas safety*'.

Fire safety

If a landlord supplies furniture or furnishings with the property, the landlord must ensure that they meet the fire resistance requirements as set out in the Fire Services Acts as amended and the Housing (Standards for Rented Houses) Regulations 2008.

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, considerations will need to be made in relation to the use of fire extinguishers, fire blankets, multiple fire alarms and multiple escape routes.

Article 11 of the Housing (Standard for Rented Houses) Regulations 2008 governs fire safety measures for rented accommodation.

For more information on a landlord's obligation to take fire precautions see the chapter on '*Fire safety*'.

Electrical safety

Electric appliances and installations that are supplied should be maintained in a good order and should be safe. There is no legal requirement on a landlord to obtain a safety certificate. For further information on electrical safety see the chapter on '*Electrical safety*'.

Rent

If the tenant falls into rent arrears and has not paid, a landlord should act immediately, otherwise the situation could get out of control. In most cases non-legal action will be sufficient. The landlord should first 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. For further information on this see our chapter on '*Rent arrears*'.

Deposit

A tenant is usually required to pay a deposit before moving into a 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. It is usual to charge at least one month's rent.

The Residential Tenancies (No. 2) Act 2021 introduced limits on the amount landlords can require anyone to pay to secure a tenancy:

1. A deposit cannot exceed one month's rent; and
2. An advance payment of rent, at any time, cannot exceed one month's rent.

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

Setting and reviewing rent

On 1st March, 2026 a new framework of rent restrictions was introduced via the Residential Tenancies (Miscellaneous Provisions) Act 2026. This Act introduced new rent controls on tenancies which commenced on 1st March or later. The rules applying to tenancies in existence as of 28th February 2026 remained unchanged.

Setting a rent at commencement of tenancy

At the commencement of a tenancy landlords must serve tenants and RTB with a 'Notice of rent setting' which indicates which of the following applies:

- Rent increase is capped at 2%, or rate of inflation if lower;
- Increase is capped at the rate of inflation only (dwelling in new or extended apartment complex where development commenced from 10th June, 2025);
- The dwelling is exempt from rent increase restrictions (rent can be set or reset to the market rent).

Irrespective of any of the above the rent set cannot exceed the 'market rent' which is determined by providing rent details of three 'comparable dwellings' from the RTB's published register situated in a comparable area – similar size, type and character, by reference to floor area, number of bedrooms and BER (where applicable).

Where a tenancy is ended within six months of the commencement date no re-set to market rent is allowed for the next tenancy if it is a 'no-fault' termination.

Exemptions

There are six grounds on which it is possible that a dwelling is exempt from rent restrictions:

1. The dwelling has not been the subject of a tenancy in the two years prior to the commencement date of this tenancy.
2. The dwelling is, or is in, a protected structure or proposed protected structure within the meaning of the Planning and Development Act 2000 and where no tenancy existed in respect of the dwelling in the 12 months prior to commencement date of this tenancy.
3. There has been a substantial change in the nature of the accommodation since the rent was last reviewed under a tenancy for the dwelling.
4. The last tenancy was ended by the tenant.
5. The last tenancy ended due to a breach of tenant obligations.
6. The dwelling no longer suited the tenant's needs.

Substantial change in the nature of the accommodation

The term 'substantial change' is defined and means that, in the period since the rent was last set under a tenancy for his dwelling, the following works have been carried out to the dwelling

concerned:

Works that consist of a permanent extension to the dwelling that increases the floor area (within the meaning of Article 6 of the Building Regulations 1997 (S.I. No. 497 of 1997)) of the dwelling by an amount equal to not less than 25% of the floor area (within such meaning) of the dwelling as it stood immediately before the commencement of those works,

OR

In the case of a dwelling to which the European Union (Energy Performance of Buildings) Regulations 2012 (S.I. No. 243 of 2012) apply, works that result in the BER (within the meaning of those Regulations) being improved by not less than 7 building energy ratings,

OR

Works that result in any three or more of the following:

1. The internal layout of the dwelling being permanently altered;
2. The dwelling being adapted to provide for access and use by a person with a disability, within the meaning of the Disability Act 2005;
3. A permanent increase in the number of rooms in the dwelling;
4. In the case of a dwelling to which the European Union (Energy Performance of Buildings) Regulations 2012 (S.I. No. 243 of 2012) apply and that has a BER of D1 or lower, the BER (within the meaning of those Regulations) being improved by not less than 3 building energy ratings; or
5. In the case of a dwelling to which the European Union (Energy Performance of Buildings) Regulations 2012 (S.I. No. 243 of 2012) apply and that has a BER of C3 or higher, the BER (within the meaning of those Regulations) being improved by not less than 2 building energy ratings.

The landlord must also confirm that the works identified above do not solely consist of works carried out for the purposes of compliance with section 12(1)(b) of the Residential Tenancies Act 2004 which states:

(b) subject to subsection (2), carry out to—

(i) the structure of the dwelling all such repairs as are, from time to time, necessary and ensure that the structure complies with any standards for houses for the time being prescribed under section 18 of the Housing (Miscellaneous Provisions) Act 1992, and

(ii) the interior of the dwelling all such repairs and replacement of fittings as are, from time to time, necessary so that that interior and those fittings are maintained in, at least, the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed

When relying on the 'substantial change' exemption documents supporting this claim must also be provided such as:

- Nature of works;
- New BER certification (where relevant);
- Letter of certification from either architect, chartered surveyor, chartered engineer clarifying the nature of structural changes and any planning documentation in relation to these changes.

Reviewing a rent during a tenancy

Rents for all private residential tenancies can only be reviewed, at a minimum, every twelve months and landlords must serve tenants with a 'Notice of rent review' at least 90 days before the revised rent takes effect. This notice must also be served on the RTB on the **same** day as it is served on the tenants.

The information contained in this notice is largely similar to that required on the 'Notice of rent setting'.

Where a tenancy commenced on or after 1st March 2026 and it has reached the end of the six year Tenancy of Minimum Duration cycle, the dwelling is then exempt from rent increase restrictions for the next rent setting (other than not exceeding the market rent).

What happens if there is a dispute concerning increased rent?

Where a valid 'Notice of rent review' has been served by the landlord then either party can submit a dispute to the RTB before the new rent is to have effect or before expiry of 28 days from the tenant receiving that notice, whichever is the later. There is no time limit where an invalid notice is served.

What does it cost and is there a hearing?

There is a fee for dispute resolution which varies depending on whether the application is made online or not. Parties may choose either adjudication or mediation in order to resolve their dispute. Both dispute resolution mechanisms usually involve a hearing with the parties and either an independent adjudicator or mediator in attendance. Some cases are processed by evidence submitted only.

Varying the terms of a letting agreement or lease.

It is always open to the landlord and tenant to vary the terms or rent under a lease by agreement. Terms cannot normally be varied by one party alone.

Exemptions to the Residential Tenancies Act

The Residential Tenancies Act applies equally to all tenants in private rented dwelling whether or not the tenants are living in a flat, bedsit, apartment or house. The landlord is obliged to register all tenancies and the applicable fee and registration form for each tenancy must be submitted to the RTB to register a tenancy. See www.rtb.ie for more information.

A landlord that fails to register a tenancy may be fined. There are implications for a landlord in terms of the mortgage interest a landlord may wish to offset against income tax on rental income received from the investment property should the landlord not register. Also, if a landlord does not register a tenancy, the landlord will not be permitted to use the RTB dispute resolution process however the tenants will nonetheless be able to submit a claim to the Injuries Board. However the RTB Act provides some limited exceptions to the requirement to register. Please visit www.rtb.ie for more information.

Excluded properties

The registration of some tenancies in certain dwellings (a 'dwelling' means, a property let for rent or valuable consideration as a self-contained residential unit and includes any building or part of a building used as a dwelling and any out office, yard and garden) is exempt:

1. A dwelling that is used wholly or partly for the purpose of carrying on a business (the exemption does not apply to a dwelling that is, for example, above a retail unit);
2. A dwelling to which Part II of the Housing (Private Rented Dwellings) Act 1982 applies;
3. A dwelling let by or to a public authority or voluntary housing bodies (i.e. an approved voluntary housing body which provides housing to persons who have a particular housing need e.g. the homeless, the elderly, the disabled, to name only a few on the list) and which is occupied by a person referred to in section 9 (2) of the Housing Act 1988);
4. A dwelling, the occupier of which is entitled to acquire, under Part II of the Landlord and Tenant (Ground Rents) (No. 2) Act 1978, the fee simple in respect of it;
5. A dwelling occupied under a shared ownership lease;
6. A dwelling let to a person whose entitlement to occupation is for the purpose of a holiday only;
7. A dwelling within which the landlord also resides (i.e. landlord and tenant share the same self-contained property);
8. A dwelling within which the spouse, parent or child of the landlord resides and no lease or tenancy agreement in writing has been entered into by any person resident in the dwelling;
9. A dwelling the subject of a tenancy granted under Part II of the Landlord and Tenant (Amendment) Act 1980 or under Part III of the Landlord and Tenant Act 1931 or which is the subject of an application made under section 21 of the Landlord and Tenant (Amendment) Act 1980 and the court has yet to make its determination in the matter.

Taking in a lodger

Overview

Letting rooms can be a useful way to get extra income and an individual is allowed to earn tax-free income from letting a furnished room in their home.

The main drawback is that other than sharing with a friend or relative who is in need of a room it will mean taking in a stranger which does involve a certain degree of risk and lifestyle change. A person enters a business relationship when they let a room in their home and is strongly advised to get a legal agreement in place.

Rights of homeowner and tenant

Someone letting part of their home should understand their obligations. There is a distinction made between lodgers and so called 'sub-tenants'. Lodgers are not seen as tenants in the eyes of the law. The lodger's occupation of the room is under the control of the owner of the home and the terms of the occupation are determined by contract. That is, if things were to go disastrously wrong, a homeowner can end a lodging agreement without needing a court order. However, if the lodger refuses to leave a court order may be required and they must not be forcibly evicted.

Licensing arrangements in private rented dwellings are often confused with sub-letting and assignments. The difference is that when a tenant assigns or sublets their rental accommodation they no longer live in it whereas the licensee shares the accommodation with the tenant.

Thus the law provides that a person may occupy property or a room in a house as a lodger under a licence or licence agreement. The terms of the licence governs the rights of each party. The creation of a verbal or contractual licence agreement does not, in and of itself, give rise to a landlord and tenancy relationship.

Licence arrangement or tenancy arrangement?

A form of agreement described as a licence is often used by parties who wish to avoid the effects of statutory restrictions or the requirements of the Residential Tenancies Act 2004. For example, a person classified as a tenant will have a right of renewal, a right to be provided with sufficient notice of termination of tenancy etc. It is important to note, however, that the courts have on some occasions interpreted arrangements described as a 'licence agreement' as in fact a tenancy agreement.

The following are the main elements that may differentiate a licence from another type of interests in a property:

1. A licensee or lodger does not usually have exclusive possession. If they have exclusive possession of the property that may be proof of the existence of a tenancy.
2. A licence or lodging arrangement only gives a person personal rights. There is no interest assigned to the licensee or lodger and so they have no statutory protection at law.

3. A licensee or lodger cannot claim adverse possession of the property given they are occupying the property with the owner's consent.
4. A simple licence (i.e. where no payment is made for the lodging) is revocable at any time, whereas a contractual licence or lodging agreement is subject to the terms of the contract.
5. A licence or lodging agreement may have to be examined to see whether the relationship between the parties is in fact a licence, lodging relationship or an agreement that has given rise to a tenancy agreement. This is required when a dispute arises and the parties need to determine their legal rights and entitlements.
6. In the case of a dispute between a lodger and owner or licensor, a number of issues will have to be examined, for example, the terms the parties use to describe themselves; the payment terms including payment dates; the relationship between the parties; the degree of control exercised by the owner or licensor; the repair and other obligations on the parties; the right of the owner or licensor to enter and retake possession of the property etc.

In the case of a lodging arrangement, it is usual for the owner to allow the lodger to take and use a room in a house in return for a weekly or monthly payment and the owner usually reserves the right to terminate the relationship at short notice.

Lodger's rights

Broadly, a lodger does not have a right to challenge the level of rent that he or she has agreed to pay. Nor does the lodger have exclusive use of the entire premises. The fact that the owner retains control over the premises and the lodgers' lack of possession independent of the owner is what distinguishes a lodger from a tenant.

Household electrical safety

It goes without saying that you should ensure that the electrics and electrical appliances supplied are safe in any property you let.

You should carry out your own visual inspections as landlord or agent and have periodic checks carried out by a qualified electrician.

What your property should have:

- an adequate number of sockets in each room;
- a safe electrical installation. This is certified by an electrical test certificate or similarly accredited engineer;
- safe electrical appliances.

Steps to ensure your property is safe

At a minimum, you should, carry out an annual visual inspection and keep a record on a safety checklist. You should also carry out an inspection when your tenants change, recording electrical equipment and its condition and fuses fitted. Have periodic inspections of electrical equipment by a qualified electrician. It is advisable to have five yearly inspections by a qualified electrician to ensure safety and that the electrical system complies with current electrical regulations. Copies of the certificate for the check should be made available to your tenants. Keep all records of these inspections.

Things to avoid

Try to avoid buying second-hand appliances as they can often be near the end of their working life or are already defective. Never ignore worn flexes to appliances or discard operating instructions for appliances.

Health & safety

What standards must your accommodation meet?

By law, rented property must be of a minimum standard. If the property does not comply with these standards, then you, as landlord, could be prosecuted. Local authorities are responsible for enforcing these standards and carry out regular inspections of rented accommodation.

Landlords are generally responsible for the maintenance and major repairs to a property. This includes repairs to the structure and exterior of the property, heating and hot water installations, basins, sinks, baths and other sanitary installations

The landlord must provide the tenant with minimum standards in accordance with the Housing (Standards for Rented Houses) Regulations 2019.

General

For each apartment, flat or house being rented as a separate unit, the landlord must ensure that the rental property is free from damp and in a proper state of structural repair (internally and externally). The Regulations require that roofs, roofing tiles, slates, windows, floors, ceilings, walls, stairs, doors, skirting boards, fascia, tiles on any floor, ceiling and wall, gutters, down pipes, fittings, furnishings, gardens and common areas must be maintained in good condition and repair. They must not be defective due to dampness or otherwise.

The landlord must ensure that electricity or gas supplies are safe and in good repair, and that every room has adequate ventilation and heating that tenants can control, and both natural and artificial lighting.

Laundry, food preparation and food storage

The regulations require landlords to provide tenants with access to:

- a washing machine
- a clothes-dryer if the dwelling does not have a private garden or yard

They must also provide facilities for cooking and for the hygienic storage of food, to include the following:

- 4-ring hob with oven and grill
- cooker hood or extractor fan
- fridge and freezer, or a fridge-freezer
- microwave oven
- suitable and adequate kitchen cupboards for storing food
- sink with mains water supply of cold potable water, piped supply of hot water and draining area

Other requirements

All landlords must provide:

- a sink with hot and cold water;
- a separate room, for the exclusive use of each rented unit, with a toilet, a washbasin and a fixed bath or shower with hot and cold water. These facilities must be maintained in good working order and the room must be well ventilated;
- a permanently fixed heater in each bathroom or shower room. These heaters must be in good repair and properly maintained;
- a suitable fixed heating appliance in each room, which is capable of providing effective heating and which the tenant can control, and adequate facilities for the safe removal of fumes;
- a fire blanket and fire detection and alarm system;
- access to vermin-proof and pest-proof rubbish storage facilities. The landlord must also make efforts to prevent the infestation of pests and vermin at the property;
- safety restrictors on windows that are located above a certain height, in order to prevent falls;
- information on the property, building services, appliances and their maintenance requirements;
- a carbon monoxide alarm which must be suitably located and maintained.

In multi-unit buildings, the landlord must provide each unit with a suitable fire-detection and alarm system, fire blanket, and an emergency evacuation plan. There must also be emergency lighting in common areas.

Further details of what standards you need to comply with when renting accommodation, are available on the RTB website.

If the property you let out does not satisfy these criteria and/or is a health risk, a tenant or local authority may be able to take legal action against the landlord.

Gas and electrical safety

A landlord must ensure that all gas appliances and installations you supply are maintained in good order and that an annual safety check is carried out by someone who is registered.

A landlord should keep a record of the safety checks and should issue it to the occupier upon request. Landlords should retain their gas safety records as proof of service and maintenance. The occupier is responsible for maintaining gas appliances that they own or is entitled to take with them at the end of the letting.

By law, you must ensure that the electrical system and any electrical appliances supplied with the let such as cookers, kettles, toasters, washing machines and immersion heaters are safe to use. If you are supplying new appliances, you should also provide any accompanying instruction booklets.

For more information, see our chapter on '*Gas safety*' and our chapter on '*Electrical safety*'.

Fire safety

Fire safety for any home is important, but if a property has multiple occupants it must be considered seriously since the risk of fire is greater.

As for any other home, it is a good idea to ensure that:

- all occupiers know their way round the house to help prevention and escape from fire;
- smoke alarms are fitted; ideally one should be fitted on each floor of the property;
- a fire blanket is placed in the kitchen;
- it has a fire extinguisher.

Fire safety of furniture

If you supply furniture or furnishings with the property, you should ensure that they are fire resistant and it is advisable to provide fire extinguishers, fire blankets, multiple fire alarms and multiple escape routes to tenants of a multiple or single dwelling.

For more information, see the chapter on '*Fire safety*'.

Gas safety

The gas safety regulations specifically deal with the installation, maintenance and use of gas appliances, fittings and flues in domestic and certain commercial premises. They place duties on landlords to ensure that gas appliances, fittings and flues provided for tenants' use are safe.

What are my main duties as a landlord?

You are required to:

- ensure gas fittings and flues are maintained in a safe condition. Gas appliances should be serviced in accordance with the manufacturer's instructions. If these are not available it is recommended that they are serviced annually unless advised otherwise by an engineer who is a Registered Gas Installer.
- ensure an annual safety check is carried out on each gas appliance/flue. Before any new lease starts, you must make sure that these checks have been carried out within one year before the start of the lease date, unless the appliances in the property have been installed for less than 12 months, in which case, they should be checked within 12 months of their installation date.
- have all installation, maintenance and safety checks carried out by a gas engineer who is a Registered Gas Installer
- keep a record of each safety check for at least two years
- issue a copy of the latest safety check record to existing tenants within 28 days of the check being completed, or to any new tenant before they move in (in certain cases there is an option to display the record). The regulations specify the gas safety matters to be covered. You should not assume that an annual service inspection meets the safety check requirement, or that a safety check will, on its own, be sufficient to provide effective maintenance. Ask the advice of a registered gas engineer where necessary

Can I delegate duties to a tenant?

No, except that a contract may be drawn up between a landlord or tenant for an appliance or flue installed in a non-residential part of a premises, for example, shops and public houses etc. Your tenant has a duty not to use an appliance they believe to be dangerous.

What happens if I use a managing agent?

The landlord retains overall responsibility for ensuring compliance with requirements. The management contract should clearly identify who is to make arrangements for maintenance and safety checks to be carried out and to keep records.

What if the property is sub-let?

In these situations the 'original' landlord may retain duties which overlap with those acquired by the person who sub-lets. In such cases, close co-operation and clear allocation of duties is essential to

ensure that legal duties are fully met, and that the terms of the contract properly safeguard tenants' safety.

What action is required to gain access to property?

The contract you draw up with the tenant should allow you access for any maintenance or safety check work to be carried out. You have to take 'all reasonable steps' to ensure this work is carried out, and this may involve giving written notice to a tenant requesting access and explaining the reason. Keep a record of any action in case a tenant refuses access and you have to demonstrate what steps have been taken. If a tenant continues to refuse access after repeated contacts, you may need to consider proper action through the courts under the terms of the tenants' contract. However, do not use force to gain entry into the property.

How do I know whether the gas engineer is registered?

The engineer should be a Registered Gas Installer and should carry an ID card which will contain a unique licence number and what they are qualified to do. You should always ask to see ID.

What if an appliance fails the safety check?

The safety check record will contain details of any defect identified and remedial action taken. You must ensure that any safety defect is rectified before the equipment is used again. It is recommended that you keep copies of work done to rectify defects identified by the safety check. In no circumstances should you reconnect an appliance which has been isolated or disconnected for safety reasons, until the fault has been rectified.

What happens if I don't maintain my tenant's gas appliances?

Failure to do so may result in loss of life.

What action do I take in the event of a gas escape?

If you smell gas, or suspect there is a gas escape, you should immediately do the following:

- Open all doors and windows.
- Shut off the gas supply at the meter control valve (if you know where it is). If gas continues to escape, call the Bord Gais helpline.
- In the case of suspected carbon monoxide leakage, follow the above procedure, except if you are able to identify the specific appliance at fault. In this case you should consult a registered engineer to investigate and make repairs.

If you provide liquefied petroleum gas (LPG) for use by a tenant in premises other than a building, e.g. a caravan or holiday home, you must discuss emergency arrangements with your LPG supplier and agree what action to take in case of a gas escape or emission of carbon monoxide from any LPG appliance.

Fire safety

The Housing (Standards for Rented Houses) Regulations 2008 and Housing (Standards for Rented Houses) Amendment) Regulations 2009 provide that all rental units that do not form part of a multiple unit must be provided with a fire blanket and two ten-year self-contained battery-operated smoke alarms.

Larger properties/Multi-unit buildings

Multi –unit dwellings are required to contain a mains-wired smoke alarm, a fire blanket, emergency lighting in common areas and an emergency evacuation plan and all residents must be made aware of what to do in the event of a fire.

You should carry out a risk assessment, or have one carried out on your behalf, to establish both the risk of fire occurring and the risk to people in the event of fire. This would apply to everyone and should take adequate account of any people with special needs. Such a risk assessment will show whether the existing fire precautions are adequate, and what changes need to be made if not.

Fire safety equipment must be regularly maintained according to the manufacturer's recommendations. Furthermore, if a fire started in your property and the furnishings were found to be below regulatory standards, you would face serious penalties for contributing to any deaths or injuries.

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.