

LANDLORD AND TENANT

Law guide - Setting up a residential tenancy

Contents

How to set up a tenancy.....	3
Tenancy agreements	9
Types of tenancy agreements	14
Reviewing rent.....	16
House in multiple occupation.....	20
Taking on a lodger	21
Household electrical safety	23
Health & safety	24
Gas safety	26
Fire safety	28

How to set up a tenancy

Before setting up the tenancy agreement, it is important to remember that there are different types of tenancy arrangements for letting your 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..

Irrespective, however, of whether or not the tenancy is fixed 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 and is concerned with security of tenure for the tenant and the circumstances under which a tenancy can be terminated.

The only exception to the above regulations, which is at the discretion of the landlord, is 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.

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.

Every tenant is a potential problem and a landlord should make detailed checks before letting them have possession of your 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.

How to set up a tenancy?

A tenancy, including sub-tenancies, may be oral or in writing or implied. 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.

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 Residential Tenancies Board (RTB) under the Residential Tenancies Act, 2004.

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 the non-owning spouse or civil partner, as appropriate, 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.

Tenancy agreements

Fixed-term tenancies are usually agreed in writing. Periodic tenancies are either informal oral agreements or they are agreed in writing. While a letting or tenancy does not have to be in writing it is advisable to have the tenancy agreement in writing as it is easier to sort out any disagreements which may arise later, and if necessary, to evict the tenant.

Does the tenancy agreement have to comply with certain legislation?

There are many laws that apply to tenancies such as the Residential Tenancies Act 2004, the Housing (Miscellaneous Provisions) Act 2009, the Residential Tenancies (Amendment) Act 2015 and the Planning and Development (Housing) and Residential Tenancies Act 2016.. Also the accommodation will have to comply with Gas and Safety Regulations and requirements under the relevant Housing (Rent Books) (Amendment) Regulations.

Statement of Information

The Housing (Rent Books) (Amendment) Regulations, 2010 provide for a statement of information to be given to tenants at the commencement of a tenancy and other requirements, which can be summarised as follows:

1. The tenant of a house is entitled to enjoy peaceful and exclusive occupation of the house.
2. Notice of termination of a tenancy must be in writing and must be made in accordance with the provisions of the Residential Tenancies Acts 2004 to 2015.
3. The landlord is prohibited from impounding the goods of a tenant to secure recovery of rent unpaid as laid down in the Housing (Rent Books) Regulations, 1993.
4. 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.
5. The landlord is obliged to keep the particulars in the rent book up-to-date. Where the rent or any other amount due to the landlord under the tenancy is handed in person by the tenant or by any person acting for the tenant, to the landlord, the landlord must, on receipt, record the payments in the rent book or acknowledge it by way of receipt. Payments not handed over directly - for example those made by banker's order or direct debit - must, not more than three months after receipt, either be recorded by the landlord in the rent book or acknowledged by way of statement by the landlord to the tenant.
6. The tenant is obliged to make the rent book available to the landlord to enable the landlord to keep the particulars in it up-to-date.
7. The landlord of a private rented house is obliged to ensure that the house complies with the minimum standards of accommodation laid down in the Housing (Standards for Rented Houses) Regulations, 2008. The Regulations do not apply to houses let on a temporary or holiday basis, local authority demountable dwellings and communal type accommodation provided by health boards and certain approved non-profit or voluntary bodies. The standards relate to structural condition, heating facilities, food preparation and storage, laundry, ventilation, fire safety, lighting, electricity, gas and refuse facilities, maintenance of common areas and washing facilities etc.
8. The landlord's obligation and duties referred to at paragraphs 5 to 8 above may be carried out by an agent of the landlord, acting on behalf of the landlord. Any reference in a statement to 'house' includes a flat, apartment or maisonette.

Copies of the Housing Miscellaneous Provisions Act, 2009, the Housing (Standards for Rented House) (Amended) Regulations 2009, the Housing (Standards for Rented Houses) Regulations 2008 and the Housing (Rent Books) Regulations 1993 may be viewed, supplied by or made available for purchase from the Housing Authority or on the Internet.

The local authority for the area in which the property is located has the responsibility for the enforcement of the law relating to rent books and standards. The name, address and telephone number of the relevant housing authority should also be confirmed to the tenant.

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. It is usual to charge at least one month's rent though some landlords require more than this.

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.

For more information on a landlord's obligation in relation to deposits see the chapter on 'Tenancy deposits'.

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.

Tenancy agreements

This document does not purport to be a legal interpretation of landlord and tenant legislation or common law but provides a simple overview and guidance on residential tenancies in the Republic of Ireland.

Tenancy agreements

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 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.

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.

How to set up a tenancy

Before any 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'). See 'Obligations of a landlord' more information.

In addition, you should select a tenancy agreement (see 'Types of tenancy agreement' below).

For further information on how to set up or register a tenancy see the chapter on 'How to set up a tenancy'.

Types of tenancy agreement

There are two broad categories of tenancy agreement:

- tenancy for a fixed term
- periodic tenancy where the duration is not specified The type of tenancy that may best suit your needs depends on your individual circumstances. To read more about the different types of tenancy agreement see chapter on 'Types of tenancy agreements'.

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 and is concerned with security of tenure for the tenant and the circumstances under which a tenancy can be terminated.

The only exception to the above regulations, which is at the discretion of the landlord, is 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.

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 'Taking on 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.

For information on a landlord's obligation in relation to deposits see our chapter on 'Deposits'.

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 provides for improved fire safety measures for rented accommodation.

For more information on a landlord's obligation to take fire precautions see our 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 our 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. However some landlords require more than this. 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.

For more information on a landlord's obligation in relation to deposits see our chapter on 'Tenancy deposits'.

Types of tenancy agreements

Types of tenancy agreement

There are various types of tenancies. Some of the more commonly known ones are as follows:

- tenancy for a fixed term
- periodic tenancy where the duration is not specified
- tenancy at sufferance
- statutory tenancy

Irrespective, however, of what type of tenancy agreement is in place, oral or written, 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 and is concerned with security of tenure for the tenant and the circumstances under which a tenancy of whatever type can be terminated.

The only exception to the above regulations, which is at the discretion of the landlord, is 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.

Which type of tenancy is in place?

Tenancy for a fixed term

A tenancy may be created for any fixed term, no matter how long or short. In short-term or most fixed-term tenancies, the term is usually for one year.

Periodic tenancy

Periodic tenancy is a tenancy where the duration 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.

Also, under the Landlord and Tenant (Amendment) Act, 1980, there is a right of a tenant applying for a new tenancy to remain in possession of the property pending the outcome of his application.

In addition, Part 4 of the Residential Tenancies Act 2004 provides that, subject to certain exceptions, a tenant can seek to remain in the property for a further period of time where that person has been in occupation of the property for a continuous period of more than six months.

Reviewing rent

Frequency of reviews

The Residential Tenancies (Amendment) Act, 2015 amended the Residential Tenancies Act 2004. Outside of designated 'Rent Pressure Zones' (RPZs), or for the first rent review since the inception of an RPZ in relation to an existing tenancy, a landlord can only review the rent once in any 24 month period. Following commencement of a new tenancy, landlords must wait for 24 months to expire in full prior to implementing a new rent review. Following the initial rent review, a landlord can then implement the next rent review 24 months from the effective date of the of the previous rent review.

In an RPZ, for a new tenancy or for the second and subsequent rent reviews of a tenancy existing prior to the inception of the RPZ, the period between reviews is a minimum of 12 months.

Properties which have undergone a 'substantial change in the nature of the accommodation' are exempt from these regulations - see 'Substantial change in the nature of the accommodation' below. If there has been such a change and the rent under the tenancy - were it to be set immediately after that change - would as a result of the change be different to what was the market rent for the tenancy at the time of the last review or the commencement of the tenancy, as the case may be, then the rent can be reviewed immediately after the substantial change has been made.

Market rent

The Residential Tenancies Act 2004 prohibits the landlord from setting a rent that is in excess of market rent. If a landlord intends reviewing the rent, they must inform the tenant in writing of any review in rent, 90 days before the new revised rent is due to take effect. A valid notice served by the landlord must be in the form prescribed by the RTB.

- It must state the amount of new rent and the date from which is to have effect.
- It must include a statement that a dispute must be referred to the RTB on the expiry of 28 days from the receipt by the tenant of that notice or the date the new rent takes effect.
- It must include a statement by the landlord that it is their opinion that the new rent is not greater than market rent having regard to:
 - the other terms of the tenancy
 - letting values of dwellings of a similar size, type and character and situated in a comparable area
- It must specify the rent amount for three comparable dwellings of a similar size, type and character and situated in a comparable area.
- It must include the date on which the notice is signed.
- It must be signed by the landlord or his/her authorised agent.

A landlord is also required to notify the RTB of the revised rent so that the registrations details can be updated.

Rent Pressure Zones

The Planning and Development (Housing) and Residential Tenancies Act 2016 Act also introduced rent predictability measures in certain areas known as Rent Pressure Zones (RPZs). These requirements also apply to tenancies and licences between students and the owners of student specific accommodation. For example, such accommodation provided privately or by a public educational institution are subject to the annual rent increase restriction in RPZs.

The rent may be increased in an RPZ but only by a maximum of 4% annually. In addition, the requirement that rent cannot be set at more than market value remains as well as the requirement to provide three comparable properties as examples to demonstrate market rent in that area. If a property in a RPZ is new to the market and it has not been let at any time during the previous two years or it has undergone substantial change then it will be exempt from the rent predictability measures. A 'substantial change' must be a significant change to the dwelling resulting in an increased market value of the tenancy.

In setting the rent under a tenancy of a dwelling in an RPZ, the amount of rent cannot be greater than the amount determined by the formula under Section 19 of the Acts (as inserted by Section 34 of the 2016 Act).

The formula is $R \times (1 + 0.04 \times T/M)$ where:

R = The amount of rent last set under a tenancy for the dwelling (the current rent amount).

T = The number of months between the date the current rent came in to effect and the date the new rent amount will come in to effect.

M = either 12 or 24.

Exemptions

There are four grounds on which it is possible that a dwelling is exempt from the rent calculation requirements within an RPZ:

1. This is the first ever letting of this dwelling.
2. The dwelling has not been the subject of a tenancy in the two years prior to the commencement date of this tenancy.
3. 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.
4. There has been a substantial change in the nature of the accommodation since the rent was last reviewed under a tenancy for the dwelling.

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,

Requirement to inform RTB of reliance on RPZ exemption

Since 1st July 2019 landlords must inform the RTB that they are relying on an exemption which means that they do not have to adhere to the RPZ formula. Landlords must provide the information listed below and send it to the RTB within one month of the new rent amount being set together with the relevant rent review notice.

The information required is:

1. landlord's name
2. dwelling address
3. tenancy registration number
4. new amount of rent being sought
5. date from which new rent is to be paid from
6. previous rent amount and the date which that rent amount was paid from (if property was rented before)
7. when relying on the 'substantial change' exemption the following additional information:
 - 7.1. nature of works
 - 7.2. new BER certification (where relevant)
 - 7.3.** 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

What happens if there is a dispute concerning increased rent?

Where a valid notice of a 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.

House in multiple occupation

Flats and bedsits or house in multiple occupation

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 on 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 term 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 5 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 Miscellaneous Provisions Act, 2009, the Housing (Standards for Rented House) (Amended) Regulations 2009 and the Housing (Standards for Rented Houses) Regulations 2008, to include, as follows:

- a fire blanket and either a mains wired smoke alarm or two or more ten year self-contained battery operated smoke alarms
- in the case of a multi-unit complex or self-contained unit, a main wired smoke alarm, fire blanket and emergency evacuation plans must be provided
- in the case of a rented property within a multi-unit complex, emergency lighting must be provided in the common areas
- an oven, grill or four ring hob
- adequate extraction apparatus in the form of an over cooker hood or extractor fan
- a fridge/freezer or a separate fridge and freezer
- a microwave
- use of or access to a washing machine or communal washing machine within the confines of the rented accommodation
- if the rented property does not include a yard or garden area for exclusive use of that property, then the Landlord must provide the tenant with a dryer
- washing facilities, to include, sink and fixed bath or shower with an adequate piped supply of cold water
- adequate cupboard and kitchen presses for the purposes of food storage
- access to an adequate supply of piped hot water
- the building must be free from damp and in good structural repair
- all appliances provided in good working order
- electrical wiring, gas and water pipes all should be in good repair

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 our 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 2 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.