

RESIDENTIAL TENANCIES ACT 2004: REVIEW AND ASSESSMENT

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I. INTRODUCTION¹

The Residential Tenancies Act 2004 (RTA) introduced a new and very detailed legislative framework governing private residential tenancies.² At the time of writing, the RTA has been

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¹ The RTA is based, in the main, on the recommendations set out in the *Report of the Commission on the Private Rented Residential Sector* (Dublin: Stationary Office, 2000). The Commission’s report sets out its main conclusions and recommendations in ch.8 and is available at www.environ.ie/housindex.html. See Ryall, “Residential Tenancy Law: An Assessment of the Recommendations of the Commission on the Private Rented Residential Sector” (2001) 6 *Conveyancing and Property Law Journal* 5; Ryall, “Reform of Residential Tenancy Law: A Critical Appraisal of Recent Government Proposals” (2001) 6 *Conveyancing and Property Law Journal* 31, for a detailed account of the background to the RTA. See Ó Dúlacháin, “Residential Tenancies Act 2004,” a paper presented at the Continuing Legal Education Lecture, Law Library, 16th November 2004, for a critical commentary on the RTA.

² The scope of the RTA is treated in detail below. It should be noted at the outset, however, that the formerly rent-controlled sector is regulated separately pursuant to the Housing (Private Rented Dwellings) Acts, 1982-1983. So-called “long occupation equity” tenancies arising under Part II of the Landlord and Tenant (Amendment) Act, 1980 (“the 1980 Act”) are governed by that Act and not by the RTA. “Long occupation equity” tenancies may arise where a residential tenant clocks-up twenty years continuous occupation of a “tenement” within the meaning of s.5 of the 1980 Act. See s.13 (1)(b) of the 1980 Act. Note, however, that ss.191 and 192 of the RTA introduced important changes to this aspect of the 1980 Act. Pursuant to s.191 of the

in force for over 18 months.³ It is, therefore, timely to reflect on some of the key changes introduced by the RTA and to review the impact that these changes have had in practice.

Part II of this article introduces the RTA and explains how it interacts with other legislative measures that regulate the landlord-tenant relationship. Part III considers selected themes of practical interest including: scope of the RTA, tenancy obligations, rent and rent reviews, security of tenure, tenancy terminations and dispute resolution. The most dramatic change brought about by the RTA is the establishment of a new public body, the Private Residential Tenancies Board (PRTB), which has taken over jurisdiction from the courts in most residential tenancy disputes.⁴ As of 25 January 2006, a total of 987 cases had been referred to the PRTB and the Board had issued 100 Determination Orders (a number of cases were resolved or withdrawn during the dispute resolution process).⁵ Pursuant to s.124 RTA, the Circuit Court plays an important role in the enforcement of orders issued by the Board. That court also has jurisdiction, pursuant to ss.189 and 190 RTA, to grant interim or interlocutory relief in

RTA, a tenant may now opt to renounce the right to apply for a new tenancy under section 13 (1)(b) of the 1980 Act. The provisions of the RTA apply to tenants who opt to renounce their 1980 Act rights. Section 192(2) of the RTA provides for the abolition of the right to apply for a new tenancy from the 1st September 2009.

³ The Residential Tenancies Act, 2004 (Commencement) Order 2004 (S.I. No. 505 of 2004), set the 1st September 2004 as the commencement date for: Part 1; Part 4; Part 5 (other than sections 71 and 72); Part 7; Part 8 (other than section 159(1)); Part 9 (other than sections 182, 189, 190), paras. (a) and (d) of section 193, and subsections (4) and (5) of section 195) and the Schedule. The 1st of September 2004 is also the establishment day for the purposes of Part 8 of the RTA. See Residential Tenancies Act, 2004 (Establishment Day) Order 2004 (S.I. No. 525 of 2004). The Residential Tenancies Act, 2004 (Commencement) (No. 2) Order 2004 (S.I. No. 750 of 2004) set the 6th December 2004 as the commencement date for: Part 2; Part 3; ss.71 and 72; Part 6; s.159(1); ss.182, 189 and 190; paras. (a) and (d) of s.193; and subsections (4) and (5) of s.195.

⁴ RTA, s.182. Note that the Board's dispute resolution jurisdiction is subject to certain limits set down in s.182(1).

⁵ See Murphy, "The Private Residential Tenancies Board's Perspective," a paper presented at the Law Society's Continuing Professional Development seminar on the theme of *Dispute Resolution and the Residential Tenancies Act 2004*, 28th February 2006, at 16.

appropriate cases. The Board's orders, reflecting the determinations of Tenancy Tribunals, may be appealed to the High Court on a point of law within 21 days and are otherwise binding. Three cases are pending before the High Court presently. The different roles played by the courts under the RTA (i.e., interim/interlocutory relief, appeal on a point of law, enforcement of Determination Orders where a party has failed to comply with one or more terms of an order; and proceedings in relation to offences), are explained in Part IV. The article concludes by assessing the overall effectiveness of the new statutory framework to date.

II. RTA IN CONTEXT

The general scheme of the RTA is as follows:

Part 1	Preliminary and General
Part 2	Tenancy Obligations of Landlords and Tenants
Part 3	Rent and Rent Reviews
Part 4	Security of Tenure
Part 5	Tenancy Terminations - Notice Periods and other Procedural Requirements
Part 6	Dispute Resolution
Part 7	Registration of Tenancies
Part 8	Private Residential Tenancies Board
Part 9	Miscellaneous
	Schedule

Although it is a substantial piece of legislation running to over 200 sections, the RTA does not consolidate the various legislative measures that govern residential tenancies. The new statutory scheme was superimposed on a scattered selection of existing measures.⁶ A degree of research beyond the text of the RTA is therefore required in order to gain a complete picture of the relevant legal rules. The Housing (Miscellaneous Provisions)

⁶ See further Ryall, "Residential Tenancies Act 2004" (2005) 10 *Conveyancing and Property Law Journal* 10.

Act 1992 (the 1992 Act) contains a number of relevant provisions that remain in force post-RTA. Regulations made pursuant to s.17(1) of the 1992 Act require a landlord to provide a tenant with a rent book or other similar document. The relevant regulations are the Housing (Rent Books) Regulations, 1993 (S.I. No. 146 of 1993),⁷ which came into force on 1 September 1993. The information that must be recorded in the rent book includes: the address of the premises, the parties, the term of the tenancy, the rent reserved, details of any other payments made to the landlord (e.g., for services), the amount of any rent paid in advance, the amount and purpose of any deposit paid and particulars of the furnishings and appliances provided by the landlord. The statutory “statement of information” set out in the Schedule to the regulations must also be included in the rent book (this statement is a basic summary of the key elements of the regulatory framework).⁸ The rationale behind the rent books regulations is to ensure that there is a record of the basic terms of the tenancy, including a record of rent and other payments made to the landlord. The existence of such a record reduces the scope for disputes between landlord and tenant. Breach of section 17 of the 1992 Act, and any regulations made thereunder, is an offence pursuant to section 34(1) of the 1992 Act (as amended). Section 17 and the rent books regulations remain in force post-RTA.

Section 18 of the 1992 Act, and regulations made thereunder, establish minimum standards for rented dwellings. The relevant regulations are the Housing (Standards for Rented Houses) Regulations, 1993 (S.I. 147 of 1993), which came into force on 1 January 1994. Section 18(1) of the 1992 Act provides that the landlord is under a duty to ensure that premises comply with the statutory requirements. The standards regulations set down very basic standards and should not pose any difficulties for most landlords, especially in the case of modern apartment

⁷ As amended by the Housing (Rent Books) Regulations 1993 (Amendment) Regulations 2004 (S.I. No. 751 of 2004).

⁸ The Housing (Rent Books) Regulations 1993 (Amendment) Regulations 2004 (S.I. No. 751 of 2004) substituted new paras. 2 and 3 in the statutory statement of information set out in the Schedule to the Housing (Rent Books) Regulations 1993 (S.I. No. 146 of 1993) in order to reflect changes introduced under the RTA.

developments. In fact, the standards regulations are vague and outdated and should be reviewed and revised as a matter of urgency. The basic obligation is to maintain the premises “in a proper state of structural repair” (Article 5(1)). Article 5(2) elaborates on the scope of this obligation by providing that “a proper state of structural repair” means:

... essentially sound, with roof, floors, ceilings, walls and stairs in good repair and not subject to serious dampness or liable to collapse because they are rotted or otherwise defective.

Beyond this core obligation, the regulations set down basic requirements concerning the provision of sinks, waterclosets, fixed baths or showers, cooking and food storage facilities, safety of electricity and gas installations, availability of adequate heating, lighting and ventilation and the maintenance of common areas, including stairways. Breach of section 18 of the 1992 Act, and any regulations made thereunder, is an offence pursuant to section 34(1) of the 1992 Act (as amended). Section 18 of the 1992 Act and the 1993 standards regulations remain in force following the enactment of the RTA. Section 12(1)(b) RTA addresses the landlord’s repair obligation and refers expressly to s.18 of the 1992 Act and the standards regulations.

Responsibility for enforcing the rent books and standards regulations remains with local housing authorities.⁹ These regulations are of considerable practical importance and it is difficult to see why the rules governing rent books and minimum standards were not incorporated into the RTA with a view to streamlining and consolidating the relevant legislative framework. As things stand, the rules governing minimum standards can only be ascertained by means of careful cross-referencing between s.18 of the 1992 Act, the standards regulations and s.12(1)(b) RTA. Meanwhile, section 19 of the 1992 Act abolished the old common

⁹ Details of enforcement activity during 2004 are contained in the Department of the Environment, Heritage and Local Government, *Annual Housing Statistics Bulletin 2004*, (Dublin, 2004) p.86. Text available at: www.environ.ie. See Ryall, “Residential Tenancies Act 2004: Update and Review” (2006) 11 *Conveyancing and Property Law Journal* 4, for analysis.

law remedy of distress in the case of premises let solely as a dwelling. It follows that a landlord is not entitled to seize or retain a tenant's property in lieu of rent due.

Beyond the 1992 Act, other legislative provisions that relate to the landlord-tenant relationship include the: Landlord and Tenant Amendment Act, Ireland 1860 (Deasy's Act); Landlord and Tenant (Amendment) Act 1980 (as amended); Fire Services Act 1981 (as amended); Equal Status Act 2002 (as amended); Environmental Protection Agency Act 1992, s.108 and regulations made thereunder (concerning noise nuisance); and European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 (S.I. No. 27 of 1995) (as amended).

III. SELECTED THEMES OF PRACTICAL INTEREST

A. Scope of RTA

A common query from landlords and their advisors is the extent to which, if at all, it is permissible for landlords to contract out of, or otherwise avoid, the various rights and obligations created in the RTA. Section 3 RTA deals with the application of the Act. It is clear from s.3(1) that the RTA applies to "every dwelling, the subject of a tenancy," including a tenancy created before the passing of the RTA.¹⁰ There must be a tenancy before the RTA will apply. It follows that the RTA does not apply to licences to reside (although note that certain provisions of the Act are relevant where a licensee is residing with a tenant).¹¹ It can be difficult to distinguish between a tenancy and a genuine licence. The existing Irish case law on this thorny question concerns business lettings and provides limited guidance for present purposes.¹² The PRTB is likely to subject any suspect licence

¹⁰ "Dwelling" is defined in broad terms in s.4 (1). See also the definition of "self-contained residential unit" in s.4 (1).

¹¹ The PRTB has published a detailed information leaflet on the theme "Licensees in Private Rented Accommodation" which is available at the Board's web site at: www.prtb.ie/downloads.htm.

¹² See further Ryall, "Lease or Licence?: The contemporary significance of the distinction" (2001) 6 *Conveyancing and Property Law Journal* 56. The Law Reform Commission has made a number of provisional recommendations on the lease/licence issue in the Law Reform Commission, *Consultation Paper on*

agreement to close scrutiny in order to ensure that this device is not employed to avoid the rights and obligations created in the RTA. The RTA does not provide an exemption for so-called “temporary convenience lettings.” There are separate provisions governing the application of Part 4 RTA concerning security of tenure.¹³

It is clear from s.5(1) that “tenancy” includes a periodic tenancy and a fixed term tenancy – whether oral or implied or in writing.¹⁴ It follows that a landlord cannot avoid the statutory scheme by creating oral tenancies. Even in the case of an oral tenancy, the landlord is still obliged to provide the tenant with a “rent book” (or other documentation to the like effect) under the rent books regulations.

Section 3(2) lists nine categories of dwellings to which the RTA does not apply. These include: business lettings;¹⁵ formerly rent controlled dwellings (which are regulated under a separate statutory scheme);¹⁶ a dwelling let by or to a “public authority” including, but not limited to, social housing;¹⁷ a dwelling where the occupier is entitled to acquire the fee simple;¹⁸ a dwelling occupied under a shared ownership lease;¹⁹ holiday lettings;²⁰ a dwelling where the landlord is also resident (e.g., in the case of the rent a room scheme);²¹ a dwelling where the landlord’s spouse, parent or child resides and no written tenancy agreement has been entered into by any person resident in the dwelling;²² and a dwelling the subject of a tenancy granted under Part II of the Landlord and Tenant (Amendment) Act 1980.²³ The precise

the General Law of Landlord and Tenant (LRC CP 28-2003) (Dublin, 2003) at paras. 1.31-1.33. Text available at: www.lawreform.ie.

¹³ See text below.

¹⁴ S.4 (1) defines “tenancy agreement” as including “an oral tenancy agreement.”

¹⁵ RTA, s.3(2)(a).

¹⁶ RTA, s.3(2)(b).

¹⁷ RTA, s.3(2)(c). Note the broad definition of the concept of “public authority” in s.4 (1).

¹⁸ RTA, s.3(2)(d).

¹⁹ RTA, s.3(2)(e).

²⁰ RTA, s.3(2)(f).

²¹ RTA, s.3(2)(g).

²² RTA, s.3(2)(h).

²³ RTA, s.3(2)(i).

terms of each of the categories listed in s.3(2) should be studied closely as a number of the exemptions are cast in detailed and rather convoluted terms. As things stand, it appears that the RTA applies to long leases of dwellings (including those created on “sales” of apartments), although this was plainly not the intention of the draftsman. An amendment by way of primary legislation is required in order to eliminate existing doubts on this important practical point.

B. Tenancy Obligations

The basic obligations of landlords and tenants are found in Part 2 RTA. Section 12 lists the landlord’s obligations, while the tenant’s obligations are found in s.16.²⁴ Landlords are obliged to: allow the tenant to enjoy peaceful and exclusive occupation of the dwelling;²⁵ carry out specified repairs;²⁶ effect and maintain a policy of insurance in respect of the structure of the dwelling;²⁷ return or repay promptly any deposit paid by the tenant;²⁸ provide the tenant with contact details for the landlord or his authorised agent;²⁹ reimburse the tenant for all reasonable and vouched expenses that may be incurred by the tenant in carrying out repairs to the dwelling for which the landlord is responsible;³⁰ and forward certain complaints received from the tenant to the management company (if any).³¹ Tenants are obliged to: pay the rent and any other agreed charges;³² not cause the landlord to be in breach of any statutory obligations;³³ avoid causing and make good any damage beyond normal wear and tear;³⁴ notify the landlord of any defects in the dwelling that require repair;³⁵ allow

²⁴ See further RTA, s.17 on the interpretation of key concepts deployed in s.16 (e.g. “alter or improve” and “behave in a way that is anti-social”).

²⁵ RTA, s.12(1)(a).

²⁶ RTA, s.12(1)(b) and s.16(f).

²⁷ RTA, s.12(1)(c) and s.12(3).

²⁸ RTA, s.12(1)(d) and s.12(4).

²⁹ RTA, s.12(1)(e) and (f).

³⁰ RTA, s.12(1)(g) and s.12(5).

³¹ RTA, s.12(1)(h).

³² RTA, s.16(a).

³³ RTA, s.16(b) and s.17(2).

³⁴ RTA, s.16(f).

³⁵ RTA, s.16(d).

access for inspection and repairs;³⁶ not engage in or allow “anti-social” behaviour;³⁷ not act or allow others to act in a way that would invalidate the landlord’s insurance;³⁸ not assign or sub-let, alter, improve, or change the use of the dwelling without the landlord’s written consent;³⁹ and keep the landlord informed of the identity of each person who, for the time being, is ordinarily resident in the dwelling (other than multiple tenants).⁴⁰

In addition to the core provisions found in ss.12 and 16, s.14 prohibits a landlord from “penalising” a tenant in certain specified circumstances (e.g., where a tenant refers a dispute to the PRTB or makes a complaint to the Gardaí or to the local housing authority in relation to a matter concerning the occupation of the dwelling). Section 15 should also be noted. It provides that a landlord owes a duty to enforce the tenant’s obligations under the tenancy to every person “who could be potentially affected” (e.g., a neighbouring occupier who may be affected by noise or some other disturbance caused by the tenant and/or his visitors). The PRTB has jurisdiction to deal with complaints under ss.14 and 15 RTA.

It is clear from s.18(1) that it is not possible to contract out of ss.12 or 16. The parties are free to agree to more favourable terms for the tenant (s.18(2)). Obligations in addition to those mentioned in s.16 may be imposed on the tenant, but only where any such additional obligations are consistent with the RTA (s.18(3)). The provisions of the RTA will override any conflicting provisions in a lease or tenancy agreement – even in the case of an agreement entered into before 6 December 2004 (the date of commencement of Part 2 RTA). A general anti-avoidance provision is found in s.184 (voidance of provisions designed to facilitate tenancy terminations).

A common query in practice is whether there is any real advantage in drafting a detailed tenancy agreement when the basic obligations of landlord and tenant are now set down in Part 2 RTA? It must be recalled here that, even in the case of an oral

³⁶ RTA, s.16(c) and (e).

³⁷ RTA, s.16(h) and s.17(1).

³⁸ RTA, s.16(i) and (j) and s.17(4).

³⁹ RTA, s.16(k), (l) and (m) and s.17(3).

⁴⁰ RTA, s.16(n).

tenancy, a landlord is obliged by law to provide the tenant with a “rent book” (or other documentation to the like effect). A letting agreement that contains all of the details required under the rent books regulations will satisfy this obligation. A well-drafted letting agreement also provides a concrete and accessible record of the parties’ rights and obligations. More significantly, the parties may wish to agree a range of “special letting provisions” addressing matters that are not covered in either ss.12 or 16 RTA. For example, the landlord may wish to oblige the tenant to keep the garden (if any) tidy and well tended or prohibit the tenant from keeping any pets in the dwelling without the landlord’s prior consent. The landlord may also wish to include an express reference to the relevant management company regulations (if any). So, depending on the particular circumstances, a written letting agreement may be advisable.⁴¹ Any special letting provisions must be consistent with the RTA.

C. Rent and Rent Reviews

Part 3 RTA deals with rent and rent reviews. The basic rule is found in s.19 and provides that the rent may not be set at a level greater than the “market rent.” This rule applies to the initial setting of the rent at the commencement of a tenancy and to any subsequent review of that rent (s.19(2)). “Market rent” is defined in s.24(1) as meaning:

... the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling, in each case on the basis of vacant possession being given, and having regard to:

- (a) the other terms of the tenancy, and
- (b) the letting values of dwellings of a similar size, type and character to the dwelling and

⁴¹ In February 2005, the Dublin Solicitors Bar Association (DSBA) published a substantially revised and updated edition of its *Specimen Residential Tenancy Agreement*. This specimen agreement, which is carefully annotated, takes full account of the requirements of the RTA. Further details can be obtained from the DSBA web site at: www.dsba.ie.

situated in a comparable area to that in which it is situated.

Practitioners will be aware that this definition is modelled on the definition of “gross rent” found in s.23(5) of the Landlord and Tenant (Amendment) Act 1980. No further statutory guidance is provided on the concept of “market rent,” however.

Rent reviews may not take place more frequently than once every 12 months (subject to a limited exception set down in s.20(3) which applies where there is “a substantial change” in the nature of the accommodation provided under the tenancy). This rule overrides any contrary provision in a tenancy agreement (s.20(2)). Where a tenancy agreement does not provide for a rent review, then a right to a review is provided for in s.21 (subject to s.20). Rents may be reviewed upwards or downwards. An example serves to illustrate the significance of this point. Assume that the parties agree the rent for a particular dwelling. The tenant proceeds to sign a tenancy agreement, takes up possession and then (almost immediately) refers a dispute to the PRTB concerning the rent reserved (i.e., the tenant argues that the rent reserved under the tenancy agreement is “greater than the amount of the market rent for that tenancy”). The result is that a rent freely negotiated and agreed between the landlord and the tenant may subsequently be disturbed by referral of a dispute about the rent to the PRTB (depending on the Board’s view of the prevailing market rent).⁴²

Pursuant to s.151(1)(e), the PRTB is charged with “the collection and provision of information relating to the private

⁴² RTA, s.78(1)(b) provides that “the amount that ought to be initially set (in compliance with s.19) as the amount of rent under a tenancy” may be the subject of a reference to the PRTB. In practice, of course, if good quality, reasonably priced accommodation is in short supply, it may well be the case that the rent was not, in fact, freely negotiated. Consider, for example, a situation where the tenant felt obliged to agree to a rent he considered to be excessive in order to secure the accommodation in the first place. The tenant’s right to dispute the rent set at the commencement of the tenancy may deter landlords from deploying excessive rent as a device to avoid the application of the Equal Status Act, 2000 (as amended by the Equality Act, 2004) to the disposal of any estate or interest in premises. I am grateful to Eoin O’Sullivan for this example.

rented sector, including information concerning prevailing rent levels.” The Board’s main source of data on current rent levels is the detailed information submitted by landlords as part of the registration system established in Part 7 RTA. Landlords are obliged to apply to register tenancies of dwellings to which the RTA applies with the PRTB.⁴³ The registration rules require a landlord to provide the PRTB with specific particulars, including: the address of the dwelling; a description of the dwelling (indicating the floor area, the number of bed spaces, the number of bedrooms and a description of the category to which the dwelling belongs, e.g., house, apartment, flat, bed sit, etc.); the amount of rent payable and the frequency with which it is required to be paid, together with details of any other taxes or charges required to be paid by the tenant.⁴⁴ Pursuant to s.139(1), the landlord is required to furnish specified information to the PRTB concerning any change in the rent payable under a tenancy registered with the Board within one month of the effective date of the change. The aim of this provision is to ensure that the Board’s database is kept up to date. It is an offence to furnish false or misleading information to the Board.⁴⁵ Section 144 deals with enforcement of the registration obligation and establishes a notification procedure which is to be followed where the Board believes that a tenancy exists that should be registered. Failure to comply with a notice served by the Board pursuant to s.144(3) requiring a landlord to register a tenancy within the time specified is an offence.⁴⁶

The Board is charged with maintaining two distinct registers. The first register is described in the Act as the “private residential tenancies register.” It is useful to describe this register as the “full” register because it contains the full range of information provided to the PRTB by the landlord in the application to register the tenancy. The general rule is that the information contained in the “full” register may not be disclosed to any person (s.127(4)). However, s.127(5) provides that specified persons may disclose information contained in the

⁴³ RTA, s.134(1).

⁴⁴ RTA, s.136.

⁴⁵ RTA, s.143.

⁴⁶ RTA, s.143(4).

register when performing any of their functions under the RTA in circumstances where such disclosure is necessary for the performance of any such function. The persons specified for this purpose are: a member of the Board; a member of a committee of the Board; a member of the Board's staff; a mediator or adjudicator; or a person providing services to the Board pursuant to s.167. The second register is the "published register." This register contains *extracts* from the full register and is available for public inspection. Pursuant to s.128(4), the published register must not contain any information concerning a particular dwelling that discloses or could reasonably lead to the disclosure of: (i) the identity of the landlord or the tenant(s) and (ii) the rent payable. It follows from this embargo that it is not possible to discover the identity of the landlord or the tenant(s) of a particular dwelling from the data set out in the published register. Neither is it possible to ascertain the rent payable for a particular tenancy from this register. However, pursuant to s.131(1), the Board may publish details of the private rented sector drawn from the full register in an aggregated form.

The PRTB has not published data on prevailing rent levels to date. It has, however, published what has been described as "the first national register of tenancies."⁴⁷ The public register contains the address of each dwelling registered with the PRTB, together with the number of bed spaces, floor area and the category of dwelling (e.g. house, flat apartment, bedsit etc.). In the case of a dwelling which is one of a number of dwellings in an apartment complex, the name of the management company (if any) is also included. The public register is available on line via the Board's website at: www.prtb.ie/pubreg.htm. The online register is presented by county in spreadsheet form. A hard copy of the public register is available for inspection at the Board's office in Dublin.

As at 31 March 2006, 91,123 tenancies were registered on the PRTB's computer system.⁴⁸ The Department of the Environment, Heritage and Local Government estimates that

⁴⁷ "First national register of tenancies is published," *Irish Times* 5 November 2005.

⁴⁸ Personal communication from Department of the Environment, Heritage and Local Government, 3rd April 2006.

there are over 150,000 rented dwellings in the State, so there is clearly a high level of non-compliance with the registration requirement (although it is not clear what proportion of the estimated 150,000 rented dwellings are excluded from the RTA by virtue of the exemptions set down in s.3(2)).⁴⁹ It is interesting to note, in passing, that before Part 7 RTA came into force on 1 September 2004, only 22,574 tenancies were registered with local housing authorities under the old registration system established pursuant to the (now revoked) Housing (Registration of Rented Housing) Regulations 1996 (S.I. No. 30 of 1996) as amended.⁵⁰ So it seems clear, even at this relatively early stage, that there is a much higher level of compliance under the new registration system operated by the PRTB. The increased number of registrations is most likely due to the publicity surrounding the establishment of the PRTB and the penalties for non-registration under the RTA. Late applications to register attract a double fee⁵¹ and, more significantly, failure to register results in the landlord losing the right to access the dispute resolution procedure operated by the PRTB.⁵²

D. Security of Tenure

The basic rule is that a tenant who clocks up six months continuous occupation as tenant of a dwelling qualifies for statutory protection and is entitled to remain in possession for a further period of three and a half years (i.e., a four-year period in total) (s.28 RTA).⁵³ Periods of occupation prior to 1 September

⁴⁹ The 2002 Census of Population found that the number of private rented dwellings almost doubled in the period 1991-2002 (from 71,000 to 141,000) and the private rented sector accounts for approx. 11% of housing stock. Note that 77.4% of Irish housing units are owner-occupied. See further *Census 2002: Principal Socio-Economic Results* (Dublin: Stationary Office, October 2003) p. 28.

⁵⁰ Department of the Environment, Heritage and Local Government, *Annual Housing Statistics Bulletin 2004* (Dublin, 2004), at 87. Text available at: www.enviro.ie.

⁵¹ RTA, s.137(6).

⁵² RTA, s.83.

⁵³ Note that in addition to the exemptions set out in s.3(2) RTA noted earlier, Part 4 does not apply where the tenant's entitlement to occupy the dwelling is connected with his continuance in any office, appointment or employment (s.25(4)(b)). There is also a specific exemption here in the case of so-called

2004 do not count towards the six months continuous occupation requirement. Part 4 rights began to crystallise on 1 March 2005 (i.e., six months from the 1 September 2004 commencement date).⁵⁴ A tenancy continued in being by virtue of s.28 is described in the RTA as a “Part 4 tenancy” (the rules governing security of tenure are found in Part 4 RTA). A landlord may prevent the right to a Part 4 tenancy from arising in the first instance by serving a valid notice of termination before the expiry of the initial six-month period (s.28(3)) – assuming, of course, that the landlord is not bound by a fixed term agreement. For example, following the commencement of Part 4 RTA (1 September 2004), where a landlord and tenant enter into a tenancy agreement for a fixed period of 12 months, the tenant may qualify for Part 4 rights automatically – even though this may not have been the landlord’s intention. In other words, the fixed term agreement prevents the landlord from taking steps to terminate the tenancy before the expiry of the initial six-month “qualifying” or “probationary” period (assuming here that the tenant is not in breach of any obligations under the tenancy). This consequence, however, does not appear to have deterred landlords from continuing the pre-RTA practice of entering into 12-month tenancy agreements.

Once a tenant has qualified for the statutory protection, the landlord may only seek to recover possession of the dwelling in specific circumstances that are carefully defined in a Table to s.34 (the “grounds for termination” of a Part 4 tenancy). The six grounds for termination set down in the Table to s.34 relate to: breach of tenancy obligations by the tenant; where the dwelling is no longer suited to the accommodation needs of the occupants; where the landlord intends to sell within three months of the termination of the tenancy; where the landlord requires the

“section 50” student accommodation (s.25(4)(a)). Section 25(1) provides that, where certain conditions are satisfied, a landlord may opt for Part 4 not to apply to a particular dwelling (*i.e.* where there are two dwellings in a building that originally comprised a single dwelling and the landlord resides in one of the dwellings). Where a landlord intends to rely on the opt-out provision created in s.25(1), he must signal notice of this intention, in writing, to the tenant before the commencement of the tenancy (s.25(3)).

⁵⁴ RTA, s.27.

dwelling for his own occupation or for occupation by a family member;⁵⁵ where the landlord intends to substantially refurbish or renovate the dwelling; and where the landlord intends to change the use of the dwelling.

E. Tenancy Terminations

The rules governing termination of tenancies are now found in Part 5 RTA.⁵⁶ As and from 1 September 2004, the termination of a tenancy to which the RTA applies must be effected by means of a notice of termination (NOT) that complies with the requirements of Part 5. In the case of a Part 4 tenancy, the requirements of Part 5 are in addition to the requirements set down in Part 4 RTA.

Part 5 RTA introduced new notice periods and other procedural requirements. The notice period is now linked to the duration of the tenancy, but special provision is made for situations where the landlord or tenant is in breach of their obligations.⁵⁷ Note, in particular, that the traditional remedies of forfeiture and re-entry are no longer available to landlords of dwellings to which the RTA applies.⁵⁸ Section 59 excludes existing rules of law and enactments from application in the case of the termination of the tenancy of a dwelling. This provision is subject to s.60. Section 60 provides that where a greater period of notice than that specified in Part 5 is required to be given under the terms of any lease or tenancy agreement, then that greater period of notice applies. There is an important proviso here – the maximum period of notice in the case of a tenancy that has lasted less than six months is set at 70 days (see s.65(4)).

Section 62 governs the requirements for a valid NOT. Section 62(1)(d) provides that a NOT must “be in such form (if any) as may be prescribed.” There is currently no prescribed

⁵⁵ “Family member” is defined in s.35(2)(4) for the purpose of this ground of termination.

⁵⁶ See generally Cannon, “Termination of Tenancies under the Residential Tenancies Act 2004: The New System” (2005) 10 *Conveyancing and Property Law Journal* 77.

⁵⁷ RTA, ss.65-69.

⁵⁸ RTA, s.58.

form.⁵⁹ It is an offence to purport to serve an invalid NOT and then act in reliance on it in a way that adversely affects, or is calculated to adversely affect, any interest of the person on whom the notice was served.⁶⁰ A series of Determination Orders, in which the PRTB has considered the validity or otherwise of a NOT, are considered in detail below.

*F. Dispute Resolution*⁶¹

The PRTB was established pursuant to Part 8 RTA⁶² and is independent in the exercise of its functions.⁶³ The Board's principal functions are set down in s.151 and include: resolution of disputes between landlords and tenants pursuant to Part 6 RTA;⁶⁴ registration of particulars of tenancies pursuant to Part 7 RTA; provision of policy advice in relation to the private rented sector to the Minister for the Environment, Heritage and Local Government; development and publication of guidelines for good practice in the sector; collection and provision of information relating to the sector, including information on prevailing rent levels; research and monitoring of various aspects of the sector; and review of the operation of the RTA and related enactments.⁶⁵ There are currently fifteen Board members drawn from a variety

⁵⁹ A sample NOT is available on the PRTB's web site at: www.prtb.ie/index.htm. The Dublin Solicitors Bar Association (DSBA) has also published a set of specimen NOTs which include guidance notes for completing the relevant notice. Further details can be obtained from the DSBA website at: www.dsba.ie.

⁶⁰ RTA, s.74(1). The various elements that make up this new offence are set out in s.74 (2)-(4), including a potential defence in s.74(2).

⁶¹ See further Linnane, "Dispute Resolution under the Residential Tenancies Act: An Analysis of the Implications of the Legislation" and Murphy, "The Private Residential Tenancies Board's Perspective," papers presented at the Law Society Continuing Professional Development seminar on the theme *Dispute Resolution and the Residential Tenancies Act 2004*, Dublin, 28th February 2006.

⁶² Establishment day for the purposes of Part 8 of the RTA is the 1st September 2004. See Residential Tenancies Act, 2004 (Establishment Day) Order 2004 (S.I. No. 525 of 2004).

⁶³ RTA, s.150(3).

⁶⁴ RTA, Part 6 came into force on the 6th December 2004.

⁶⁵ See "The Private Residential Tenancies Board," *Corner Stone* Issue 26, March 2006 (Homeless Agency Dublin) at 27, for an overview of the Board's activities to date.

of backgrounds including law, auctioneering/estate agency, public service and academia, together with representatives of Threshold and the Irish Property Owners' Association. Members are appointed by the Minister on the basis of "experience in a field of expertise relevant to the Board's functions."⁶⁶ Only six of the current members are qualified lawyers.

The most dramatic change introduced by the RTA is that jurisdiction over residential tenancy disputes is now vested in the PRTB instead of the courts (subject to the jurisdictional limits set down in s.182(1)). Part 6 RTA (which came into force on 6 December 2004), established a complex, multi-layered dispute resolution procedure. The aim of this section is to provide an overview of the dispute resolution service operated by the PRTB before moving on to explain the role of the courts under the RTA in Part 3 below. A more complete account of the intricacies of the procedure lies beyond the scope of this article. Full details are found in Part 6 RTA and in Dispute Procedure Rules made by the Board pursuant to s.109.⁶⁷

Section 78(1)(a)-(q) provides a non-exhaustive list of matters that may be referred to the Board including: retention or refund of a deposit; rent setting and rent review; alleged failure by the landlord or the tenant to comply with tenancy obligations, including those contained in any lease or tenancy agreement; tenancy termination; alleged failure by the tenant to offer up vacant possession by the specified date following service of a valid NOT by the landlord; a claim for costs or damages (or both) in respect of a failure to comply with tenancy obligations; a claim for costs or damages (or both) for the purported termination of a tenancy otherwise than in accordance with the RTA; alleged failure to comply with a Determination Order made by the PRTB; an allegation that a landlord has contravened s.14 RTA (the prohibition on penalisation of tenants); and a claim by a landlord for arrears of rent or other charges. In addition to this non-exhaustive list, s.77 confers a right on qualified persons to refer a complaint to the Board alleging that a landlord has failed to enforce the tenant's obligations under the tenancy agreement in

⁶⁶ RTA, s.15 (2).

⁶⁷ The Dispute Procedure Rules are available at: www.prtb.ie/DownloadDocs/S109Rules.pdf.

breach of the duty owed by the landlord to third parties (e.g. neighbours) under s.15 RTA. Different matters may be the subject of a single reference to the PRTB.⁶⁸

Either the landlord⁶⁹ or the tenant (or a person who satisfies the conditions set down in s.77(2) in the case of a complaint pursuant to s.15) can refer a dispute to the PRTB.⁷⁰ Parties who are considering whether or not to refer a dispute are advised to contact the PRTB in the first instance to discuss the matter informally.⁷¹ It currently costs €25 to refer a dispute to the Board and a specific application form (“Application for Dispute Resolution Services”) is available from the PRTB.⁷² Specified time limits apply to referrals, but the Board may extend time where the applicant shows “good grounds” for an extension.⁷³ A decision of the Board to extend or to refuse to extend the time concerned (as the case may be) can be appealed to the Circuit Court.⁷⁴

The Board may refuse to deal with certain references pursuant to s.84 where it is of the opinion that:

- the dwelling which is the subject of a dispute referred to it is not a dwelling to which the RTA applies;
- the dispute is not within the Board’s jurisdiction for any other reason;
- proceedings in respect of the matter would be statute barred if they were instituted in court; or
- the matter at issue is trivial or vexatious.⁷⁵

⁶⁸ RTA, s.79.

⁶⁹ Note that a landlord is not entitled to refer a dispute to the Board where the tenancy in question is not registered (See RTA, s.83).

⁷⁰ In certain cases, sub-tenants and licensees are also entitled to refer a dispute to the Board. See RTA, ss.89-91 on the relationship between Part 6 RTA and certain other dispute resolution mechanisms.

⁷¹ *The PRTB Dispute Resolution Service* Information Leaflet published by PRTB. Text available at: www.prtb.ie/downloads.htm.

⁷² Dispute Procedure Rules, rules 2 and 3.

⁷³ RTA, s.88 (1) and (2).

⁷⁴ RTA, s.88(4) and (5).

⁷⁵ See further RTA, s.85 on the right of an adjudicator or a Tribunal not to deal with a reference. A challenge to a decision of the Board rejecting a dispute pursuant to s.84 (1)(d) RTA (that the matter at issue is trivial or vexatious) was heard and rejected by the Circuit Court on the 30th March 2006.

The Board is required to serve a notice on the party who referred the matter stating its opinion and giving that party an opportunity to make a submission (within a specified period) as to why the Board should deal with the dispute. If, following consideration of a submission, the Board decides that its original opinion was not well founded, it is obliged to notify the parties accordingly and then to proceed to deal with the dispute. Pursuant to s.84(5), the party who referred the dispute to the Board, or any other party to the dispute, is entitled to appeal to the Circuit Court against the Board's decision not to deal with or, as appropriate, to deal with the dispute (after the procedure set out above has been followed). Section 84(6) provides that the Circuit Court may, as it thinks fit, allow the appeal and direct the Board to deal with or, as appropriate, not to deal with the dispute, or it may dismiss the appeal. In the event of an appeal, the Board is obliged to await the Circuit Court's decision before proceeding to deal with the dispute.

The Department of the Environment, Heritage and Local Government takes the view that legal representation "should not be necessary" for proceedings before the PRTB "as the dispute resolution process will operate informally and is intended to minimise expense and stress for all parties concerned."⁷⁶ This policy is reflected in s.5(3) and (4) RTA which provide that legal and other expert costs and expenses in relation to proceedings before the PRTB will only be allowed in "exceptional circumstances" as determined by the Board. Civil Legal Aid and Advice is not available in respect of "disputes concerning rights and interests in or over land."⁷⁷

The dispute resolution procedure established in Part 6 RTA essentially involves two stages. The first stage consists of either mediation⁷⁸ or adjudication.⁷⁹ The second stage is a hearing

⁷⁶ Department of the Environment, Heritage and Local Government *Residential Tenancies Act 2004: A Quick Guide* (Dublin, 2004) p. 6. Text available at: www.prtb.ie/downloads.htm.

⁷⁷ Civil Legal Aid Act, 1995, s.28(9)(a)(ii). Note that this exclusion is subject to the exemptions set out in s.28(9)(c)(i)-(iii). Legal aid is not available for proceedings before Tribunals except in cases where the Minister for Justice, Equality and Law Reform has prescribed the relevant Tribunal for this purpose (See Civil Legal Aid Act, 1995, s.27(2)(b)).

⁷⁸ RTA, ss.95, 96 and 101.

before the Tenancy Tribunal. Both parties must agree to mediation before this method of dispute resolution can apply to the dispute at issue.⁸⁰ Where the parties agree to mediation, a mediator is appointed from the PRTB's panel of mediators to assist the parties to resolve the dispute themselves. The rate of take-up of the mediation service offered by the Board has been very low to date.⁸¹ Where either of the parties decides not to avail of mediation, or where the Board takes the view that, in the particular circumstances of the case, a dispute is not suitable for mediation, an adjudicator is appointed from the PRTB's panel of adjudicators to examine the parties' evidence and to investigate the dispute fully.⁸² The adjudicator will determine how the dispute is to be resolved.⁸³ Mediation and adjudication are confidential to the parties, although a Determination Order embodying the terms of the determination of an adjudicator may be published on the Board's website. There are currently circa. 150 people appointed to act as PRTB mediators and adjudicators and some of these individuals perform both roles.

Each Tenancy Tribunal is made up of three persons drawn from the PRTB's Dispute Resolution Committee.⁸⁴ A Board member, other than in exceptional circumstances, will always chair the Tribunal hearing. There is no statutory requirement that each Tribunal must include at least one member who is a lawyer, but, in practice, at least one member will be a lawyer. A dispute may be referred to a Tenancy Tribunal in the following circumstances: first, where mediation is unsuccessful and any of

⁷⁹ RTA, ss.97-99 and 101.

⁸⁰ RTA, s.93.

⁸¹ Murphy, "The Private Residential Tenancies Board's Perspective," a paper presented at the Law Society Continuing Professional Development seminar on the theme *Dispute Resolution and the Residential Tenancies Act 2004*, Dublin, 28th February 2006, at 16-17.

⁸² RTA, s. 97(2) and (3).

⁸³ See Holohan, "An Adjudicator's Perspective," a paper presented at Law Society Continuing Professional Development seminar on the theme *Dispute Resolution and the Residential Tenancies Act 2004*, Dublin, 28th February 2006, for a practical account of the mechanics of the adjudication process.

⁸⁴ RTA, s.103. See RTA s.159 on the Dispute Resolution Committee. The Committee has made rules of procedure under s.159(6).

the parties requests a Tribunal hearing;⁸⁵ second, where a party wishes to appeal an adjudicator's determination;⁸⁶ and third, in certain circumstances the Board may refer a dispute directly to the Tribunal where it considers that mediation or adjudication would not be appropriate (e.g., alleged illegal eviction or serious anti-social behaviour).⁸⁷ The current fee for a referral to the Tribunal is €40.⁸⁸ Each of the parties to a Tribunal hearing is entitled to be heard, to present evidence and witnesses to the Tribunal and to be represented⁸⁹ (although note that there is very limited provision for the award of legal and other expert costs and expenses in relation to proceedings before the PRTB and Civil Legal Aid and Advice are not generally available for such proceedings). Anecdotal evidence to date indicates that the majority of parties are not represented. Proceedings before the Tribunal are conducted in public.⁹⁰ Tribunal determinations will become binding on the parties unless appealed to the High Court on a point of law within 21 days of the order being issued to the parties.⁹¹ The High Court may direct the Board to cancel the Determination Order concerned or to vary it in such manner as specified by the Court.⁹² The determination of the High Court is final and conclusive.⁹³ There is no general right of appeal to the courts from a Tribunal determination. The Tribunal itself does not enjoy a power to refer a point of law to the High Court. As of the end of February 2006, 27 Tribunal hearings had taken place. The rate of appeal to the Tribunal from determinations made by adjudicators is currently in the region of 20%.

Section 115 deals with the forms of redress that may be granted under Part 6 RTA. A wide variety of declarations or

⁸⁵ RTA, s.96(6).

⁸⁶ RTA, s.100.

⁸⁷ RTA, s.94.

⁸⁸ Dispute Procedure Rules, rule 15.

⁸⁹ RTA, s.104(6).

⁹⁰ RTA, s.106(1). The Board has the power under s.106(2) to direct that the identities of all or of one or more of the parties to a dispute before the Tribunal must not be disclosed in cases where the Board considers that this is appropriate in the particular circumstances.

⁹¹ RTA, s.123(3) and (8).

⁹² RTA, s.123(5).

⁹³ RTA, s.123(4).

directions (as appropriate) may be made or given in respect of a dispute.⁹⁴ Pursuant to s.117, an adjudicator or the Tribunal may also grant redress of an interim nature pending the final determination of the matter. This provision is separate from the Board's entitlement to apply to the Circuit Court (on being requested to do so by the person who referred the dispute to the Board) "for such interim or interlocutory relief as the Board considers appropriate" (this point is considered further in Part IV below).⁹⁵ An adjudicator or the Tribunal may award damages of up to €20,000 and arrears of rent up to €20,000 or twice the annual rent (whichever is the greater).⁹⁶ An upper limit of €60,000 applies in the case of rent arrears and where the award relates to both rent arrears and damages.⁹⁷ Disputes involving amounts greater than these thresholds must be pursued through the courts.⁹⁸

A mediated agreement, or the determination of an adjudicator or of a Tribunal, as the case may be, will result in a Determination Order being prepared and issued by the Board.⁹⁹ Any direction given by an adjudicator or a Tribunal under s.82(5) or s.117 also results in a Determination Order.¹⁰⁰ The Determination Orders are based on reports submitted to the Board by a mediator or an adjudicator, or on the determination of the Tribunal (as the case may be). A Determination Order embodying the terms of a mediated agreement or the determination of an adjudicator is binding on the parties concerned once the order is issued to them.¹⁰¹ A Determination Order embodying the terms of a determination made by a Tribunal becomes binding once the time limit for an appeal to the High Court on a point of law has expired.¹⁰²

Section 123(7) provides that the Board "may publish, in such manner as it thinks fit ... a determination order issued by it."

⁹⁴ RTA, s.115(1) and (2).

⁹⁵ RTA, s.189.

⁹⁶ RTA, s.115(3).

⁹⁷ RTA, s.115(3).

⁹⁸ RTA, s.182.

⁹⁹ RTA, ss.121(1)(a), (b) and (c) and s.121(2).

¹⁰⁰ RTA, s.121(1)(d).

¹⁰¹ RTA, s.123(1).

¹⁰² RTA, 123(2).

At the time of writing, 73 Determination Orders issued by the PRTB are published in the “Disputes” section of the Board’s web site at www.prtb.ie/disputes.htm (the most recent order available is dated 6 January 2006). A selection of Determination Orders issued by the Board is examined below.

As regards enforcement, the PRTB, or any party mentioned in the order, may apply to the Circuit Court pursuant to s.124(1) for an order directing the respondent to comply with the terms of a Determination Order. Failure to comply with a Determination Order is an offence.¹⁰³ The provisions governing enforcement of Determination Orders are considered further below.

*G. Analysis of a selection of Determination Orders*¹⁰⁴

As noted above, as of 25 January 2006, 987 cases had been referred to the PRTB and the Board had issued 100 Determination Orders. Deposit retention was the most common dispute referred to the Board by tenants (423 cases) while rent arrears was the most common issue referred by landlords (104 cases). The Determination Orders issued by the Board are very brief.¹⁰⁵ It is interesting to examine a selection of Determination Orders where the Notice of Termination (NOT) served by either landlord or tenant (as the case may be) was found to be invalid. For example, the Determination Order issued in Case DR98/2005 simply states that, “... the notice dated 11 February 2005 headed ‘Termination of Tenancy’ and issued to the tenants of [the dwelling] was not a valid Notice of Termination.”¹⁰⁶

The Order indicates that the notice was invalid, but it does not explain *why* the notice was invalid. A similarly terse and uninformative approach is found in the orders issued in Cases DR397/2005¹⁰⁷ and DR146/2005.¹⁰⁸ The lack of detail renders these orders of limited assistance to practitioners. The Board has adopted a different approach in other Determination Orders. For

¹⁰³ RTA, s.126(1).

¹⁰⁴ See further, “Private Residential Tenancies Board Determinations” (2005) 10 *Conveyancing and Property Law Journal* 103.

¹⁰⁵ See RTA, ss.121-126, on Determination Orders generally.

¹⁰⁶ Order made on the 28th September 2005.

¹⁰⁷ Order made on the 7th October 2005.

¹⁰⁸ Order made on the 19th October 2005.

example, the Determination Order issued in Case DR199 and 200/2005 states in relevant part that, “The Notice of Termination of Tenancy served by the Landlord on the Tenant does not comply with section 62(1)(f) of the Residential Tenancies Act 2004 and as such was not valid.”¹⁰⁹

It is clear from the above paragraph that the NOT in question did not comply with s.62(1)(f) which requires that the NOT must specify the “termination date.” Failure to comply with s.62(1)(f) is also cited as the reason for the NOT being invalid in Cases DR37/2005¹¹⁰ and DR14/2005.¹¹¹ These orders highlight the importance of specifying the “termination date” on the NOT as per s.62(1)(f) and confirm that the requirements of the section must be strictly complied with. The Determination Order issued in Case DR09/2005¹¹² cited the fact that the NOT “did not contain a date of service” as the reason for its being invalid. However, the order did not cite the relevant section of the RTA (s.62(1)(c)) which requires that the date of service must be specified in the NOT. The Determination Order in Case DR86/2005 cited failure to comply with s.62(1)(c) and s.62(1)(g) as the grounds for the NOT being invalid.¹¹³ Section 62(1)(g) requires that the NOT must state that any issue as to the validity of the NOT or the right of the landlord or tenant (as the case may be) to serve it must be referred to the Board under Part 6 RTA within 28 days of receipt of the notice. The NOT served in Case (TR08)/DR84/2005 was also held to be invalid for failure to comply with s.62(1)(g).¹¹⁴ The Determination Orders where the PRTB has explained the reason(s) why the purported NOT was found to be invalid indicate that the Board takes a strict approach when assessing whether or not the formal requirements set down in s.62 have been met.

Where a NOT is invalid, the Determination Order should cite the particular statutory requirement(s) that has not been complied with. This approach would serve to alert practitioners

¹⁰⁹ Order made on the 19th August 2005.

¹¹⁰ Order made on the 29th August 2005.

¹¹¹ Order made on the 8th July 2005.

¹¹² Order made on the 24th June 2005.

¹¹³ Order made on the 19th August 2005.

¹¹⁴ Order made on the 19th August 2005.

to the most common pitfalls when drafting NOTs and should go some way towards reducing the number of invalid NOTs that are served in practice. This is particularly important in the early days of the new legislative framework when landlords, tenants and their advisors (if any) are gradually coming to terms with the new and often complex rules governing termination of tenancies. In any event, it is important that the Board adopts a consistent style or template when drafting Determination Orders. As noted above, a number of orders did not explain why a particular NOT was found to be invalid while other orders were more specific and cited the relevant provision(s) of s.62. The latter approach is to be preferred.

IV. THE RTA AND THE COURTS

Although the RTA diverted the task of resolving most residential tenancy disputes from the courts to the PRTB, the courts are vested with specific functions that arise at various stages in the new dispute resolution system. As explained above, certain preliminary decisions taken by the Board may be the subject of an appeal to the Circuit Court (i.e., a decision to extend/refuse to extend the time within which a dispute can be referred to the Board and a decision to deal with/not to deal with a dispute pursuant to s.84). There is an appeal to the High Court on a point of law from a Tenancy Tribunal's determination (s.123(3)), but there is no general right of appeal to the courts. Depending on the specific grounds on which it is sought to question the Tribunal's determination, judicial review, rather than a narrow appeal on a point of law, may be the more appropriate remedy.¹¹⁵

The Circuit Court is assigned a specific role in relation to applications for interim or interlocutory relief made by the Board under s.189 and in the enforcement of Determination Orders pursuant to s.124. Both roles are outlined below. The Circuit Court Rules (Residential Tenancies Act 2004), 2005 (S.I. No. 388

¹¹⁵ *State (Abenglen Properties Ltd.) v. Dublin Corporation* [1984] I.R. 381 at 393 *per* O'Higgins CJ. See generally Bradley, C., *Judicial Review* (Dublin: Round Hall, 2000), paras. 19.12-19.23.

of 2005) prescribe procedures in respect of applications brought under s.124 and s.189 RTA.

Proceedings in relation to offences under the RTA may be brought and prosecuted by the Board in the District Court.¹¹⁶ A person found guilty of an offence is liable on summary conviction to a fine not exceeding €3,000, or imprisonment for a term not exceeding 6 months, or both.¹¹⁷ Where a person is convicted of an offence under the RTA, the District Court “shall” order that person to pay the Board’s costs and expenses in relation to the investigation, detection and prosecution of the offence, unless the court is satisfied that there are “special and substantial reasons” for not doing so.¹¹⁸ The District Court also plays a role where the Board seeks to remove an adjudicator from its panel of adjudicators for misconduct.¹¹⁹ There is an appeal to the Circuit Court from an order of the District Court authorising the Board to remove an adjudicator from the panel.

A. Interim and Interlocutory Relief

Circumstances may arise where interim or interlocutory relief is necessary in order to protect the rights of the landlord or the tenant pending the determination of a dispute by the PRTB. For example, a landlord may threaten to evict a tenant, or may have evicted a tenant, without observing the procedures for terminating a tenancy set down in Part 5 RTA. Alternatively, a tenant’s conduct (e.g. serious anti-social behaviour) may pose a threat to the fabric of the dwelling. In both examples, the matters at issue will be urgent. Threshold’s advice workers dealt with

¹¹⁶ RTA, s.9(3).

¹¹⁷ RTA, s.9(1). See further s.9(2). Note that the RTA, s.201 amends the Housing (Miscellaneous Provisions) Act, 1992, s.34 and increases the penalties for offences under s.17 and 18 of that Act to the level of penalties set for offences under the RTA. Limited details of prosecutions brought in the District Court during 2004 under the Housing (Miscellaneous Provisions) Act, 1992 in relation to alleged breaches of the rent books and standards regulations are noted in the Department of the Environment, Heritage and Local Government *Annual Housing Statistics Bulletin 2004* (Dublin, 2004) p.86. The outcome of these prosecutions and the level of fines imposed, if any, are not recorded in the bulletin.

¹¹⁸ RTA, s.9 (5).

¹¹⁹ RTA, s.165.

271 illegal eviction problems during 2004 indicating that this sort of unlawful activity by landlords continues to be a serious problem within the private rented sector, particularly at the lower end of the market.¹²⁰ As of 25 January 2006, the Board had received 44 cases in the illegal eviction category.¹²¹

Prior to the enactment of Part 6 RTA, the only remedy available to a tenant threatened with, or subjected to, illegal eviction, was to seek injunctive relief before the courts. Alternative avenues of redress are now available under the scheme established in the RTA. As noted above, an adjudicator or a Tribunal has power under s.117 to issue directions for the purpose of providing interim relief to one or more of the parties to a dispute. Any such directions will result in a Determination Order made by the Board (pursuant to s.121(1)(d)) which is binding on the parties. Section 117 is without prejudice to the Circuit Court's jurisdiction to grant interim or interlocutory relief under s.189.¹²²

Section 189 RTA concerns "jurisdiction in aid of Part 6 dispute resolution procedure." According to s.189(2), this provision takes effect where the circumstances of the dispute are such that, if proceedings were brought in the Circuit Court in relation to the dispute, it would be appropriate to apply to that court for interim or interlocutory relief. Essentially, a person who has referred (or is referring) a dispute to the Board, may request the Board to apply to the Circuit Court (on the referrer's behalf) for interim or interlocutory relief.¹²³ Section 189(4) requires the Board to have regard to a list of factors when deciding whether or not to accede to such a request (including the merits of the referrer's contentions and the amount of damages that the Board may be required to pay to the respondent in the event that such damages have to be paid). Section 190 includes "supplemental provisions" designed to enable the Circuit Court to grant interim

¹²⁰ *Threshold Annual Report 2004* at 9. Text available at: www.threshold.ie.

¹²¹ Murphy, "The Private Residential Tenancies Board's Perspective," a paper presented at the Law Society Continuing Professional Development seminar on the theme *Dispute Resolution and the Residential Tenancies Act 2004*, Dublin, 28th February 2006.

¹²² RTA, s.117(4).

¹²³ RTA, s.189(3).

or interlocutory relief until the final determination of the dispute under Part 6 RTA and to authorise an adjudicator or a Tribunal (as the case may be) to include an award of costs in connection with any application under s.189 in the relevant determination.

B. Enforcement of Determination Orders

Following a request from a party to a Determination Order, the Board may apply to the Circuit Court (pursuant to s.124(1)) for an order directing the respondent to comply with the terms of a Determination Order. The Board is not obliged to make such an application and a party to an order may make an application to the Circuit Court under s.124 in his own right. Subject to s.125, the Circuit Court is obliged to make an order directing compliance with the Determination Order unless it considers, or the respondent demonstrates to the court's satisfaction: that procedural fairness was not observed in the relevant proceedings under Part 6; or that a material consideration was not taken into account; or that a manifest error in relation to a legal issue was made in the proceedings; or that the determination made by the adjudicator or the Tribunal (as the case may be), was manifestly erroneous.¹²⁴ It seems, therefore, that enforcement proceedings provide a party against whom a Determination Order has been made with an indirect means of challenging that order on the limited grounds set out above. In practice, this may prove to be a more attractive option for a respondent than pursuing an appeal on a point of law to the High Court against a determination of a Tenancy Tribunal. A respondent in proceedings brought under s.124 to enforce a Determination Order may be required to provide security for costs.¹²⁵ There is a strange anomaly here as this requirement only applies to respondents.¹²⁶ The Circuit Court may make such ancillary orders as it considers just on the hearing of an application under s.124.¹²⁷ As of 25 January, 2006, 14 cases

¹²⁴ RTA, s.124(2) and (3). Section 125 relates to cancellation of a determination order in cases of non-appearance.

¹²⁵ RTA, s.124(4).

¹²⁶ I owe this point to Brian Gallagher.

¹²⁷ RTA, s.124(7).

had been referred to the Board's solicitors for enforcement pursuant to s.124.¹²⁸

As noted above, s.126(1) provides that it is an offence to fail to comply with one or more terms of a Determination Order and this provision has effect notwithstanding the means for enforcement provided under s.124. It is important to note, however, that, pursuant to s.126(3), a person who is convicted of an offence under s.126 shall not be sentenced to any term of imprisonment in respect of that offence where it is established that the failure to comply with the order was due to that person's "limited financial means."

It is anticipated that the Board will in future initiate prosecutions pursuant to s.9 RTA for the offence of failing to comply with a Determination Order, rather than pursuing the s.124 civil enforcement mechanism.¹²⁹ This approach is based on the fact that it is open to any party in whose favour a Determination Order has been made to bring proceedings under s.124 in his own right and on the substantial cost to the Board of making s.124 applications.¹³⁰ It is noteworthy here that the matters mentioned in s.124(3) (discussed above in the context of civil enforcement of Determination Orders) do not apply in the case of criminal enforcement under s.126. This may prove to be a fruitful ground on which to challenge a prosecution for alleged breach of a Determination Order.

V. CONCLUSION

The RTA introduced a complex legislative framework that has wrought dramatic changes to long-established rules governing residential tenancies. It will take some time for the new system to

¹²⁸ Murphy, "The Private Residential Tenancies Board's Perspective," a paper presented at the Law Society Continuing Professional Development seminar on the theme *Dispute Resolution and the Residential Tenancies Act 2004*, Dublin, 28th February 2006, at 15.

¹²⁹ Murphy, "The Private Residential Tenancies Board's Perspective," a paper presented at the Law Society Continuing Professional Development seminar on the theme *Dispute Resolution and the Residential Tenancies Act 2004*, Dublin, 28th February 2006, at 15.

¹³⁰ *Ibid.*

settle down. It is, as yet, too early to attempt an assessment of the real impact of the RTA in practice.

The role played by the PRTB is critical to the success of the RTA. Landlords, tenants and their advisors must have confidence in the new legislative framework and in the procedures applied by the Board. It is essential, therefore, that the Board is provided with sufficient expert staff and resources to ensure that the dispute resolution service and the registration system operate fairly and efficiently.

The long title to the RTA states that one of the aims of the Act is to provide for disputes between landlords and tenants to be resolved “cheaply and speedily.” There is a difficult tension here between the emphasis on relatively “informal” and “alternative” methods of dispute resolution and the general scheme of the RTA which puts in place a complex regulatory framework governing important legal rights, including property rights, with little or no appeal to the courts. This tension is sharpened by the absence of Civil Legal Aid and Advice for proceedings before the PRTB and by the limited scope for awards of legal and other expert costs in the context of the dispute resolution procedure. Careful monitoring of proceedings before the PRTB is required in order to track levels of representation and to assess the impact of lack of representation on dispute outcomes. There is a danger that important points of legal principle may be misunderstood or ignored in the absence of legal representation, particularly in a system where there is no guarantee under the legislation that even one member of a Tenancy Tribunal will be a qualified lawyer. The importance of the supervisory role of the courts in this context cannot be overstated.

Although the RTA diverted the resolution of most residential tenancy disputes from the courts to the PRTB, the courts have been assigned significant roles at various stages in the dispute resolution system created in Part 6 RTA. The availability of a right to appeal to the High Court on a point of law from a Tribunal determination pursuant to s.123(3) RTA means that the High Court will be presented with opportunities to interpret and clarify the more difficult aspects of the RTA. The procedures applied by decision-makers in the course of dispute resolution proceedings will also come under scrutiny in the context of

enforcement proceedings before the Circuit Court under s.124 RTA. Decisions from the High Court and the Circuit Court (as the case may be) should be published on the Board's website at the earliest opportunity because these decisions will be an important resource for practitioners and others who engage the Board's dispute resolution service. The system could be improved by vesting the Tenancy Tribunal with power to refer a question of law to the High Court.

The terse Determination Orders published on the Board's website to date are of limited value as precedents for future disputes and do not provide a solid basis for analysis of emerging trends in the case law. More detail is needed if practitioners and others using the Board's dispute resolution service are to discover how the Board approaches the different categories of disputes that come before it and, more importantly, the Board's interpretation of different provisions of the RTA. In the absence of this detail, it is difficult to see how a body of jurisprudence will ever develop. One interim solution would be for the Board to consider publishing a selection of Tribunal determinations on its website. The PRTB also has an important role to play in terms of raising awareness among landlords and tenants of their rights and responsibilities under the RTA. Publication of a selection (or a digest) of Tribunal determinations would also serve this purpose.

In conclusion, if the recent, sweeping reform of residential tenancy law is to be successful, the new system must provide clarity and certainty for landlords, tenants and their advisors. Lack of legal certainty will simply undermine confidence in the new regulatory framework.