
Briefing Residential Rents and Terminations - Update (July 2020)



INSTITUTE OF DIRECTORS
IN IRELAND

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The Emergency Measures in the Public Interest (Covid-19) Act 2020 prohibits residential rent increases and prevents landlords from terminating residential tenancies during the COVID-19 crisis.

How long will this last?

These measures, amending existing residential tenancies legislation (the “Residential Tenancies Acts”) are set out in Part 2 of the Act. The measures were to last for the duration of the ‘emergency period’ which for the purposes of these particular measures is stated to be a period of 3 months commencing with enactment of the Act on 27 March 2020. However, the emergency period has since been extended by the Emergency Measures in the Public Interest (COVID-19) Act 2020 (Section 4) Order 2020, so that it is now set to expire on 20 July 2020.

While a late amendment to the Act creates some potential uncertainty around the duration of the operation of the suspension of tenancy terminations, for the purposes of this briefing, we are assuming that the “emergency period” as described above applies to suspension of terminations, in the same way as it applies to the prohibition on rent increases.

Who is affected?

Part 2 of the Act applies both the rent freeze and suspension of terminations to all residential tenancies governed by the Residential Tenancies Acts, including licences granted to students in respect of purpose-built student accommodation.

In addition, a late amendment to the Act extends the suspension of tenancy terminations to tenancies that are not ordinarily governed by the Residential Tenancies Acts and to all tenancies of Local Authority and Approved Housing Body dwellings.

These provisions were originally confined solely to residential tenancies and the recitals to the Act and relevant parliamentary debates all took place within the residential context. However, this late amendment is broadly expressed so

that it could be interpreted as preventing termination of commercial tenancies also (considered further below).

Travellers who are currently resident in any location should also not be evicted from that location during this crisis except where movement is required to ameliorate hardship and provide protection and subject to consultation with the Travellers involved.

How are rents affected by the Act?

No residential rent increase of any nature will take effect for tenancies governed by the Residential Tenancies Acts during the emergency period. This includes increases already notified and due to take effect during the emergency period. Residential rent increases may also not be applied to these tenancies retrospectively to the emergency period.

What does the Act set out in respect of termination of tenancies?

Residential landlords may not terminate tenancies for any reason during the emergency period. They are expressly prohibited from serving notices of termination and, except in accordance with determinations made following referral of a dispute to the Residential Tenancies Board, are also effectively prohibited from taking any action to implement any notices already served.

In principle, residential tenancies due to terminate during the emergency period on foot of any notice of termination served beforehand by a landlord will not terminate on the date specified in the notice served; instead the notice period will be extended by the duration of the emergency period. An exception to this is where a dispute in respect of a tenant breach is referred to the Residential Tenancies Board and the relevant adjudicator or Tenancy Tribunal hearing the dispute determines otherwise.

Residential tenants who have remained in occupation of a dwelling following termination of their tenancy may also remain in occupation during the emergency period, subject to the terms and conditions that were in place before the emergency period, but again, unless an adjudicator or the Tenancy Tribunal determines otherwise in a referral of a dispute to them.

Ordinarily to terminate a tenancy for non-payment of rent, residential landlords must notify the tenant in advance that the rent has not been paid and allow 14 days to pass before taking further action. That 14 day period has been extended to 28 days, although the intended effect of this is unclear in circumstances where the landlord's right to take the next step (ie serve a notice of termination) is suspended. It may be that it gives a tenant a further 14 days grace when the emergency period is coming to an end.

As mentioned above, a late amendment to the Act might be interpreted as preventing termination of commercial tenancies. Tenants under commercial leases in this

jurisdiction already enjoy certain protections, including “relief from forfeiture”, where they can show to a Court that they are acting in good faith and there is a willingness to try to meet lease obligations. So the practical impact for commercial tenancies of this very widely drafted provision is likely to only become material if the current crisis is prolonged and its effect is not clarified in the meantime.

Other related provisions of the Act

None of the provisions of the Act will take effect to entitle a residential tenant to acquire the usual right to security of tenure for a 6 year period where this would not otherwise have arisen.

The ordinary requirement under the Residential Tenancies Acts for proceedings before the Tenancy Tribunal to be held in public is suspended during the emergency period.

Owners of real estate may also be interested in our briefing on the proposals in the Act to freeze certain timelines and make other changes to planning legislation available [here](#).

Further information is available from



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