

# The PRTB

## – a fair deal for Landlords?

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**If you are a landlord or a landlord's agent, you will no doubt have heard of the PRTB, the entity which was set up to take the place of the courts in Ireland in respect of residential landlord and tenant disputes. But does the PRTB give landlords a fair deal? What is the balance between landlords and tenants when it comes to the PRTB's practice and procedures and what kinds of penalties are being handed out to landlords who are found to be in breach of the law? We ask these and other questions in an effort to uncover the PRTB's view of the landlord classes.**

Firstly, it is important to bear in mind that orders of the PRTB have the full force of the law and are binding on all parties. If a landlord or tenant is unhappy with the decision of the Board then an appeal to the High Court is permitted only on a point of law. However, the costs in taking a High Court action are prohibitive and consequently decisions of the Board will usually go unchallenged. Take the case of *Jordan v. Trofimovs & Mozuras TR89/DR153/2008*. This was a dispute involving, amongst other things, the validity of a notice of termination and deposit retention. Section 80 of the Residential Tenancies Act 2004 (the RTA 2004) states that a dispute relating to the validity of a notice of termination may not be referred to the Board for resolution after 28 days from the date of service. In that case, the alleged termination took place almost 3 months before the dispute was referred. However, the Tribunal proceeded to hear the matter, its reasoning being that other unrelated issues were referred to in the same dispute.

Delays within the PRTB are well publicised and would appear to stem from the large number of cases referred to it each year. It is currently taking up to eight months for a dispute to be heard at the PRTB and although delays are prejudicial to both landlord and tenant alike, it is usually the landlord who has more to lose financially. The majority of disputes referred by tenants relate to deposit retention (61% in 2008) and are for amounts which are usually equivalent to one month's rent. However the largest category of disputes referred to the PRTB by landlords were cases involving non-payment of rent (70% in 2008). In a deposit retention case, the sum outstanding to the tenant is fixed at the amount of the deposit, however, in the case of the landlord, rent arrears are, at the very least, two months outstanding before a case can be referred. In addition, the longer the delay in the matter being heard the greater the accumulation of rent arrears.

The financial burden on landlords is further worsened by the fact that landlords must pay for representation at the PRTB whereas tenants can be represented without charge by Threshold. Threshold is the National Housing Organisation in Ireland and received over €1m in grants last year. Representation at the PRTB is not obligatory. However, given that the Board has authority to award up to €20,000 in damages and up to €60,000 in rent arrears cases, it is vital to be represented. Threshold refuse to represent landlords and instead refer landlords to the Access Housing Unit where advice is only available in return for payment but they do not provide representation. There is no equivalent body to Threshold in Ireland

where landlords can obtain free representation. In addition, legal costs are rarely awarded at PRTB level, so a tenant's risk in referring what might be a spurious dispute is low, thereby cultivating a "have a go" approach.

There also appears to be an imbalance as regards rights of audience at the PRTB and this relates to the obligation on landlords to register their tenancy. If a tenancy is not registered with the PRTB, the landlord will be prevented from referring a dispute. A dispute which relates to an unregistered tenancy might then be referred to the Courts but in practice, the Courts will turn the matter back to the PRTB by insisting that the tenancy is registered. Thankfully, the obligation to have a tenant's signature on the PRTB registration form was dispensed with earlier this year and this has facilitated the landlord's ability to comply with the obligation to register. However, the same restriction does not apply to the tenant as the Board will proceed to hear a tenant's dispute even if the tenancy is not registered. The thinking here is clearly to promote compliance among landlords with the requirement for registration. However, it indirectly favours the tenant as the tenant but not the landlord will have a forum for dispute resolution regardless of the status of registration.

The traditional view taken by non-landlords in Ireland seems to be that landlords are considered to be in a better financial position than tenants. This view is antiquated and entirely inappropriate in the current economic climate. Thousands of Irish landlords, particularly those who purchased in recent years, are struggling financially with the fall in property values and rents and increased vacancy periods. These numbers include many young people who invested in property during the boom years seeing it as a sound investment securing their future. Others who have lost their jobs and never intended to become landlords have been forced to rent out their homes to meet mortgage repayments. Add to this the Non Principal Private Residence charge of €200 (which is due again in March 2010), a reduction in mortgage interest relief, government proposals to reduce rent supplements and the obligation to obtain Building Energy Rating certificates and you might wonder who in their right mind would become a landlord in the first place. It's also easy to forget that landlords house a vast number of welfare and rent supplement tenants on behalf of the state thereby assisting in the massive shortfall in local authority housing.

Irish landlords need all the help they can get and the portrayal of them as fat cats who can afford to take it on the chin is ridiculous and needs to change urgently, particularly at government level. Certainly the PRTB is not to blame for this perception, however, the necessary changes in attitude toward landlords need to emanate

from bodies such as the PRTB. Automatic fast tracking of all rent arrears disputes would be a fantastic start.

We turn now to the most common disputes that arise between landlords and tenants and how the PRTB assess and adjudicate on them.

### *Illegal eviction*

In the absence of a Court Order it is not possible to force a tenant out of a property and this is the case no matter how much rent arrears are outstanding. In stressful circumstances, particularly where there are significant rent arrears, many landlords take the approach of changing the locks. This course of action is illegal and if a tenant takes a landlord to task, substantial damages are likely to be awarded.



In the case *Partridge v. Watson* TR109//2007 €12,000 was awarded to the tenant for the distress and loss of personal possessions arising from an illegal eviction. In *Carroll v. Masoudally* TR121/DR850/2007 the landlord was ordered to pay the tenant €3,000 compensation for illegally evicting her by changing the locks on the premises. Furthermore, if a landlord issues invalid or badly drafted notices of termination then he may be ordered to pay compensation to the tenant for

stress and inconvenience. This was the case in *Murphy v. Wang* TR34/DR94/2008 where damages of €2,000 were awarded against the landlord for distress caused to the tenant as a result of the invalid notice and therefore unlawful termination. Badly drafted notices can end up costing you thousands of euro, so it's worth getting it right and seeking appropriate advice. The same sum was awarded in *Gallagher v. Oladunjoye* TR40/DR1173/2008 for distress and inconvenience caused by illegal eviction and in *Griseto v. O'Driscoll* TR154/DR231/2007, €3,000 was awarded to the tenant where the landlord illegally evicted the tenant giving her 24 hours to leave the property.

### *Rent Arrears*

In *Patten v. Wright* TR60/DR277/2008 the tenant owed €10,880 in rent arrears. The Tribunal noted the tenant's unfortunate economic circumstances and ill health but stated it had no jurisdiction to take these into account and ordered that the tenant vacate within 6 weeks from the issuing of the Determination Order and repay all arrears. In other instances, while the Board has found in favour of the landlord in relation to rent arrears, the landlord may also have damages awarded *against* him for breaching his obligations under the lease. For example, in *Boyne v. Hanaway* TR49/DR1262/2008 the tenant was ordered to pay the landlord

€5,250 in rent arrears. However, this was offset against an award of €4,500 against the landlord for unlawful entry.

### ***Deposit retention***

In deposit retention cases taken by a tenant against the landlord, the onus is on the landlord to prove that the deposit was withheld legitimately and in accordance with the RTA 2004. It is vital that the landlord has strong evidence with which to back up a defence to this type of claim. In the absence of such evidence, the full return of the deposit to the tenant plus an amount for damages will be the likely result. Take the case of *Azad v. Sinnathambi TR16/DR234/2008*, where the landlord was ordered to repay the deposit of €900 plus €400 compensation. See also *Maguire v. Kraukle & Deksnis TR129/DR764/2007* where the landlord failed to produce credible evidence and was ordered to return the deposit and pay compensation. By way of contrast, see *Scott v. Price TR118/DR397&750/2007* and *Jongbloed v. O'Sullivan TR79/DR1197/2008*, where the landlords were entitled to keep the deposit for damage beyond normal wear and tear. In the latter case, the tenant had kept livestock on the property and had also damaged the walls of the property.

### ***Breach of Fixed Term***

Landlords should also be aware of their rights to take a tenant to task for breach of a fixed term lease and this right will be upheld by the Board. Provided a lease agreement is compliant with the RTA 2004, the lease can contain any legally acceptable clause or provision as desired between the parties. This is the essence of contract law and a lease agreement is just that – a contract between two parties. The landlord can provide that the tenant cannot have pets on the property or, for example, that the tenant will pay the costs of registering the tenancy with the PRTB. These issues are contractual arrangements which will be upheld by the PRTB provided it can be shown that the parties voluntarily chose to include them in the agreement. Typically in a residential scenario, a landlord and a tenant will agree a letting for a twelve month period and this “fixed term” is an example of a provision in the lease which, although not provided for in the RTA 2004, does not offend the legislation and therefore will be binding on the parties and upheld by the Board. Fixed terms are common as they provide the landlord with the comfort that the rent will be coming in for a specified period of time and often banks will want to see them as reassurance that mortgage payments will be met into the future. Accordingly, if a tenant wishes to leave before the end of the term and avoid being exposed for re-letting costs as well as the rent for the remainder of the fixed term, he must either assign or sublet the property thereby avoiding any interruption in payment of rent to the landlord. The right to compensation for breach of a fixed term was confirmed by the Tribunal in *Cole v. Keenan TR139/DR891/2007*. See also *Rush Maypole Properties v. Kelly, Carroll & Carroll TR149/DR982/2007* where the landlord was

entitled to keep the deposit of €995 in lieu of rent for the remaining two months of a fixed term and also *Gogola v. McDonnell TR112/DR917/2007* for a similar outcome.

### ***Anti-Social Behaviour***

At first glance anti-social behaviour seems like a quick way to terminate a tenancy with a problem tenant as it requires just seven days notice to vacate. However, it is extremely difficult to succeed at PRTB level on this basis. A successful outcome will typically require evidence of a criminal offence or assault and the threshold required at PRTB level seems far higher than the threshold as set out in the definition of anti-social behaviour in the RTA 2004. What a reasonable landlord perceives to be anti-social behaviour will not necessarily correlate with what the PRTB considers to be anti-social behaviour. For example, in *Jordan v. Trofimovs & Mozuras TR89/DR153/2008* a strongly worded letter to the landlord from the management company setting out details of physical fighting between the tenants was insufficient to satisfy the Tribunal of anti-social behaviour. It follows that third party written confirmation of anti-social behaviour will not convince the PRTB and the person or persons who witnessed such behaviour must be present at the hearing to give evidence. The view of the PRTB, correctly held, is that the allegation of anti-social behaviour has very serious implications for the character and good name of a person, hence the high burden of proof. Caution must also be exercised. For example, in *Horgan v Walsh & Roche TR84/DR719/2007* the Tribunal held that anti social behaviour was not proven despite the fact that there was CCTV footage of the alleged anti-social behaviour together with the testimony of five witnesses which included allegations of threatening behaviour.

### ***Failure to Maintain the Premises***

In cases involving failure to maintain the premises, it can be difficult to prove the damage is beyond normal wear and tear without solid evidence to include dated before and after photographs and invoices for restoration work carried out. Regard will be had to the length of the tenancy and questions will be asked as to when the property was last painted/decorated etc. In *O Raghallaigh v. Garcia, Hernandez & Vullo TR134/DR837&1177/2007* the Board were not satisfied, in the absence of invoices, quotes or otherwise, that the landlord had established that damage beyond normal wear and tear had occurred. In *Mooney-Parsons v. McAdam TR152/DR1153/2007* the tenant was ordered to pay for painting and decorating in excess of normal wear and tear and cleaning. The tenant had painted walls of the dwelling contrary to the letting agreement and acknowledged she had damaged a door. The landlord in this case had invoices detailing the expenses incurred.

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Please note that the above is not intended to be a substitute for legal advice which should be sought in all circumstances.