

TIPS FOR LANDLORDS

* Ensure that the PRTB registration form is signed by the tenant prior to letting them into the property.

* When signing up the lease agreement, put monthly in as the term.

* Always give a rent book.

* Get references

* When taking in new tenants ensure that you take your time and vet them well. Check references and if there are none available then don't take them in as tenants. Where tenants have come from bad circumstances and you are tempted to give them a chance, don't. The risk to you is too high. The PRTB are taking so long with the disputes, you can be stuck with bad tenants for two years or more. This includes tenants that are not paying any rent or who are disturbing their neighbours.

* Rent can only be increased once a year at the market rate. It has to be increased in writing at least one month in advance of the date that the increase applies (rent increase notices are available from the office).

* The first 6 months of a new tenancy is a probationary period, and property owners should decide within that period if a tenant is to remain in a property. If the tenancy is not going well, a notice of termination needs to be served within the first six months and this should be done without stating a reason (this assumes that no fixed term lease has been put in place).

*** Unpaid Rent:**

When rent is not paid on a tenancy you must act immediately. Send a letter to the tenant stating that the rent is in arrears, detailing the amount. If the rent is not paid within 14 days of the tenant receiving that letter, a notice of termination can then be served allowing 30 days. If the tenant does not vacate the property on the date specified, you need to fill in a dispute resolution form and send it into the Board. Be prepared to wait at least 8 months before you get a date for adjudication. This is a very slow process. You are not allowed to change locks or to evict a tenant. If you lock a tenant out of a property you will be contacted by the PRTB within days, and they can insist that you let the tenant back in and then they can fine you up to €20,000.

*** Late Rent:**

If rent is continually paid late this is a breach of your agreement with the tenant. Give them a verbal warning that it needs to be paid on time. The next time it is late give a written warning and if it is late again a notice of termination should be served.

*** Notice of Termination from Tenants**

It is important to note that tenants should give written statutory notice of termination of their tenancy. Do not accept verbal notice. Ensure that the correct notice is served in writing as per the Residential Tenancies Act 2004.

*** Notice of Termination:**

The requirements of the notice of termination can vary depending on the reason of service. Our notice of termination contains the standard items:-
Be in writing.

Be signed by the landlord or by his/her authorised agent. Specify the date of service, State the reason for termination (where the tenancy has lasted for more than 6 months).

Specify the termination date (the tenant has the whole of the 24 hours of this date to vacate possession).

State that any issue as to the validity of the notice or the right of the landlord to serve it must be referred to the Private Residential Tenancies Board within 28 days from the receipt of the notice.



***Notice Periods for the Termination of a Tenancy:**

Subject to the terms of any letting agreement in place, the notice period to terminate a tenant's tenancy is determined by the duration of the tenancy, as follows:

Duration of Tenancy	Notice by Landlord	Notice by Tenant
Less than 6 months	28 days	28 days
6 or more months but less than 1 year	35 days	35 days
1 year or more but less than 2 years	42 days	42 days
2 years or more but less than 3 years	56 days	56 days
3 years or more but less than 4 years	84 days	56 days
4 or more years	112 days	56 days

Where a tenancy has lasted more than 6 months and less than 4 years, the landlord must state in the termination notice the reason the tenancy is being terminated

The following terms must be added if they apply:.

* If you are substantially refurbishing a property, it must contain a schedule of the works that will be carried out and confirmation that the tenant can return to the property after the works have been carried out, if you are re-letting. This assumes that the tenant gives you their contact details. If planning permission is required, it must have been obtained prior to terminating the tenancy. The rent can be increased after a refurbishment but only to the market rent.

* If a notice of termination is being served because you or a member of your family are moving into the property, you must name the person, state their relationship to the landlord and the expected duration of their tenancy. You must also state that the tenant can return to the property if it becomes vacant within a six month period. The tenant must leave their contact details.

* When a breach of lease occurs give a verbal warning. If it occurs again give a written warning and if the behaviour is not rectified within a reasonable period of time, serve a notice of termination of at least 30 days. Ensure you have adequate proof of the breach if you have to take the case to the dispute resolution process of the Board.

* If there are any other breaches, like rent arrears, use these as well because the Board do not like to label tenants anti-social.

* A seven day notice of termination can only be used where a crime has been committed on the premises, and again you have to be in a position that you can prove this. You will need to apply for dispute resolution if the tenant does not leave and you must stress the urgency to the PRTB on a continual basis. Under no circumstances are you allowed to lock a tenant out.

IPOA News

OFFICIAL NEWSLETTER OF THE IRISH PROPERTY OWNERS ASSOCIATION



Editorial

Is it worth it?

Private renting has become a nightmare with troublesome tenants, who use and abuse the system to their own advantage, won't pay rent, have immediate access to the Private Residential Tenancies Board who may not or cannot enforce their own decisions against tenants. Tenants can live in your property without paying rent for up to 3 years.

Health Boards and Local Authorities discount rents by up to 10%, where the Law states market rents must be paid. Property owners are being penalised by Legislative Bureaucracy of immense proportion, with high entry costs of 9% stamp duty and Income Tax thereafter at 44%.

Why do we have to take this?

Is there an alternative? Yes. Have a look at Commercial/Industrial property, what do you get? Tenants who are responsible for their own business, where you can get 5-25 year leases with reviews of rent every 5 years (mostly upwards only), and the tenant takes the responsibility for repair, maintenance and insurance.

Has the day come for us to look around for better investments/returns?

Stephen A. Faughnan, Chairman

It is interesting to note the makeup of the new Government with the Green Party taking on the two senior portfolios, which have great interest to property owners in the private rental sector. Will Minister of the Environment, John Gormley, TD, take the PRTB by the scruff of the neck and shake it up as it needs to be? Or will Eamon Ryan, TD, Minister for Energy, grant aid property owners in the private rental sector in order to comply with new directives for energy?

We hope they will.

NEW IPOA ENERGY PUBLICATION

The IPOA in association with an expert committee have been working hard over the past 5 months, on a soon to be published leaflet on energy efficiency in residential property. This document will build on the momentum generated by last October's Green House Sessions, and will contain valuable information on preparing your home for the soon to be implemented Buildings Energy Rating system. It's remit is to provide you, our members, and other residential property owners with valuable tips on how to conserve energy, save money, and will include case studies and easy to follow diagrams with handy pointers.

The expert committee, all of whom have contributed valuable information to the publication include Stephen Faughnan, IPOA, Kevin Daly, Engineer, Ken Beattie, DIT, Patrick Duffy, NICER, Des Foley, Propertynews.com, Noel O'Reilly, IAVI and Kevin O'Rourke, SEI. They have all given generously of their time, free of charge and we are very grateful for their commitment.

The leaflet will be published in association with the Irish Independent on 5th October and we urge you to purchase the paper on this date. We will also send all of our members a copy by post.

IS NOW THE TIME TO GET OUT OF THE PRIVATE RENTAL MARKET?

Investors purchasing property today will not even cover the interest on the mortgage, without topping up their investment from their salary or another source.

Renting property is time consuming and you are on call 24 hours a day.

The Residential Tenancies Act 2004 is unfair to landlords. Property owners are being fined if they lock out tenants, no matter what the circumstances. The long awaited quick and easy dispute resolution system is much slower and not as effective as the courts.

The registration system is bureaucratic and messy, and should have been left with the Local Authorities. It would have made much more sense if units had to be registered every 4 years as proposed by the IPOA all along, even at the Commission. This would give the statistical information required by the government, and make life easier for property owners.

If a tenant refuses to sign the Registration Form, a landlord cannot register the tenancy and cannot avail of the dispute resolution system, but tenants can, even if they refuse to sign the registration form.

Tenants can stay in properties for more than two years without paying any rent.

Anti-social behaviour affecting neighbours and other people in the house is not stopped, but landlords can be fined for not managing their properties.

Valid notices of termination mean nothing; tenants are still allowed to remain in the property.

Adjudication & Tribunal Determinations can be ignored and tenants remain in situ.

Income from rental property is classed as unearned, income like income from shares.

Time spent by property owners renovating, decorating, gardening and cleaning is not taken into account by Revenue.

Income derived from letting is not allowable for pension purposes.

Stamp duty drives up the cost of entering the business.

Rents are capped for people on rent supplement, which is unfair and discriminatory.

IPOA TRAINING COURSE

There are still a few places left on our upcoming training course on property management and investing in property. The course is aimed at recent investors, sons and daughters of existing landlords, letting and managing agents. It will also be very useful for anyone currently letting property in the private rental market. The object is to give a clear understanding of the procedures and legislation involved in the rental market. The course will include property standards, taxation, registration, finance, buildings energy ratings, the Residential Tenancies Act 2004 and the day to day management of property.

The venue is our Ashtown Training Centre and the first course will commence on Wednesday 10th October from 7-9pm and run for 6 weeks. The IPOA will provide certification for this course. Limited number of spaces. If you are interested please contact the office.

IPOA Meetings

Dublin Meeting: There will be an IPOA members meeting on the 4th December in the Red Cow (Morans) Hotel, Naas Road at 8pm.

Cork Meeting: There will be an IPOA members meeting on the 5th December in the Silversprings Moran Hotel Tivoli, Cork at 7.30pm.

We will be updating members on the Dispute Resolution System of the Private Residential Tenancies Board, procedures under the Residential Tenancies Act 2004, with special note on the forthcoming end of the first series of part 4 tenancies etc. The Building Energy Rating Directive that will effect all members in January 2009 will be highlighted, and the correct use of leases and licences outlined.

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RAS Contracts

If you are considering letting your property on the RAS Scheme, ensure that you read and understand the contract before you sign. There are a number of items that you would be advised to check.

Are you allowed to interview the tenants to see if you are happy with them? You will have to deal with them on a day to day basis. You should be able to see the tenants past history and references from previous landlords.

Will you be allowed to sell at any time if you give the correct notice under the Residential Tenancies Act 2004?

There should be a rent review clause allowing reviews to take place yearly at the market rent. If you are agreeing to a percentage discount, the percentage amount should be agreed at the outset.

The amount allowed for damages should be at least three months rent.

You will need at least 14 working days between lettings to renovate and repaint etc.

PRE-63 STYLE ACCOMMODATION

There has recently been calls from different areas that this style accommodation is no longer necessary and outdated. This is of course untrue. There is a need for different types of accommodation and for consumers to have a choice. As a result of the building boom there is now a great selection of property types available for rent.

Good quality bed-sit accommodation is still required and still the preferred choice for certain groups of people. The requirement is reasonably priced accommodation with adequate cooking and storage facilities.

Unfortunately as a result of the size, character and beautiful features of these older buildings, a lot have been turned into private houses and are no longer in the private rental market. As a result of this we are slowly losing a style of accommodation that suits the needs of a section of the market. The current tax relief for refurbishment of these types of properties, not alone should be kept, but should be increased, particularly with the implementation of the Buildings Energy Regulations in 2009. Studio apartments and one bed apartments are more expensive to rent, and as a result a lot of people who do not want to share their accommodation cannot afford to rent these.

Like every section of the rental market, these buildings need to be inspected to ensure that they comply with the minimum standards outlined in the Housing (Standards) for Rented Houses Legislation 1993. If the Local Authorities inspected these properties like they are paid to do, any properties not up to standard would be either brought up to standard or no longer used in the rental market.



HOW CAN YOU DISTINGUISH BETWEEN A TENANT AND A LICENSEE ?

A licence is not a tenancy and therefore (save for one exception) the Residential Tenancies Act 2004 does not apply to such an arrangement. A licence can be best described as a permission to enter onto and/or occupy a dwelling (without which a trespass would occur).

For a detailed overview of licensees in private rented accommodation and the application of the Residential Tenancies Act 2004 to them, please see PRTB leaflet on "Licensees in Private Rented Accommodation".

There is no hard and fast rule in relation to what arrangement constitutes a tenancy or a licence. This will depend on the facts of each case. Where necessary the PRTB will objectively assess every individual case to determine whether the arrangement amounts to a tenancy or a licence.

The following criteria are helpful in determining the nature of the arrangement between the owner and the occupier of a property but are not conclusive.

1. Exclusive Possession

Where a tenancy is in existence, the tenant will have exclusive occupation of part or all of the dwelling leased by him or her. In certain circumstances a licensee may also have exclusive possession, however in most cases a licensee will not have exclusive possession of the dwelling and the owner will have a right of continuing access to the dwelling or part of the dwelling occupied by the licensee.

2. Assignment / Sub-lease

A licensee cannot usually assign his or her interest in a dwelling. A tenant however, subject to the landlord's consent (which cannot be unreasonably withheld), can assign or sublet his or her tenancy to a third party.

3. Termination

A tenancy can only be terminated in accordance with the Residential Tenancies Act 2004 and the valid terms of any lease agreement. A licence however can be revoked or terminated by the person who grants it provided reasonable notice is given to the licensee. Where a contractual licence exists however, the licence can only be revoked in accordance with the terms of the contract.

4. Rent

Rent is an essential element in the creation of a tenancy. A licensee may or may not make payments in respect of their occupation of a dwelling. Payments however which are called something other than rent, will not operate to create a licence arrangement, when in reality the payments amount to rent.

5. Bedsits

The Residential Tenancies Act 2004 applies to self-contained residential units, which includes the form of accommodation more commonly known as a bedsit (Section 4 of the Residential Tenancies Act 2004). An individual who occupies bedsit accommodation is entitled to the full protections of the Residential Tenancies Act 2004 (unless it can be shown for other reasons that the circumstances are such that a licence exists.)

6. No contracting out of Part IV Tenancy

Parties cannot contract out of a tenant's entitlement to a Part IV tenancy (Section 54 of the Residential Tenancies Act 2004). Any agreement between two parties, which purports to be a licence for the purposes of avoiding the application of the Part IV of the Residential Tenancies Act 2004, will not operate to deny an individual's right to a Part IV tenancy.

7. Name of Contract

Referring to a written document on its face as either a lease or a licence does not (in the absence of other criteria) prove the nature of the relationship between the parties.

extract from PRTB site

POTENTIAL RE-REGISTRATION PROBLEMS

Next year landlords face another problem. Tenants who have been with them since September 2004 will be due to be re-registered in September 2008. If these tenants refuse to sign the registration form, landlords will not be able to register them and will not be able to avail of the dispute resolution services of the Private Residential Tenancies Board.

Tenants can of course avail of the service regardless of whether they pay rent, or sign the registration form.

UIPI 39th INTERNATIONAL CONFERENCE - BERN

The 39th UIPI conference was attended by our Chairman, who is a member of the Executive Committee. The opening ceremony included a welcome speech by the host, National Councillor Dr. Rudolf Steiner President HEV Switzerland, a welcome by Christine Egerszegi, President of the National Council 2007. Stratos Paradias, President of the UIPI opened the congress. The themes of the Conference included the future of housing, building today and in the future, and energy saving. The future of housing was presented by Dr. Claude Longchamp, and Prof. Dr. Volker Eichener. Building today and in the future was presented by Prof. Hansruedi Preisig. There was a viewing of a Solar energy station and presentations on energy saving today and in the future by Dr. Rudolf Hartl, CEO Swiss Oil and Jean-Marc Hensch, CEO Gas Organisation.

The congress was well organised with a wealth of information for participants from highly qualified people. The national organisation in Switzerland (HEV) must be complimented on the overall work to achieve such a well organised event, with hospitality second to none in the beautiful city of Bern. The next congress, the 40th UIPI Congress, will take place in Stockholm, Sweden, in June 2009.

RECENT CASES

TR/2007

7 day notice served for severe anti-social behaviour, threatening other tenants with an iron bar and threatening to burn down the premises.

Dispute Resolution applied for in October 2006.

Emergency Tribunal hearing held six months later in April 2007.

Tribunal Decision was Mid June and tenant left on foot of the determination order.

Eight months for a very dangerous situation and the landlord and other people were put into a very threatening position. It was really lucky that no one got hurt.

TR24/DR366/DR272/2006

No rent has been paid in this case since March 2005 and the tenant is still living there rent free. The PRTB took this case to the courts for enforcement and the judge said that the tenant was to leave and pay the rent. However the tenant is now appealing it to the High Court and is still residing there.

The Residential Tenancies Act allows tenants to live rent free, but penalises landlords for evictions regardless of the circumstances.

TERMINATING TENANCIES - LANDLORDS HAVE NO RIGHTS

Under the Residential Tenancies Act 2004 there are a number of situations that a property owner can use to end tenancies **where there is no fixed term lease in place**. Among these are when you want to sell, need it for yourself or a member of your family, or you can give notice within the first six months. There is a huge problem with this because even after you serve the notice a tenant does not have to leave. You are not allowed under any circumstances to lock a tenant out and could wait a number of years before the PRTB get the tenant out under their Dispute Resolution Process. In effect this legislation takes away your rights and could cause you to lose your own home. It is difficult to sell a property where a tenant will not leave.

I.P.O.A. INSURANCE SCHEME

This scheme has provided insurance cover to members when no other company would carry the risk and is priced very competitively (and includes RAS scheme requirements).

For further details or quotation without obligation contact Emmet or David on 01-8245555 or info@safaughnan.ie SA Faughnan Brokers Ltd., Ashtown Business Centre, Navan Road, D15 www.safaughnan.ie

DEPOSIT RETENTION

Be aware that deposits belong to tenants and should be returned to them. A deposit is given for damages above reasonable wear and tear. In a situation where there has been damage, ensure that you give a statement to the tenant outlining the damage & cost, a copy of the invoice etc. and return the balance of the money. If you are taken to the Board you will need to be in a position to prove that the item was perfect when they moved in. This is where a good inventory comes in.

Be sure that your inventory is signed and outlines the age and state of each item. If a 5 year old sofa is damaged above wear and tear ensure that you only hold the replacement for a 5 year old sofa and not the cost of a new one. Try to be as fair as possible.

Buildings Energy Rating



You will all be aware that from January 2009 all properties that are let or sold will require a BER Certificate. This is a certificate that will rate the energy efficiency of your property. It is the law and will apply everywhere. If you are renovating a property, be sure to take energy efficiency into account - it will ultimately effect the letting value and resale value of the property

Simple items to improve the energy efficiency of your property include attic insulation, draught proofing, lagging jackets, energy efficient lighting, double glazing, dry lining and cavity wall insulation.

BE CAREFUL WHEN SELLING

Never sign a contract to sell with vacant possession until after the tenants have left the property. Obviously serve the correct notice of terminations on tenants and organise a buyer, but do not sign the contract until you are sure that the tenants have left. Otherwise if they don't go and it takes you two or more years to get vacant possession by going through the Board, you can be penalised by the purchaser, and have to pay a monetary fine - this could be on a daily or weekly basis. Be aware if you lock a tenant out of a property even

- * when they are causing damage
- * have not paid the rent for a year
- * when they are threatening neighbours and other tenants
- * overholding where you have served a valid notice of termination.

You can be fined up to €20,000 and may have to let the tenant back in.

Advice Series Booklets

John Gormley T.D., Minister for the Environment, Heritage and Local Government recently launched the first two in a new advice series of booklets on the care and maintenance of older buildings. A Guide to the Care of Older Buildings and a Guide to the Repair of Historic Windows are the first two published. These are informative, practical and useful and include sensible renovation tips. They are available from Government Publications Sales Office in Molesworth Street.

Stamp Duty on Leases

Most residential leases are exempt from Stamp Duty (this is a cost that has to be paid by the tenant). In the case where annual rent is under €19,050 and the tenancy is less than 35 years, there will be no stamp duty payable. If the annual rent does exceed €19,050, then stamp duty is charged at 1% of the total annual rent, not just that portion in excess of €19,050. If there is a rent review clause in the lease, a further €12.50 will be charged and if there is stamp duty on the original lease/letting agreement, you will be charged a further €12.50 to have the counterpart stamped. The cheque and lease need to be sent to the Stamping Building, Dublin Castle, Dublin 2.

With recent rent increases more tenancies will be above the ceiling for stamp duty and we have recently written to Minister Cowen asking him to review the situation and amend upwards.