Property Litigation Update

Wednesday 10 April 2019
Welcome

Michael Doran, Partner & Co-Head of Real Estate, Mason Hayes & Curran
PRS legal developments 2019

Peter Johnston
10 April 2019
Residential tenancies – what’s in store?

- Government Bill
- Residential Tenancies
  - More to come?
  - Private Members Bills

Dublin
London
New York
San Francisco

MHC.ie
Residential Tenancies (Amendment)(No. 2) Bill 2018

Key provisions

- **“Substantial change”**
  - New definition

- **Longer termination notice periods**
  - Where tenancies between 6 months and 6 years

- **Notification Requirements**
  - Additional Notification Requirements

- **New criminal offences**
  - Breaching rent increase restrictions and new notification requirements

- **New RTB investigative powers and sanctions**
  - Improper conduct by landlords
“substantial change” in the nature of the accommodation that affects the market rent = exemption from the rent increase restrictions when the rent is next set

Requirements:

- At least 50% (25%) of floor area undergoes renovation and/or
- structural to the extent that (1) the internal layout is permanently altered (2) the dwelling is adapted to provide for disability access and use (3) the number of rooms is increased (4) a permanent extension is added or (5) the BER is improved.

- Cannot merely be in compliance with landlord’s repairing obligations
## Longer termination notice periods

<table>
<thead>
<tr>
<th>Duration of tenancy</th>
<th>Current Notice Period</th>
<th>New Notice Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 6 months</td>
<td>28 days</td>
<td>28 days</td>
</tr>
<tr>
<td>6 or more months &lt; 1 year</td>
<td>35 days</td>
<td>90 days</td>
</tr>
<tr>
<td>1 year or more &lt; 2 years</td>
<td>42 days</td>
<td>120 days</td>
</tr>
<tr>
<td>2 years or more &lt; 3 years</td>
<td>56 days</td>
<td>120 days</td>
</tr>
<tr>
<td>3 years or more &lt; 4 years</td>
<td>84 days</td>
<td>120 days</td>
</tr>
<tr>
<td>4 years or more &lt; 5 years</td>
<td>112 days</td>
<td>180 (120) days</td>
</tr>
<tr>
<td>5 years or more &lt; 6 years</td>
<td>140 days</td>
<td>180 (140) days</td>
</tr>
<tr>
<td>6 years or more &lt; 7 years</td>
<td>168 days</td>
<td>180 days</td>
</tr>
<tr>
<td>7 years or more &lt; 8 years</td>
<td>196 days</td>
<td>196 days</td>
</tr>
<tr>
<td>8 or more years</td>
<td>224 days</td>
<td>224 days</td>
</tr>
</tbody>
</table>
Notification Requirements

- Annual registration of tenancies
- If relying on the rent exemption in an RPZ notify RTB within one month
- Landlord’s details
New criminal offences for landlords

Failure to comply with:

- Rent increase restrictions
- Providing false/misleading info to RTB in exemption notice
- Failure to comply with new notice requirements where exemption being relied upon
- Failure to comply with notice from RTB to update rent info after a rent alteration
Investigative powers and sanctions

- Extensive investigative powers of ‘authorised officers’

- Investigations into ‘improper conduct’ by landlords:
  - breaching rent increase restrictions;
  - failing to notify when relying on an exemption;
  - relying on an exemption falsely;
  - failing to register a tenancy and to update the register regarding rent alterations

- Sanctions
Some other provisions…

• Defects in termination notices – ability for landlord to remedy defect and serve a 28 days ‘remedial notice’

• Mandatory publication of RTB determination orders

• Payment for mediation services

• Further part 4 tenancies – treated as extension of existing tenancies so that notice periods correctly applied

• Changes in registration fees
More to come?

- Rent transparency – records of rental amounts
- Extension of residential tenancies legislation, particularly rent setting, to student accommodation granted under licence
- Changes to ward off danger of rents increasing after three year rent restrictions end in Dublin and Cork City in December 2019
Final thoughts

• Administratively more burdensome for landlords

• Remit of the RTB expanding

• Watch this space
Laura Farrell

Law Library of Ireland
Selected Pointers
for those already familiar with
the Residential Tenancies Acts
Laura Farrell BL, M.A. (Oxon.), LL.M. (Dub.)
This morning . . .

- Landlord Obligations
- Termination of Tenancies
- Practice and Procedure in the RTB
Landlord Obligations

The duty owed to certain third parties to enforce tenant’s obligations.

- An onerous obligation
  - Onerous in scope
  - Onerous in content
- Circulation of documents
Termination of Tenancies

- Warning letters when terminating for rent arrears
- Statutory declarations accompanying notices of termination
- Multiple notices of termination
- Terminating during a fixed term
Termination of Tenancies

Warning letters when terminating for rent arrears

- 14 days is not always a reasonable time
- If there has already been an RTB determination order in relation to rent arrears, can the landlord include those arrears in a letter warning of termination if the arrears are not paid?
- If in doubt, leave it out
Termination of Tenancies

Statutory declarations accompanying notices of termination

- “... by virtue of the Statutory Declarations Act 1938”
- The slip rule will not apply to errors or omissions contained in a statutory declaration
Termination of Tenancies

Multiple notices of termination

- A single notice of termination may include more than one reason for termination
- Caution is advised in serving a fresh notice of termination where the landlord wishes to rely on the first notice of termination as having validly terminated the tenancy
- Whilst there is an open dispute before the RTB considering the validity of one notice of termination the landlord may serve a new notice of termination
Termination of Tenancies

Terminating during a fixed term

- There is no absolute rule that a fixed term tenancy may not be terminated by the landlord during the fixed term for one of the reasons contained in the table to s34 of the Act.
- It all depends on the parties agreement.
Practice and procedure in the RTB

- Rules of evidence
- Fair procedures
Infrastructure Projects, CPOs and Arbitration

Deirdre Nagle, Partner and Head of Planning and Environmental Law
Q&A
Thank You

Questions?

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