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Tenant rights under Ireland's Residential Tenancies Acts 2004–2025

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ABSTRACT

In recent years a number of jurisdictions have sought to reform their landlord and tenant laws to provide enhanced protections for tenants. Ireland was one such jurisdiction, and it commenced its reforms relatively early, beginning in 2004. Since then, Ireland's reforms have been both praised and echoed in other jurisdictions. Yet, Ireland's Residential Tenancies Acts 2004 to 2025 are not so highly praised within Ireland itself. In this article, I offer a critical re-reading of these Acts and their efforts to rebalance the landlord–tenant relationship in Ireland. While it is true that the Acts appear to grant many rights to tenants, they fail to ensure that these rights are adequately enforced or respected and they also fail to provide suitable punishment for those landlords who do not abide by the rules. I argue that there is scope to reform the Residential Tenancies Acts in a way which would both respect tenants' housing rights and landlords' property rights.

Keywords: landlord and tenant; housing law; Ireland; housing rights.

INTRODUCTION

'The lot of a tenant is not an easy one, and likely any of us who have lived in rented premises have tales galore to recount.'[1] So said the Irish High Court in *Marwaha v the Residential Tenancies Board* as Marwaha sought to challenge the notice of termination his landlord had served on him.[2] Barrett J's comments belie the repeated efforts of the Irish Government to enhance the experiences of tenants in the private rented sector (PRS). Indeed, the Irish experience offers a good example of just how challenging it can be to protect tenant rights in the PRS.

* For helpful comments on previous versions, I would like to thank the anonymous peer reviewers, audiences at the Institute for Advanced Legal Studies, Maynooth University, the Irish Association of Law Teachers, and Trinity College Dublin. All errors are my own. All external links are current as of August 2025. I am on the board of directors of the Mercy Law Resource Centre. All views expressed in this article are my own.

1 *Marwaha v RTB* [2016] IEHC 308, para 25.

2 Ibid paras 1–2.

Ireland's experiences are particularly relevant as Ireland's legislation, the Residential Tenancies Acts 2004–2025 (RTA 2004–2025),[3] has become a model for other jurisdictions to draw on.[4] However, over 20 years after the RTA first came into force, Ireland finds itself suffering a severe and prolonged housing crisis with concerns around its PRS at the centre. A report from 2022 noted that levels of homelessness were rising in Ireland at a faster rate than anywhere else, barring those places affected by war or natural disasters,[5] and many people entering homelessness do so from the PRS.[6] In addition, Ireland is also facing spiralling rents. Such a situation seems to run counter to the promises of the RTA 2004–2025 and particularly runs counter to two key tenant rights: security of tenure and affordability (as guaranteed by rules on rent reviews).[7]

Government politicians often cite the Constitution as a reason for why tenant rights, particularly those around protecting security of tenure and affordability, cannot go further. Scholars have queried these claims and have argued that the Irish Constitution is more nuanced than the political debate admits.[8] While it is true that the constitutional protections for property rights are relevant for any regulation of the PRS, in this article I argue that the bigger problem with the PRS lies in the design of its regulation. The recently released *Report of the Housing Commission* recognises the need for improved enforcement in the PRS but its recommendations are either lacking in specifics or repeat issues with the current model.[9]

Therefore, I argue that there is scope for the RTA 2004–2025 to adopt a different method of enforcement. The Act promises significant

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3 As I am referring to both the Act as originally enacted and the current version, I use RTA 2004 to refer to the Act as enacted and RTA 2004–2025 to refer to it as it currently is at date of writing. See postscript for comments on changes proposed after this article was accepted.

4 Chris Martin, 'Australian residential tenancies law in the Covid-19 pandemic: considerations of housing and property rights' (2021) 44(1) University of New South Wales Law Journal 197–226, 223; Mark J Bennett, 'Security of tenure for generation rent: Irish and Scottish approaches' (2016) 47 Victoria University of Wellington Law Review 363–384.

5 Isabel Baptista, Dennis P Culhane, Nicholas Pleace and Eoin O'Sullivan, 'From Rebuilding Ireland to Housing for All: International and Irish Lessons for Tackling Homelessness' (COPE Galway, Focus Ireland, JCFLJ, Mercy Law, Simon Communities of Ireland 2022) 8.

6 Ibid 39.

7 There is arguably a third right here, that of habitability, but due to constraints of space this article focuses on security of tenure and affordability.

8 See, eg, Hilary Hogan and Finn Keyes, 'The housing crisis and the Constitution' (2021) 65 Irish Jurist 87–118.

9 The Housing Commission, *Report of the Housing Commission* (2024), s 6, 114–138.

penalties for those who breach its provisions, but the legislation adopts a 'consumer-led' model of enforcement.[10] Instead of seeking to prevent breaches, the RTA 2004–2025 seeks to punish breaches after-the-fact and this has proven to be too little, too late. Such a route of enforcement places too much of the burden on tenants in an environment where their power is largely on paper,[11] and so fails to offer sufficient protection to tenants. Instead, I contend that any reforms to enforcement of tenant rights should adopt a model designed to prevent rather than respond to breaches. Borrowing terminology from the law and technology field, the new model would be a form of compliance-by-design whereby the regulatory model has compliance built in, particularly for landlords seeking to change the rent or end tenancies. The new model would centre more on regulation than prosecution, and it would require the Residential Tenancies Board (RTB) to play a bigger role than it currently does. Previous years have seen the Government expand the RTB's role in terms of oversight,[12] as well as granting it powers of investigation and sanction.[13] As such, calling for the RTB to play an even larger role fits with an existing tendency on the part of government. An enhanced focus on regulation and building in compliance would remove some of the burden of enforcement from tenants. Built-in compliance would also reduce the burden on landlords, but it would require a different form of punishment for landlords who fail to abide by the regulations. Here, however, Ireland's constitutional protections for property must be taken into consideration. Thus, this article also explains how a new model of enforcement would fit with protecting landlords' property rights.

I begin in part one with a brief overview of the regulation of Ireland's PRS prior to the enactment of the RTA in 2004, including a summary of the *Report on the Commission of the Private Rented*

10 The term is taken from Emily Walsh, 'What's law got to do with it? Is consumer law the solution to problems faced by student tenants?' (2021) 41(4) Legal Studies 567–584, 582. See also Martin (n 4 above) 198.

11 See Michael Byrne and Rachel McArdle, 'Secure occupancy, power and the landlord–tenant relation: a qualitative exploration of the Irish private rental sector' (2022) 37(1) Housing Studies 124–142. The issue is not unique to Ireland: see, eg, Elinor Chisholm, Philipa Howden-Chapman and Geoff Fougere, 'Tenants' responses to substandard housing: hidden and invisible power and the failure of rental housing regulation' (2020) 37(2) Housing, Theory and Society 139–161.

12 The Residential Tenancies (Amendment) Act 2015, ss 3–21, brought approved housing body tenancies under the RTB, while the Residential Tenancies (Amendment) Act 2019, s 3, brought student-specific accommodation under the RTB.

13 Residential Tenancies (Amendment) Act 2019, s 28.

Residential Sector.[14] The second part briefly sets out the RTA 2004–2025's provisions on security of tenure and affordability.[15] The third part explains why the RTA 2004–2025's provisions on enforcement do not work and suggests how a different model, designed to prevent breaches, would work. The fourth part argues that this new model would be compliant with constitutional protections for property. The fifth part concludes.

THE PRE-2004 SITUATION IN IRELAND

When it comes to the regulation of the PRS in the twentieth century a theme common across many jurisdictions is strict regulation, particularly in the decades immediately following 1945, with the beginnings of deregulation in the 1980s and 1990s.[16] Not every jurisdiction follows this pattern exactly, and Ireland only follows the general pattern in respect of one section of its PRS. For much of the twentieth century, Ireland had a bifurcated PRS with tenancies either being controlled or uncontrolled.[17] While the technical, legal distinction between these tenancies would ultimately come to turn on several factors,[18] the short-hand descriptor came to be unfurnished versus furnished dwellings.[19] The former term was used to describe controlled tenancies, the latter was used to describe uncontrolled tenancies. The controlled regime offered better tenant protections, while furnished dwellings were regulated by a mix of common law and statute.

As with other European countries, nineteenth-century Ireland had a majority of people living in the PRS.[20] Following the land war, the Land Acts introduced the concept of tenant purchase which saw many agricultural tenancies change to smallholdings, which were themselves later consolidated into larger, more economically viable farms.[21]

14 Department of the Environment and Local Government, *Report of the Commission on the Private Rented Residential Sector* (Government Stationery Office July 2000).

15 There is not space here to discuss issues around habitability in Ireland's PRS.

16 See eg Department of the Environment and Local Government (n 14 above) 73–75, 108–109.

17 For an overview of the controlled sector, see Mark de Blácam, *Private Rented Dwellings* 2nd edn (Round Hall 1992).

18 Ibid 3–23.

19 See Department of the Environment and Local Government (n 14 above).

20 Michelle Norris, *Property, Family and the Irish Welfare State* (Palgrave Macmillan 2016) 2.

21 For an overview of the Land Acts, see, eg, Brendan Edgeworth, 'Rural radicalism restrained: the Irish Land Commission and the courts (1933–39)' (2007) 42 Irish Jurist 1–28.

Outside of agricultural land, Michelle Norris has traced how the Irish state encouraged owner-occupation in urban areas in the decades following Irish independence.[22] The end result being that Ireland switched from being a nation of tenants to being a nation of owner-occupiers.

Ireland's PRS may have declined in size and importance between the late nineteenth century and the late twentieth century, but it never vanished completely. Padraic Kenna describes the development of the PRS during the twentieth century as 'haphazard'[23] and notes that by the early 1980s there was a sense that the sector was 'forgotten'.[24] Kenna observes that the PRS was far from a uniform sector insofar as it was divided up into controlled tenancies and uncontrolled tenancies, and 'luxury' versus low-end accommodation.[25]

The divide between controlled and uncontrolled tenancies stemmed from tenant protections introduced during the First World War.[26] While Ireland maintained these stricter controls via a series of statutes after the First World War, these controls never applied to the entirety of the PRS.[27] Tenants of controlled properties were entitled to security of tenure with landlords only able to recover possession on a limited number of grounds.[28] Controlled properties were also subject to stringent rent controls.[29] Eventually, to be a 'controlled' property, the property had to be built before 7 May 1941, had to have a particular rateable value and had to be let unfurnished.[30]

The legislative provisions around controlled properties were found to be unconstitutional in *Blake v Attorney General*.[31] Following Blake, some aspects of the controlled regime were revised though the initial revision was also successfully challenged in *Re the Housing (Private Rented Dwellings) Bill 1981*.[32] The effect of both decisions was to

22 See Norris (n 20 above).
23 Padraic Kenna, *Housing Law, Rights, and Policy* (Clarus 2011) para 12.01.
24 Ibid para 12.05, referring to L O'Brien and B Dillon, *Private Rented: The Forgotten Sector* (Threshold 1982).
25 Kenna (n 23 above) para 12.05; for the controlled versus uncontrolled tenancies, see Department of the Environment and Local Government (n 14 above) 9–11.
26 de Blácam (n 17 above) 1–8.
27 For an overview of the history, see ibid.
28 See, eg, the grounds listed in the Rent Restriction Act 1960, s 29.
29 See, eg, de Blácam (n 17 above) 5–7, summarising the pre-1983 rules around rent increases in controlled tenancies.
30 Department of the Environment and Local Government (n 14 above) 10.
31 *Blake v Attorney General* (1981), [1982] IR 117 (SC). For contemporary analysis, see Gerard McCormack, 'Blake-Madigan and its aftermath' (1983) 5 Dublin University Law Journal 205–224.
32 *Re the Housing (Private Rented Dwellings) Bill 1981* (1982), [1983] IR 181.

prompt a significant decline in controlled properties such that by 2002 there were only about 1700 left.[33]

Outside of controlled tenancies, tenants in the PRS were in a precarious position. Uncontrolled tenancies were generally let furnished and their tenancy agreements were much more informal.[34] While some of these tenancies had a lease, others went month to month or week to week, with the potential for rent increases at the end of each period and limited security of tenure.[35] Such precarity was less of an issue given that in 1991 only 8 per cent of households were in the PRS.[36] However, by the 1990s the Government had retreated from its former emphasis on supporting home ownership and building social housing.[37] Kenna notes that similar changes, namely an increasing focus on 'income related housing allowances' instead of 'capital expenditure' were seen beyond Ireland as well.[38]

The Government's retreat from building housing was one of many factors which led to an increased demand for rented accommodation in the 1990s. Other factors included the Celtic Tiger economic boom which began in the mid-1990s and coincided with increasing house prices. The 2000 report of the Commission on the Private Rented Residential Sector (the Commission) noted that there was demand from students and others with a real shortage of supply in the PRS.[39] The report also notes that there was growing investment in the PRS from investors seeking to take advantage of rising house prices in Ireland.[40]

Increasing investment in the PRS was a specific goal of government policies in the 1980s and 1990s. Such policies arrived around the same time as the Government retreated from housebuilding and the aftermath of *Blake*. One early policy was targeted tax relief for those who bought new houses or apartments and rented them for 10 years.[41] Such relief became more targeted following the Finance Act 1992

33 The 1700 figure is an estimate from the Department of the Environment given in Clare O'Dea, 'Rent-controlled tenancies in doubt as time runs out for protections' *Irish Times* (Dublin 8 March 2002). For the situation of these tenancies following the end of the 1982 protections, see Department of the Environment and Local Government (n 14 above) 50–52.

34 Department of the Environment and Local Government (n 14 above) 10.

35 Ibid 10–11.

36 Ibid 6.

37 See Norris (n 20 above) chs 5 and 6.

38 Kenna (n 23 above) para 12.86.

39 Department of the Environment and Local Government (n 14 above) 8–9, 13–15.

40 Ibid 17–24.

41 See Finance Act 1981, s 23, and Finance Act 1988, ss 27–29. See also Department of the Environment and Local Government (n 14 above) 125–127.

with the goal of supporting urban renewal.[42] The 10-year retention requirement was clearly aimed at guarding against speculators seeking a quick profit.

With rising investment in the PRS and rising demand for rented accommodation came demands for increased tenant protections. The Housing (Miscellaneous Provisions) Act 1992 provided a statutory notice period of 28 days,[43] as well as allowing for regulation of rent books, housing standards and the registration of tenancies.[44] There was limited scope to extend tenancies or to get a new tenancy where a fixed term had ended.[45] In effect, many tenants in the PRS, especially those in the uncontrolled sector, had limited security of tenure and no protections around affordability. Admittedly, the Landlord and Tenant (Amendment) Act 1980 granted those tenants who had been in occupation of a particular residential property for 20 years the right to a 35-year lease.[46] However, in reality, the potential for long-occupation leases typically saw tenants being evicted once they came close to qualifying for one.[47]

Despite the legislation of the 1990s, Ireland's PRS remained relatively unregulated, with what regulation there was being poorly enforced. Investment in the sector may well have increased, but the PRS was not providing adequate housing.[48] Supply also continued to be an issue in the PRS.[49] In response, the Government created the Commission on the Private Rented Residential Sector in 1999. The Commission reported in 2000, and its report would inform the Residential Tenancies Act 2004.

Before examining the evolution of the RTA in Ireland since 2004, particularly its provisions on security of tenure and rent increases, it is helpful to briefly summarise the Commission's remit and report. The terms of reference stated that the Commission was to develop suggestions which would improve security of tenure, balance landlords' and tenants' rights and encourage increased investment in the PRS.[50] The then Housing Minister advised that the goal was to make the

42 For a more detailed overview, see Department of the Environment and Local Government (n 14 above) 125–130.

43 Housing (Miscellaneous Provisions) Act 1992, s 16.

44 Ibid ss 17, 18, 20.

45 Department of the Environment and Local Government (n 14 above) 85.

46 Landlord and Tenant (Amendment) Act 1980, pt II; Department of the Environment and Local Government (n 14 above) 11.

47 Department of the Environment and Local Government (n 14 above) 11.

48 For the definition of adequate housing, see United Nations Committee on Economic, Social and Cultural Rights, General Comment No 4 (1991).

49 See, eg, Clare O'Dea, 'It's a jungle out there so be prepared for a tough flat-hunting trip' *Irish Times* (Dublin 3 August 2001) 41.

50 Department of the Environment and Local Government (n 14 above) 1.

PRS 'an option of choice rather than a tenure of transition before home ownership or social housing'.[51] In crafting its suggestions, the Commission looked at the experiences of the United Kingdom, Australia, New Zealand, Canada and the Netherlands in some depth, with a briefer look at the broader European context.[52] The Commission also accepted submissions from a range of actors, including the Irish Property Owners' Association (a body representing landlords), along with several charities, such as Threshold and St Vincent de Paul, focused on addressing housing issues.

What is perhaps most striking about the resulting report is the Commission's faith in the PRS despite evidence to the contrary. Here, there is not the space to fully critique the report's tendency to gloss over issues around unaffordable and inadequate housing in the PRS – both in Ireland and abroad – nor the ways in which the report glosses over evidence which suggests that the PRS might not be a good investment choice for individuals. Nonetheless, there are suggestions in the report which are striking to see a quarter of a century later. As such, where relevant, I refer to the report as I move on to examine the measures around security of tenure and affordability seen in the RTA 2004–2025.

THE EVOLUTION OF THE RTA FROM 2004 TO 2025

Since 2004 the Residential Tenancies Act has been amended multiple times. As such, it can be a challenging Act to keep up with and has, understandably, become more complex to read and understand. Although security of tenure and affordability interact with each other,[53] in this section I examine the provisions around each separately, before moving on in part three to examine the provisions around enforcement. Given the technicalities of each provision, the goal is to offer an overview rather than an exhaustive account of each change. It is worth noting that 2016 saw several changes to security of tenure and affordability, which were initially set out in the *Strategy for the Rental Sector*.[54] That strategy was prompted by rising rents and a shortage of supply.[55]

51 Ibid 2.
52 Ibid app C.
53 A point the Commission noted: ibid 101.
54 Department of Housing, *Strategy for the Rental Sector* (December 2016).
55 Ronan Lyons, 'A new government must address an old challenge' (*The Currency* 3 December 2024).

Security of tenure

In 2000, the Commission identified the lack of security of tenure in Ireland's PRS as a key problem.[56] Accordingly, introducing provisions around enhanced security of tenure was one of the key recommendations of the Commission and remains a key feature of the RTA 2004–2025. Security of tenure is governed by part 4 of the Act, and secure tenancies are known as 'part 4 tenancies'.

As originally enacted, the RTA 2004 stipulated that after six months of occupation a tenancy would become a part 4 tenancy lasting for the next 3.5 years.[57] The Act makes it clear that a part 4 tenancy will arise in cases of multiple tenants where only one of them has been in occupation for the requisite six-month period,[58] though the part 4 protections will only apply to each tenant if and when they are in occupation for six months.[59] If the landlord should 'accept [any person] as a tenant' once a part 4 tenancy is in force in relation to another tenant, that person will get the part 4 protections once they are in occupation for six months even if part of that period of occupation was as a 'licensee of the tenant'.[60] That licensee must still ask the landlord to become a tenant, but the landlord 'may not unreasonably refuse to accede to such a request'.[61] These measures are clearly designed to ensure that part 4 tenancies would apply to a shared house where individual tenants' leases start at different times, as well as to protect – to some extent[62] – a person's ability to move in with their partner.

Once the original four-year term was at an end, a further part 4 tenancy would arise after six months. In effect, the idea was that a landlord could terminate for any reason during this six-month gap between part 4 tenancies.[63] Outside of the initial six-month period, or the six-month gap between part 4 tenancies, the landlord could only terminate on a set number of grounds. These grounds were a mix of fault-based and no-fault-based grounds. In terms of the former, the landlord could end the tenancy if the tenant should fail to abide by their obligations under section 16 of the RTA 2004. The no-fault grounds for eviction were:

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56 Department of the Environment and Local Government (n 14 above) 145.
57 RTA 2004, s 28.
58 RTA 2004-2025, s 49 (2).
59 Ibid s 50 (2).
60 Ibid s 50(3)–(7).
61 Ibid s 50(6)–(8).
62 Given that one of the grounds for eviction is that the property is no longer suitable for the numbers living there, there is scope for this provision to be less protective than it seems: see RTA 2004–2025, ss 34–35, table 1
63 RTA 2004, ss 41–42. But see *Dunivya v PRTB* [2016] IEHC 41.

- the rented accommodation being no longer suitable for the tenant as a result of the size of the property and the number of people living there;
- the landlord intends to sell the property within three months;
- the landlord needs the property for themselves or a family member;[64]
- the landlord intends to renovate in such a way that the tenant needs to vacate the property;
- the landlord intends to change the use of the property.[65]

The grounds for eviction have been amended slightly since 2004. One key change is that the fault-based grounds now include a separate, specified ground for rent arrears which was introduced in 2020.[66] With respect to the no-fault grounds, the most significant change is that there are now limits on a landlord's ability to access the selling ground for eviction where the landlord is selling 10 or more properties in the same development.[67] The limit here is clearly targeted at the Real Estate Investment Trusts and their associated build-to-rent developments which have flourished since 2013.[68] It was introduced in 2016 in response to a mass eviction in Tyrelstown, Dublin,[69] and is called the 'Tyrelstown amendment' as a result. Landlords can gain an exemption from the Tyrelstown rule and may still evict the tenants where they can show that selling with tenants *in situ* would achieve a sale price of at least 20 per cent less than market value and where selling with tenants *in situ* would be 'unduly onerous on' or cause 'undue hardship' to the landlord.[70]

Other changes to the no-fault-based grounds include additional detail about the form of notice which must be provided as well as an increase to the amount of time the landlord has to sell the property.[71] The grounds for terminating a tenancy have to be read with the rules around tenancy terminations in part 5 of the RTA 2004–2025. The rules around what constitutes a valid notice of termination are found

64 With 'family member' defined by RTA 2004–2025, s 35(4).

65 RTA 2004, ss 34–35, table 1. For the current rules, see RTA 2004–2025, ss 34–35, table 1.

66 RTA 2004–2025, table 1, para 1A.

67 Ibid s 35A.

68 For the history, see Megan Nethercote, 'Build-to-rent and the financialization of rental housing: future research directions' (2020) 35(5) Housing Studies 839–874, 844–845.

69 For this event, see Michael Sheils McNamee, '"It is devastating': residents of Dublin estate facing "mass eviction"' (*The Journal* 14 March 2016).

70 RTA 2004–2025, s 35A(3).

71 Ibid, s 34, table 1, para 3 (it is now 9 months instead of 3 months, see RTA 2004, s 34, table 1, para 2); for the notice, see RTA 2004–2025, s 35(7)–(12).

in section 62, but there are also relevant rules contained within the no-fault grounds themselves.[72] In effect, along with the valid notice of termination, the landlord must provide a statement detailing the information about the ground. That is the landlord must provide evidence of planning permission for changed use and so on. When relying on the fact they intend to sell, landlords must now include a statutory declaration along with the notice of termination.[73] Such an amendment is designed to ensure that the landlord actually intends to sell rather than just evict a tenant.

The biggest change to security of tenure has been the length of time that a tenancy lasts. The original four years became six years in 2016,[74] and in 2021 this became an indefinite tenancy.[75] Tenancies which were on a six-year cycle when the rule came in will stay as six-year tenancies, only converting to an indefinite tenancy once the relevant six-years and six months ends.[76] The most striking aspect of these changes is that they echo the original suggestions of two groups supporting tenants which made submissions to the Commission in 1999–2000. Both the Union of Students in Ireland and St Vincent de Paul suggested that the original length should be six years rather than four,[77] while Threshold suggested that tenancies should be indefinite.[78] Not surprisingly, the Irish Property Owners Association (IPOA) strongly objected to automatic security of tenure, including the original four-year term.[79]

That the RTA 2004–2025 should eventually end up where one of Ireland's leading housing charities suggested is striking. When introducing six-year tenancies in 2016, the Government described them as a 'step towards tenancies of indefinite duration'[80] but gave no timeline for when such tenancies would be introduced. Ultimately, the next term increase came in 2021 and went straight to indefinite duration. The end result is that the changes to term lengths echo the suggestions in the Commission's report and suggests that both the original four-year term and 2016's six-year term were simply delaying the inevitable. As significant as the introduction of indefinite tenancies are, the change here is not necessarily that useful for tenants. The reason why is due to the *lack* of changes to the grounds for no-fault eviction available to the landlord, with the exception of the limits on

72 RTA 2004–2025, ss 34–35A.
73 Ibid s 35(8).
74 Planning and Development (Housing) and Residential Tenancies Act 2016, s 37.
75 RTA 2004–2025, s 28, as amended by Residential Tenancies (Amendment) Act 2021.
76 Residential Tenancies (Amendment) Act 2021, s 5(4).
77 Department of the Environment and Local Government (n 14 above) 169.
78 Ibid 169–172.
79 Ibid 164–165.
80 Department of Housing (n 54 above) 9.

eviction where the landlord is selling 10 or more properties in a single development

Admittedly, the rules around evictions generally have been tightened. Since 2020, for example, all notices of eviction must be sent to the RTB and the tenant simultaneously.[81] While this might be suggestive of oversight, the relevant legislative provisions indicate that the purpose is to allow the RTB to write to the tenant to advise them of their right to refer a dispute to the RTB.[82] I return to the provisions around enforcement in part three, but for now the key point is that the landlord's reasons for accessing eviction remain the same. Even the limits on those selling 10 or more properties have exemptions which undermine the promised security of tenure.

Rent affordability

The Commission did not think rent controls were a good idea. The report pointed out that, where rent controls are introduced, they are hard to remove, [83] and so it has proven to be with the RTA 2004–2025. The Commission did recommend a version of light-touch rent control – even if it insisted that it was not actually rent control – which was adopted in the original version of the RTA 2004. Since then, the RTA 2004–2025 has been amended to introduce a much stricter version of rent control in some areas, but these efforts continue to reflect a broader antipathy to the idea of rent control.

The Commission's report spent some time detailing the drawbacks of rent control.[84] Its concern was the effect that *any* system of rent control would have on supply.[85] The issue was that rents in 2000 represented only a modest return on investment and were not high enough to attract international investment.[86] Such statements are somewhat jarring given that they appear alongside evidence that rents in 2000 were *already* too high for many individuals.[87]

In addition, the Commission accepted that the appropriate yardstick for any limits on rent should be the market rather than the situation of tenants. As the Commission put it: 'Calculating private sector rents on the basis of tenants' incomes is untenable when the costs being carried

81 For this rule, see RTA 2004–2025, s 39A.

82 RTA 2004–2025, s 39A (2).

83 Department of the Environment and Local Government (n 14 above) 107.

84 Ibid 107–114.

85 Ibid. But see the analysis of rent control provisions by Konstantin A Kholodilin and Sebastian Kohl, 'Do rent controls and other tenancy regulations affect new construction? Some answers from long-run historical evidence' (2023) 23(4) International Journal of Housing Policy 671–691.

86 Department of the Environment and Local Government (n 14 above) 105, 143–144.

87 Ibid 102.

out by the landlord bear no relationship to the circumstances of the tenant.'[88] The logic of the Commission's point is clear, but it ignores whether tenants should pay more than they can afford. The Commission also noted that, while rent control was, in theory, compatible with the Constitution, 'landlord and investment interests' thought that *any* interference with rents would be 'an unwarranted infringement of their property rights'.[89]

The Commission recommended a system of rent reviews which were adopted in the original version of the RTA 2004. The rules around rent reviews were and are contained in part 3 of the Act.[90] In its original form, part 3 sought to limit rents to 'the market rent', whether in terms of the initial rent or rent increases.[91] Rent increases were limited to one every 12 months,[92] and landlords had to give 28 days' written notice of rent changes.[93] Landlords could raise the rent more than once in a 12-month period if there had been 'a substantial change in the nature of the accommodation provided under the tenancy' which would result in a different market rent.[94] These rules superseded anything which might be stated in a tenant's lease.[95]

In 2015, the 12-month review period was increased to 24 months on a temporary basis,[96] but the bigger change came in 2016 with the introduction of 'rent pressure zones' (RPZ).[97] Originally these RPZs existed in Cork City and the greater Dublin area.[98] RPZs initially limited rent increases to 4 per cent per year, and the hope was that RPZs would only last for three years.[99] Instead, the existence of RPZs has been repeatedly extended in length and expanded to other areas.

88 Ibid 114.

89 Ibid 110–111, 115.

90 This part does not apply to cost-rental tenancies, an option introduced in 2021: see Affordable Housing Act 2021, s 33(1).

91 RTA 2004, ss 19, 22, 24.

92 Ibid s 20(1).

93 Ibid s 22 (2).

94 Ibid s 20 (2)–(3).

95 Ibid s 24 (2).

96 RTA 2004–2025, s 20(4)–(5), as inserted by Residential Tenancies (Amendment) Act 2015. It was supposed to revert to annually in 2026, but as a result of the extension of RPZs nationwide these rules have been largely superseded for most tenancies in the PRS, with one exception related to timing of subsequent rent reviews for existing tenancies in new RPZs, see RTA s 24C. As a result, we do not examine these further in the rest of the article.

97 RTA 2004–2025, ss 24A–24B, as inserted by Planning and Development (Housing) and Residential Tenancies Act 2016, s 36. Even though RPZs have now been extended nationwide I still use the term to differentiate the earlier regime and because the term is still used by the RTB.'

98 Namely, Dublin City Council, Dún Laoghaire-Rathdown County Council, Fingal County Council and South Dublin County Council: RTA 2004–2025, s 24B(1).

99 Planning and Development (Housing) and Residential Tenancies Act 2016, s 36.

As the result of changes introduced in 2025, RPZs have now been expanded nationwide and are due to expire on 28 February 2026.[100] Such extensions result from legislative amendments.

The allowed annual rent increase in RPZs has also changed from 4 per cent to 2 per cent or the rate of general inflation, whichever is lower.[101] Tenants must also get 90 days' written notice of the new rent.[102] The current legislation requires the landlord to provide additional information with this notice including: a reminder of how the tenant can dispute the rent increase; confirmation that it is the landlord's 'opinion [that] the new rent is not greater than the market rent';[103] three comparable properties and their advertised rent; and, in RPZs, the landlord must include the calculation of the new rent.[104] The end result is somewhat contradictory given that rent increases in RPZs are now stricter, but the hope is that RPZs themselves will remain time-limited.

There are some exemptions to the rent increases allowed in RPZs. These fall under two main categories: significant improvements and the re-letting of a property which has been unlet for at least two years (or one year where the property is a protected structure).[105] It should be noted that landlord hardship does not justify an exemption to rent increase limits.

ENFORCING SECURITY OF TENURE AND AFFORDABILITY UNDER THE RTA 2004–2025

As Úna Cassidy and Jennifer Ring note, the dispute resolution mechanisms of the RTA 2004 were a key aspect of the new system.[106] The hope was that providing for a speedier dispute resolution via the Private Residential Tenancies Board (PRTB) would aid in the development of the PRS. In creating a board for residential tenancies' disputes, the RTA 2004 ended much of the old role of the courts with appeals being limited to the High Court on a point of law only;[107] the

100 RTA 2004–2025, s24B(3), see also s 24(1)–(2). These changes were introduced by Residential Tenancies (Amendment) Act 2025, s 3. For the gradual expansion, see the list on How Rent Pressure Zones (RPZs) work.

101 RTA 2004–2025, s 19(4); for the old 4 per cent rate, see Planning and Development (Housing) and Residential Tenancies Act 2016, s 34.

102 RTA 2004–2025, s 22(2).

103 Ibid s 22 (2A)(c).

104 Ibid s 22 (2A).

105 Ibid ss 19(5)–(5B). Note that for protected structures, the property only needs to be unlet for one year.

106 Úna Cassidy and Jennifer Ring, *Landlord and Tenant Law: The Residential Sector* 2nd edn (Round Hall 2020) para 9.01.

107 RTA 2004–2025, s 123(3).

limits to appeals from the board was confirmed in *Canty v PRTB*.[108] The PRTB became the RTB in 2015 when the board got jurisdiction over tenancies in approved housing bodies,[109] and the board's role was further expanded to include student-specific accommodation in 2019.[110]

In addition to the expansion of the board's remit, the RTB's powers of enforcement have also expanded. In 2019, the RTB acquired 'a complaints, investigations and sanctions regime' which gives the RTB further powers over residential tenancies.[111] The next section will argue that there is scope to expand the RTB's enforcement powers further but first sets out the current situation.

THE CURRENT ENFORCEMENT AND DISPUTE RESOLUTION PROCEDURES

That the RTB should focus on dispute resolution is not a surprise if the goal is speedier and cheaper solutions to landlord–tenant issues. The RTB has three methods of dispute resolution: mediation, adjudication and a hearing.[112] While most disputes will be between landlords and tenants, it is possible for third parties to bring a dispute before the RTB.[113] Generally speaking, the third parties bringing disputes will be neighbours and others trying to enforce tenant (or landlord) obligations which affect them. The classic example being the neighbour of a disruptive tenant.[114] Based on the figures from 2023 there were 261 applications brought by a third party out of a total of 9908.[115] The RTB figures do not differentiate between the different forms of dispute resolution.

There are a few limits to the RTB's jurisdiction. First, any landlord referring a dispute must have registered the relevant tenancy.[116] All tenancies are supposed to be registered and there are significant penalties for unregistered tenancies.[117] Second, if damages are claimed they must be less than €20,000, while any rent arrears must

108 *Canty v PRTB* [2007] IEHC 243; [2008] IESC 24; [2011] IESC 28. See also *Canty v Ireland* [2011] IESC 27.
109 Residential Tenancies (Amendment) Act 2015, s 13 (1).
110 Residential Tenancies (Amendment) Act 2019, s 3.
111 Cassidy and Ring (n 106 above) para 9.04; Residential Tenancies Amendment Act 2019, s 28.
112 Cassidy and Ring (n 106 above) para 9.08.
113 Ibid paras 9.20–9.54.
114 Ibid paras 9.33–9.44.
115 RTB, 'RTB Dispute Resolution Service Statistics'.
116 RTA 2004–2025, s 83.
117 Ibid s 144. The penalties are set out in s 9.

be less than €60,000.[118] Thirdly, there are time limits imposed on bringing a claim. Those relevant to challenging rent increases are 28 days from receipt of rent review or the date the new rent comes into force, whichever is later.[119] Disputes about a notice of termination must be brought within 28 days of receipt.[120] The RTB can extend these deadlines if asked to and if it is warranted.[121]

The differences between mediation, adjudication and hearings are ones of formality. There is a sense of escalating from the most collaborative process to one where the RTB imposes a decision on the parties. This is reflected by Cassidy and Ring's practical note that the RTB can seek to resolve obvious misunderstandings without the need to even proceed to one of the named dispute resolution mechanisms.[122] While such a collaborative approach seems to suggest that landlord and tenants are equals in a relationship, the practical realities of the PRS can make both parties feel powerless.[123]

The figures from 2021, 2022 and 2023 suggest that tenants bring more applications than landlords, a pattern that was seen prior to the eviction ban during the pandemic.[124] Roughly speaking, tenants bring over 50 per cent of cases, with landlords bringing over 40 per cent of cases. The RTB deals with several thousand cases across the three types of dispute resolution each year. For example, in 2023, there were almost 10,000 cases.[125] Appeals from the RTB are relatively rare, with there being less than 100 cases in the High Court since 2004.[126] Then again, as the grounds for appealing from the RTB are narrow, it is not surprising that appeals to the High Court should be so few. If the goal was simply to reduce the number of cases going to the High Court, the introduction of the RTB has been very successful. Of course, the RTB was introduced as part of a broader effort to make Ireland's PRS more desirable for both tenants and landlords, and with the stated goal of making renting a tenure of choice.

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118 Ibid s 182.

119 Ibid s 22(3).

120 Ibid s 80.

121 Ibid s 88.

122 Cassidy and Ring (n 106 above) para 9.93.

123 For tenants see, eg, Byrne and McArdle (n 11 above). Feelings of powerlessness are less studied among landlords, but see, by way of example, the following US-based study: Meredith Greif, *Collateral Damages: Landlords and the Urban Housing Crisis* (Russell Sage Foundation 2022).

124 See RTB (n 115 above) figure 2.

125 Ibid.

126 Searches on bailii.org and vLexJustis for PRTB or RTB as a party name return less than 100 cases. Using RTB or PRTB as a party name is a rough proxy for appeals. These searches were done on 21 August 2025.

While tenants are clearly relying on the RTB to enforce their rights, the issues with the current system of enforcement are twofold. First, bringing a dispute about rent increases or a notice of termination typically requires the tenant to act. In such scenarios tenants may fear retaliatory action by the landlord should they bring a challenge. While a dispute is ongoing there are provisions to maintain the *status quo*,[127] but the problem is that, if the rent review is resolved in the tenant's favour, they may find the landlord attempting to evict them. The idea of 'revenge eviction' is well-established in scholarship about renting in England but is less studied in the Irish context.[128] With respect to challenging an eviction notice, a tenant may not have much to lose but, if they win, there is the same risk of perceived retaliatory action via future efforts to evict the tenant or through the charging of additional fees such as for parking. The problem is that such retaliatory action by landlords is not always classed as such because they are within their rights to take these steps.

In 2019, the RTB was empowered with what is known as 'the sanctions regime'.[129] The sanctions regime is targeted at landlords and reflects recognition that some landlords were and are deliberately flouting the legislation. The regime operates off both reports from the public and the RTB's own initiative.[130] The procedure is that there is an investigation and then a decision, with the decision having the potential to result in a written caution, a fine of up to €15,000, and liability for the RTB's costs up to €15,000, or any combination thereof.[131] The sanctions regime is limited to 'improper conduct' as defined by the RTA 2004–2025.[132] Improper conduct means any of the following: not registering a tenancy; not complying with rent increase limits in an RPZ; not telling the RTB that the landlord intends to rely on an exemption to the RPZ rent limits; providing a 'false or misleading' reason around termination; and not re-offering the tenancy to the tenant where the ground of termination did not come to pass.[133]

The sanctions regime represents a significant departure from the earlier emphasis on dispute resolution. The RTB had always had the power to prosecute landlords for failing to register a tenancy,[134] but the evidence suggests this power was and is used sparingly. The

127 Cassidy and Ring (n 106 above) paras 9.211–9.216.

128 Less studied does not meaning that it is an unknown phenomenon in Ireland, see, eg, Ellen O'Riordan, 'Landlord's move to pressurise and evict 92-year-old "unconscionable", says RTB' *Irish Times* (Dublin 14 August 2024).

129 Cassidy and Ring (n 106 above) para 11.25.

130 Ibid para 11.26. RTA 2004–2025, ss 148T–148Z.

131 RTA 2004–2025, ss 148T–148Y; Cassidy and Ring (n 106 above) para 11.49.

132 RTA 2004–2025, sch 2.

133 Ibid. Cassidy and Ring (n 106 above) para 11.28.

134 RTA 2004–2025, s 144

process set out in the RTA 2004–2025 is that the RTB sends a notice to landlords suspected of having an unregistered tenancy with a chance to register within a given timeframe, if they do not, they are sent a second notice which must be complied with within 14 days before the landlord will be 'guilty of an offence'.[135] The RTB's Annual Report from 2017 illustrates that, even following the second notice, landlords are given a chance to comply because after the 'official enforcement notices', which indicate a prosecution will be pursued if the tenancy is not registered, the next steps are a 'solicitor['s] warning letter', then a case will be prepared and, finally, a court summons will be issued.[136]

The figures from 2016 and 2017 illustrate that such an approach results in a small number of prosecutions. In 2016, the Board contacted 20,131 landlords over their failure to register a tenancy. Following that contact, there were '37 cases prepared for prosecution with 29 district court summons issued and 20 criminal convictions'.[137] In 2017, there were 20,409 notice and enforcement letters, but the number of convictions declined to three in 2017,[138] one conviction in each of 2018 and 2019,[139] and then, due to the pandemic, there were no cases taken to the courts over failure to register in 2020 or 2021.[140] There were also no cases taken in 2022 or 2023.[141] The figures illustrate that the RTB's approach is effective at ensuring compliance without needing to proceed to a prosecution. If anything, both the statutory approach and the RTB's own reports on how it uses such an approach indicate a reluctance to prosecute landlords. Such a reluctance arguably reflects the seriousness of a criminal conviction and the RTB's own comments that it 'continues to work closely with landlords to facilitate the registration of tenancies'.[142]

Meanwhile, the sanctions regime, since coming into force midway through 2019, has seen complaints range from 245 in 2020 to 82 in 2023.[143] The Annual Report from 2023 notes that the Board 'prioritised

135 Ibid s 144(1)–(4).

136 See, eg, the figures and steps listed in RTB, *Annual Report 2017: A Year of Change*, 31–32.

137 RTB, *Annual Report 2016*, 22. The figures are also available in the 2017 report (n 136 above).

138 RTB, *Annual Report 2017* (n 136 above) 31–32.

139 RTB, Annual Report 2018: Working to Make the Rental Sector a Better Place, 17; RTB, *Annual Report 2019: 15 Years Supporting the Rental Sector*, 56.

140 RTB, *Annual Report 2020: Adapting and Responding in Challenging Times*, 54; RTB, *Annual Report and Accounts 2021*, 37.

141 RTB, *Annual Report and Accounts 2022*, 90; RTB, Annual Report and Accounts 2023, 80 (no landlord even needed a second solicitor letter in either year).

142 RTB, *Annual Report 2017* (n 136 above) 31.

143 RTB, *Annual Report and Accounts 2023* (n 141 above) 80.

allegations of breach of RPZ restrictions'.[144] Such a prioritisation raises questions about the resourcing of the RTB with respect to its sanctions regime; nonetheless, as I now move on to argue, there is scope to build on the change the sanctions regime represents.

Addressing the power imbalance and preventing breaches rather than prosecuting them

The Housing Commission, as part of its broader review into Irish housing, explored issues in the PRS.[145] The report notes that the RTB 'is a unique and positive feature' while also acknowledging issues with the Board.[146] One key issue, according to the Housing Commission, was enforcement in the PRS, though the report was vague on how to fix it.[147] One suggestion was that the RTB should be 'a proactive regulator … that does not rely on tenants taking cases' and suggested the broader solution to enforcement issues was via the sanctions regime.[148] As useful as a more proactive RTB would be, that would not necessarily address the issues currently being faced by tenants. In this subsection I offer an alternative model of enforcement, which is less focused on prosecutions.

The Housing Commission report notes that the current regulatory approach 'is to assume, in the first instance, that landlords are willing to comply with their statutory responsibilities'.[149] The assumption could also be phrased in the present tense; that is, the assumption is that landlords *are* complying. A better enforcement model would be 'compliance-by-design' rather than assuming the desired result. While it is true that a more proactive regulator would help – provided it is adequately funded – it would also be helpful if compliance was built in rather than being patched up after the fact. Compliance-by-design is a term more common in the law and technology field, but it is also a form of enforcement seen in other administrative bodies.[150] The term is used here to denote a system of regulation designed so that engaging with the system results in compliance as far as possible. In the context

144 Ibid 17.

145 Housing Commission (n 9 above) s 6.

146 Ibid 133.

147 Ibid.

148 Ibid.

149 Ibid 132.

150 See, eg, Pompeu Casanovas, Jorge Gonzales-Conejero and Louis de Koker, 'Legal compliance by design (LCbD) and through design (LCtD): preliminary survey' (2017) Proceedings of the 1st Workshop on Technologies for Regulatory Compliance. For a similar phenomenon in other administrative agencies, see Sarah E Hamill, 'Making the law work: Alberta's Liquor Act and the control of medicinal liquor from 1916 to 1924' (2012) 27(2) Canadian Journal of Law and Society 249–265.

of tenants' affordability concerns and security of tenure, compliance-by-design offers a way to ensure that these rights are realised and do not just exist on paper.

At present the RTB's regulatory model could be described as mainly reactive and collaborative, with the sanctions regime offering limited scope for the RTB to be proactive. The effect of this model is that the landlord and tenant regime continues to reflect the idea that rental housing is a choice, which is increasingly not the case for many tenants and, indeed, some landlords. For many tenants, the PRS is their only option for housing; while many small-scale landlords are accidental landlords who may not be in a position to sell their property and must rent it out.[151] A more realistic regulatory model would recognise that the sheer scale of the PRS and the increasing complexity of the regulatory regime raises questions about whether small-scale landlords can actually abide by the rules. A compliance-by-design model would reduce complexity for landlords and offer better protections for tenants. It would also see the RTB act as an intermediary in *all* residential tenancies rather than only when issues arise.

There are already tentative steps taken which would fit with compliance-by-design or a regulation rather than prosecution model for the PRS. Two examples will illustrate this. First, the rules and the procedure around enforcing the requirement to register suggests the RTB itself would prefer to avoid prosecutions where possible. The second example is that the current rules around evictions require the RTB to be informed at the same time as the tenant. Similarly, the RTB must also be informed of new rents following a rent review. There is scope for the RTB to use this information but, rather than seeking to prosecute landlords after the fact, a compliance-by-design model of enforcement would prevent prosecutions of landlords and better protect tenants' rights.

For example, when conducting a rent review the landlord could first be required to send the form and supporting evidence for the RTB to review, with the RTB then sending the review onto the tenant, copying in the landlord, with a note of whether it is valid or not. A failure to comply with the various rules around rent increases could be penalised by freezing the rent for the relevant review cycle – another 12 months at the current rent in RPZs – and limiting the landlord's access to no-fault eviction during this period. For example, if a landlord tries to

151 For discussion of accidental landlords in England, see Tom Moore and Richard Dunning, 'Regulation of the private rented sector in England using lessons from Ireland' (Joseph Rowntree Foundation 2017) 10. See also, Adriana Mihaela Soaita, Beverley Ann Searle, Kim McKee and Tom Moore, 'Becoming a landlord: strategies of property-based welfare in the private rental sector in Great Britain' (2017) 32(5) Housing Studies 613–637, 624–625.

increase the rent beyond the allowed amount in an RPZ, the tenant's rent would be frozen for another 12 months with the landlord unable to count the 12 months of frozen rent towards the increase normally allowed in an RPZ. It would be unfair to the tenant for them to have to absorb a double increase the subsequent year. In addition, affected landlords would need to have an appeals process to prevent undue hardship. The idea here is that the penalty would be relatively minimal but sufficient to encourage compliance with the goal of protecting tenants from the consequences of a landlord's misbehaviour.

Alternatively, given the relatively rigid and mathematical rules around rent increases, it might be possible for rent reviews to be carried out via an online system. Such a system would not allow multiple rent increases within a set time-period, nor rent increases beyond the allowed amount. Either way, the onus would be on the landlord and/or the RTB to make sure that the rent review was legal. Such a situation would protect the tenant who may not be willing or able to challenge an illegal review. It would still be open for the tenant to negotiate with the landlord if the new rent is too high, but that would be a matter for the landlord and tenant rather than the RTB.

To be clear, the proposal is not that rent reviews become automatic every 12 months. Landlords would still be expected to act to review the rent. The difference would be that having the RTB act as a check or offer an online system to alert tenants to rent reviews would ensure that all rent reviews abide by the rules. It could also prevent landlords increasing the rent where a tenancy comes to an end and a new tenant arrives within two years of the former tenancy ending. In this way it might better allow the provisions in the RTA 2004–2025 to limit broader rent increases; that is, it might allow RPZs to reduce rent inflation while also benefiting tenants.

Similarly, for evictions, the RTB could be empowered to review the grounds and the documents the landlord provides. As the RTB should be familiar with what the correct documents for each grounds are, the RTB is better placed than tenants to review the eviction for legality. Such a situation could see evictions under the no-fault grounds become more streamlined as the RTB would have already reviewed the eviction notice prior to the tenant being informed.

Such a streamlining might see questions about due process being raised on the part of the tenant. Under the current regime, that an eviction will bring about a hardship on a tenant is not grounds to refuse the eviction. It is no defence to an eviction that it will leave the tenant homeless. Nonetheless, there is still a need for procedural safeguards in evictions. Affected tenants could be allowed to raise objections, perhaps asking that the RTB's initial decision be reviewed. For example, the original assessment may be made by a single RTB employee with

that decision being subject to the review of a panel. Certain grounds for eviction could also require that the RTB follow up to ensure that they have taken place. For example, in the context of selling, the RTB could be required to be notified when the sale has taken place and if the sale does not take place within 12 months the RTB could ask for an explanation for the delay. It may be appropriate, depending on the context, to impose fines if the RTB determines that the landlord's grounds for eviction were not genuine. However, such fines would be strictly punitive and would do little to enhance a tenant's security of tenure.

A common theme across both suggestions is that the RTB would have a larger role, and a role which is effectively an intermediary between the landlord and tenant. The suggested changes seek to make it harder for landlords to illegally raise the rent and seek to offer more oversight over the eviction process. The issue with the current regulatory landscape is that the sheer complexity of the rules can make compliance a challenge. It is one thing to assume that people wish to comply with the rules, it is another to make it easy for them to do so. The regulatory regime should strive for the latter, and not assume the former.

There is an obvious risk that the RTB would not be able to act in the way suggested here. For the RTB to act in the manner suggested and for compliance-by-design to work, the RTB would need to be properly resourced and relevant legislation would need to be amended. That legislation includes the RTA 2004–2025 as well as the various statutes regulating the provision of property services.[152] There might also need to be amendments targeting online platforms which facilitate the PRS. In Ireland, two leading platforms are daft.ie and myhome.ie and these platforms may have a role to play in any compliance-by-design model. For example, these platforms might be required to check that any person advertising a property for rent has the requisite registrations and/or licences.[153] However, there remains a degree of informality in the PRS, such that many tenancies begin outside of these platforms and may not involve any estate agent. In such cases, it is the tenants themselves who will have to perform the necessary checks.

The other risk is that an increased role for the RTB in all tenancies simply adds more bureaucracy without improving the experience for those in the PRS. As likely as this risk is, the bigger issue is that the RTA 2004–2025 promises a degree of oversight over rent increases and promises security of tenure, but its enforcement mechanisms undermine these protections. The introduction of the sanctions regime

152 See, eg, Property Services (Regulation) Act 2011.

153 For example, estate agents must be licensed under the Property Services (Regulation) Act 2011, s 28.

reflects recognition that the RTB needs to do more, but punishing landlords after the fact does not help tenants. Giving the RTB more oversight over rent reviews and eviction could better protect tenants and reduce prosecutions of landlords. The risk of more bureaucracy is thus worth the likely result of better protections for tenants and fewer prosecutions of landlords, particularly those who may have unwittingly broken the rules.[154]

The final risk is that the proposed changes would fall foul of the constitutional protections for property. It is to that risk I now turn.

THE CONSTITUTIONALITY OF THE PROPOSED ENFORCEMENT MODEL

In any proposed changes to the landlord and tenant regime, the constitutional protections for property rights must be considered. Before beginning, it is important to remember that constitutional protections for property are not absolute. The focus in this article has been on changes to the enforcement of tenants' affordability rights and their security of tenure, rather than on the shape of the rights themselves. The current version of these rights and their enforcement have not (yet) been constitutionally tested. That being said, an earlier version of these two rights received judicial comment in Ireland and was at the heart of the challenge in *Blake*. The question of rent control also returned in *Re the Housing (Private Rented Dwellings) Bill 1981*,[155] which was a case challenging the Government's first effort at addressing *Blake*. Forty years have passed since these decisions, which raises questions about their continued relevance. Nonetheless, these cases offer a good starting point for analysing the current regime and the changes proposed in this article.

Blake centred on the old, controlled tenancies regime. While it is true that the controlled tenancies regime was very favourable to tenants in terms of affordability and security of tenure, the regime impugned in *Blake* differs substantially from that seen under the RTA 2004–2025. In *Blake*, the bulk of the focus is on the provisions around rent control, and, under the old, controlled regime, rent increases were virtually impossible.[156] Such a situation meant that controlled tenancies were far below market rent and, as such, represented a clear violation of landlords' property rights.[157]

The violation of landlords' property rights was made clear in the *Re Private Rented Dwellings* decision. The focus of the *Re Private Rented*

154 See eg *Wow Investments Ltd v RTB* [2022] IECC 3.

155 *Re Private Rented Dwellings* (n 32 above).

156 *Blake* (n 31 above) 128, 138–140.

157 Ibid.

Dwellings decision was on the changes made to rent control. Rather than immediately introducing market rent, the Housing (Private Rented Dwellings) Bill 1981 opted to gradually increase the rent from 1982 to 1986 so that it was only in 1986 that full market rent would be paid.[158] Or as O'Higgins CJ put it 'for a period of five years … landlords are to receive an amount … substantially less than the just and proper rent'.[159] O'Higgins CJ recognised the hardship which might be caused to some tenants but noted the 'presumption that any such hardship will be provided for adequately by the State'.[160]

The conclusion from the *Re Private Rented Dwellings* decision is often assumed to be that only market rent avoids violating landlords' property rights.[161] However, such a conclusion is a misreading of both *Blake* and the *Re Private Rented Dwellings* case.[162] The issue in both cases stemmed from the way rent control applied in both cases. In *Blake*, rent control meant that increasing the rent was all but impossible and, to make matters worse, the rules applied to some buildings and not others but did not refer to 'the needs of the tenants … the financial or economic resources of the landlords, or to any established social necessity' and was not time limited.[163] Similarly, the rule in the Private Rented Dwellings Bill limited rents payable on a blanket basis with some limited scope for some landlords to apply for a variation.[164]

The current rules around rent reviews in the RTA 2004–2025 differ insofar as they allow rent increases but limit the amount and frequency. The original rent review rules clearly evidence a concern with protecting market rent[165] and so would likely survive any constitutional challenge. What is less certain is whether the RPZ measures would pass constitutional muster. It is likely that the RPZ provisions would be deemed constitutional. The reason why is that, unlike *Blake*, rent increases are allowed in RPZs, and there is scope to apply for exemptions under set circumstances. Moreover, RPZs are supposed to be temporary and were, at least initially, somewhat targeted insofar as until June 2025 they only applied to specific areas which met set criteria. While it is true that RPZs have been extended beyond their original three-year term, such extensions occur via legislative amendment and so face repeated democratic scrutiny. RPZs are clearly

158 *Re Private Rented Dwellings* (n 32 above) 190.
159 Ibid 191.
160 Ibid 192.
161 Compare IPOA's reservations in the Department of the Environment and Local Government (n 14 above) 164–166.
162 See Hogan and Keyes (n 8 above) 113–118.
163 *Blake* (n 31 above) 138.
164 *Re Private Rented Dwellings* (n 32 above) 190–191.
165 See nn 83 to 96 above.

targeted at addressing a pressing social need, given rapid increases in rents. Finally, the rules in for RPZs now apply to all dwellings in the private rented sector in Ireland. Though this too is due to end in 2026.

This article's proposed changes to enforcing the rules around rent reviews do not prevent rent increases, nor do they reduce the amount a landlord can increase the rent by – so long as landlords abide by the rules. As such the proposed changes balance the landlords' property rights with the rights of the tenant and the social goals of the RTA 2004–2025. Any rent freeze would be targeted and time-limited, with scope for an appeal if the landlord's circumstances justified it. It is hard to see how that could violate *Blake*, *Re Private Rented Dwellings*, or subsequent developments in Irish property rights' protection.[166]

Hilary Hogan and Finn Keyes argue that a key post-*Blake* development in property rights' jurisprudence is the emergence of proportionality.[167] A targeted and time-limited rent freeze for landlords who violate the rules around rent increases, with the potential to appeal, would almost certainly be found to be proportional.[168] It is possible that granting the RTB a role in rent reviews could be considered an interference with property rights but, realistically speaking, the RTB already has a role; the proposed changes would just make that role effective.

However, two points are worth noting about the relevance of proportionality analysis in the context of property rights. First, the courts' use of proportionality analysis in property rights cases has not always been consistent.[169] Second, Hogan and Keyes made their argument prior to the Supreme Court's decision in *O'Doherty & Another v The Minister for Health & Others*.[170] In *O'Doherty*, O'Donnell CJ sounded a note of caution about the unthinking use of proportionality in Ireland given 'that different articles of the Constitution contain different limiting provisions, and thus the application of a proportionality test in the case of any given right must take account of the particular constitutional text'.[171] In the context of legislation around housing affordability, all O'Donnell CJ's comments might mean is a return to the type of analysis seen in *Blake* and *Re Private Rented Dwellings* which, while not proportionality analysis, offers guidelines for constitutionality such as pressing social need and

166 See eg Hogan and Keyes (n 8 above) 88–98.

167 Ibid 90–93.

168 Ibid 94–95.

169 See, eg, Rachael Walsh, *Property Rights and Social Justice: Progressive Property in Action* (Cambridge University Press 2021) 116–123.

170 *O'Doherty v The Minister for Health* [2022] IESC 32.

171 Ibid para 57.

time-limited application. Again, such guidelines apply more to the substance of the rules around rent increases than to their enforcement.

Blake's discussion of the security of tenure of the controlled regime was fairly cursory.[172] Nonetheless, the proposed changes to enforcement of the provisions on eviction do not change the rules on eviction, only how they can be enforced. It would remain the case that landlords could access no-fault eviction if their circumstances warranted it but, equally, it could stave off efforts to subvert the rules to the detriment of tenants. Again, it is hard to see how such a change could be considered an unconstitutional interference with property rights.

CONCLUSION

On paper, Ireland has strict rules around rent increases and offers tenants in the PRS good security of tenure. However, these rules have an Achilles' heel, namely, the fact that the rules generally rely on consumer-led enforcement. In this article, I have argued that the oversight of both rent reviews and evictions should be explicitly with the RTB itself. For such a suggestion to work, the RTB would need to be much better resourced than it currently is. Even under the current rules, there are reports of delays and backlogs at the RTB.[173] A change to a compliance-by-design model would require the RTB to do more. It might reduce some of the cases, particularly around evictions, and so could reduce the case load that the RTB is currently dealing with. Such changes would, however, take several years to become apparent.

The argument for introducing a compliance-by-design model is in keeping with changes made to the RTB since its introduction in 2004. The RTB's remit has been expanded to include tenancies in approved housing bodies and student accommodation. Likewise, the introduction of the sanctions regime in 2019 represents an expansion in the RTB's powers. Compliance-by-design would be another expansion. Yet, here, a word of caution is important. Rather than continually expanding the RTB's remit piecemeal, it is perhaps time to substantially overhaul the RTB itself and to ask if it is fit for purpose and, if not, why not. If affordability and security of tenure for tenants in the PRS are to be realised, the RTB has a role to play: the questions are what role and how?

172 *Blake* (n 31 above) 140–141.

173 Laoise Neylon, 'Delays, mistakes and risk of data breaches at the RTB, according to Grant Thornton report' (*Dublin InQuirer* 15 November 2023).

POSTSCRIPT

Since this article was accepted the Government announced its intention to introduce several significant changes to Ireland's PRS. The first of these changes, the extension of RPZs nationwide, took effect in June 2025 and is reflected as far as possible in the article. The other announced changes are scheduled to come into effect in 2026 with relevant legislation expected in the next few months. Based on the Government's press release, the other main changes will be to security of tenure and increased differentiation of large and small landlords, with small landlords to be defined as those with three or fewer tenancies. The proposals indicate that tenants of small landlords will have rolling six-year tenancies rather than the current indefinite tenancies. Large landlords will no longer be able to access no-fault eviction, with small landlords facing a reduction in no-fault eviction grounds during the six-year tenancies with more grounds for eviction available at the end of each six-year-term. In addition, once the new changes are introduced, all new tenancies will face having their rent reset every six years, though all rents will continue to be limited by the concept of 'market rent'.[174] While significant, these proposals do not explicitly mention any changes to how the residential tenancies legislation will be enforced. As such, the suggestions in this article remain relevant and, arguably, more so given the increased complexity which will follow these proposed changes.

174 See Department of Housing, Local Government and Heritage, 'Government to introduce major reforms to the rental sector' (10 June 2025).