

Minister Eoghan Murphy
Department of Housing, Planning and Local Government
Custom House
Custom House Quay
Dublin 2

29th March 2019

Anti-Evictions Bill & Residential Tenancies (Amendment) Bill 2018

Dear Minister Murphy,

The Society of Chartered Surveyors Ireland (SCSI) wishes to share our views and concerns regarding the proposed amendments to the Residential Tenancies Act (RTA) and proposed measures to be introduced via the Anti-Evictions Bill.

SCSI acknowledges efforts by your Department to tackle the housing and homelessness challenge by addressing the housing supply and demand imbalance. It is encouraging to see housing completions on the rise, house price inflation rates reducing and rent inflation showing signs of slowing down. While these are all positive signs, further uncertainty in the market- place may impact on progress made and, to this end, our estate agent and property management members have flagged some worrying consequences if the proposed measures in the Anti Evictions Bill and changes to the RTA Act are implemented in its current form.

In recent years, SCSI reported in our Annual Property Reports on why landlords are exiting the private rental sector. The regular legislative and regulatory changes has resulted in uncertainty and complexity, which has meant that smaller landlords can no longer justify investment in the private rental sector. SCSI is concerned that further peripheral changes to regulations, coupled with the prospects of all residential property in Ireland emerging from negative equity next year, will mean many more investors may leave the market.

SCSI recommends a fundamental overhaul of legislation that sets a vision for a mature rental market, where security of tenure for tenants underpins long term investment strategy, where responsibility for repairs and costs are matched against a long term lease; in short, a rental market that is fair to both landlord and tenant in equal measure. It is our contention that neither of these Bills contribute to the long-term vision and strategy needed to properly develop the residential rental sector. We are also concerned that this type of legislation continues to perpetrate the often-unjustified negative perception of landlords, with no recognition of the vast compliant majority who pay tax at significantly higher levels to commercial or institutional landlords.

Ireland needs small investors in areas outside of the main urban centres where large institutional investors do not perceive operational scale or value. Who else will provide choice in our towns and

villages across the country at this time of demand, where more people work remotely to avoid long commutes, where families want to move back to where they are from; where young people want to move into their first home? We are therefore concerned that the proposed changes and further regulation will only exacerbate the problem rather than help to address it.

We hope that you find our submission useful and we would very much like to meet with you and your department to discuss our concerns and recommendations in more detail.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Aine Myler', written in a cursive style.

Áine Myler
Director General

Cc

Damien English, Minister of State, Housing, Planning and Local Government

Maria Bailey, Housing Planning and Local Government Committee Chairperson

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

& Anti-Evictions Bill 2018

POLICY PAPER

March 2019

Preamble

This is a submission from the Society of Chartered Surveyors Ireland (SCSI) in response to proposed measures of the Anti-Evictions Bill 2018 and the Residential Tenancies (Amendment) Bill 2018.

This submission outlines the SCSI recommendations, informed by our members operating in the residential estate agency, property management and letting agency sectors across the country.

Our focus in preparing this submission is in the public interest and to advance professional standards in the profession and the residential sector. SCSI plays an active role in the future strategy for the residential rental sector and has participated at many stakeholder invitations involving the review and establishment of Government strategy for the Rental Sector contained within Rebuilding Ireland.

The rental sector has become increasingly regulated in recent years, in response to the dysfunctional housing market. SCSI understands the need for the introduction of Rent Pressure Zones and Rent Certainty measures as a short term measure to address the challenges faced within the private rented sector.

Proposals & Observations

Residential Tenancies (Amendment) Bill 2018

Section	Proposed change	Impact	SCSI observation
148AA	Proposes that a sanction on a landlord can be appealed to the Circuit Court.	Landlords will most likely incur a significantly higher cost in their appeals through the Circuit Court	SCSI believes that this is disproportional and should be amended to reference appeals to the District Court
Section 3 of Bill	Definition of 'Structural'	The current definition of 'structural', will, in our opinion, remove any incentive for landlords to carry out improvement works. For example, in many apartments, one would have to remove or alter a structural element of a unit to be classified as structural change. This would be almost impossible in an apartment environment as structural changes are often not permitted.	Definition change required to eliminate impact & limitation in respect of e.g. apartments
	Current Rent Pressure Zones (RPZ's)	Investors are unlikely to purchase a previously rented property in an RPZ as the regulation impacts on the value and rental yield of the property.	Further consideration required to address this market challenge. Interestingly, Amsterdam authorities propose to ban buy to lets of new homes to remove competition from FTB's. The point is that the current rent regulation in Ireland may be promoting unintended market trends and should be noted.
148R	Definition of 'complainant'	Potentially, any person could make a complaint to the RTB regarding a landlord.	SCSI recommends that this should be confined to include persons that have a direct interest in the tenancy rather than 'any person'.

Anti-Evictions Bill 2018

Section	Proposed change	Impact	SCSI observation
<p>Section 2 (b) Anti Eviction Bill 2018.</p>	<p>Under the Residential tenancies Act 2004 the act does not apply to bodies listed in Section 3. (2).</p> <p>Section 3 (2) (c), (i) lists a Public Body as an exempted entity.</p> <p>Section 4 (1) lists various organisations fitting the description of a Public Body and Section 4 (1) (g) lists educational institutions in this category.</p>	<p>Because of this exemption, the Anti-Evictions Bill 2018 and its proposed amendments to Section 5 of the 2004 Act will create a two-tier system of Student Accommodation in Ireland. Student accommodation built by educational bodies can continue to operate on a licensed basis not affording tenants any rights and not subject to the RT. All other Public Bodies will be subject to the RTB, bringing additional operational costs and compliance requirements which educational bodies will not have to bear.</p>	<p>Student accommodation is generally rented on a short-term basis. By implementing the rights afforded to longer terms rentals in the housing market, could add significant difficulties to this market.</p> <p>For example, with the current notice periods in the RTA a landlord may find themselves having to issue termination notices shortly after granting a 'tenancy' so that it coincides with the end of the school.</p>
<p>Amendment of section 34 of Act of 2004</p>	<p>to require landlords terminating a tenancy on the ground of needing the dwelling for occupation by the landlord or by a member of the landlord's family to pay compensation to the tenant</p>	<p>Further costs to landlords and increasing the risk that more landlords will leave the market.</p>	<p>SCSI is concerned that this proposal would result in more and more landlords leaving the sector.</p> <p>It is observed that there is no proposal for the landlord to be equally compensated by a tenant that breaks the lease terms. SCSI acknowledges the disruption that a termination of tenancy can bring to tenants, however, in the interest of equity and fairness, further supports are required for landlords in instances of non-paying tenants and</p>

			<p>breaks in lease covenants.</p> <p>There is also a concern for instance, an investor may choose to leave a property vacant rather than rent it. This would remove the issue of paying compensation. In an example whereby a landlord was considering selling next year when out of negative equity, they may decide to leave the property vacant until then.</p>
<p>Amendment of section 16 and section 34 of Act of 2004</p>	<p>to abolish substantial refurbishment or renovation as ground for termination of a tenancy</p>	<p>This proposed change will disenfranchise landlords to improve properties and standards for tenants.</p>	<p>Removal of this proposal should be considered. It is counter-productive. Stronger definition of 'substantial refurbishment' req'd.</p>

Market trends – a worrying outlook

The private rental sector accommodates approximately 1,500,000 households, an increase of 4.7 per cent on 2011. Renting is now a tenure status for almost 30 per cent of all occupied dwellings.

Long term Local authority rental has experienced the largest increase, up 11 per cent from 129,033 in 2011 to 143,178 in 2016. The number of properties rented either from a private landlord or voluntary body rose by 2 per cent from 320,319 in 2011 to 326,493 in 2016.

Three years on from Census 2016, it is very evident that the trend of landlords leaving the rental market continues unabated. The Residential Tenancies Board (RTB) has now identified that, although rents are at a ²“record high and the Irish rental market is experiencing unprecedented demand, the number of landlords is falling with a decline of 8,829 tenancies since 2015 and 1,778 fewer landlords than in 2016”.

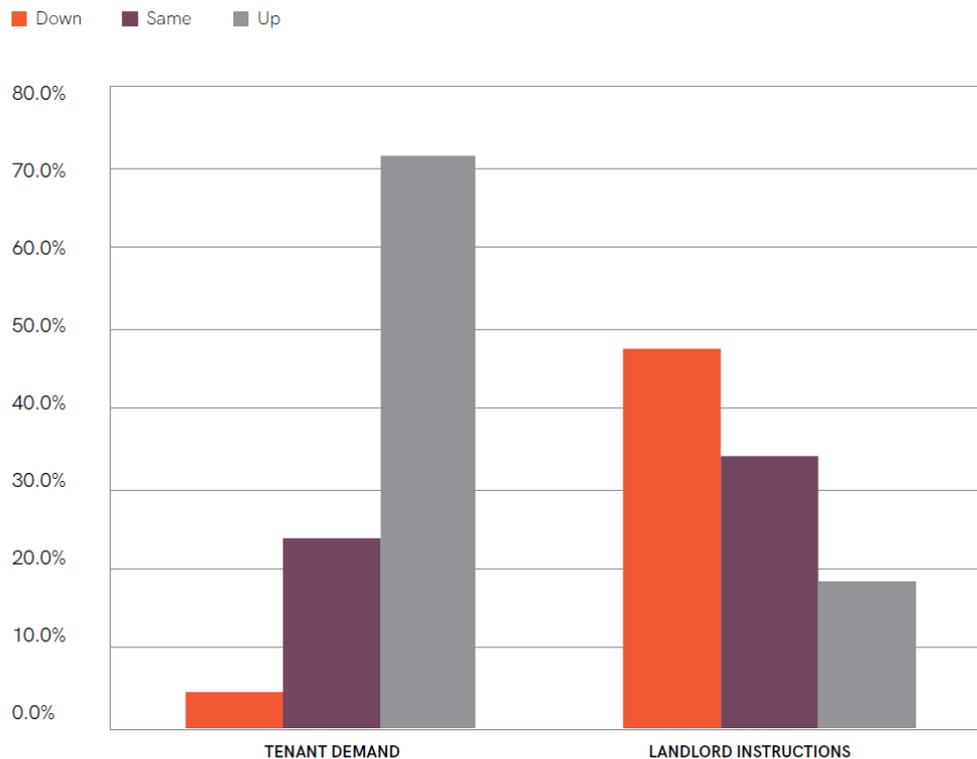
This is a very worrying trend as Ireland continues to rely heavily on the private rental sector, especially small investors, to deliver housing stock for all sectors of the renting population, but importantly to social housing needs. Ireland’s current Rental Strategy, as part of Government’s ‘Rebuilding Ireland’ Strategy, is not meeting its objectives. SCSl raised concerns in our 2016 Rental Strategy submission to Government that rent regulation, as a long-term strategy, will most likely result in challenges for continued investment in the sector. The tax treatment of smaller landlords should be reviewed again as many cite high taxation as one of the reasons for landlords exiting the market place.³

¹ CSO Census results 2016

² RTB Rent Index Q3 2018

³ SCSl Annual Residential Property Review and Outlook Report 2018

SCSI Survey of Agents, 2018 - Activity Indicators of Landlords in the market



Residential Tenancies (Amendment) Bill Proposals

Alterations

The thrust of the Bill fails to deliver adequate support and improvements to both tenant or landlord in a balanced proportion. The Bill outlines what we see as a number of further restrictions for landlords and disincentivises further investment or improvements to rented units. One of the most significant issues within the Bill is the definition of 'structural'. Landlords with apartments are, in most part, not permitted to make structural alterations and therefore the reference to the 'internal layout of the dwelling is permanently altered' should be removed or amended to deal with this potential anomaly.

The Bill currently states that the improvements;

are structural in nature to the extent that—

- (l) the internal layout of the dwelling is permanently altered,

- (II) the dwelling is adapted to provide for access and use by a person with a disability, within the meaning of the Disability Act 2005,
- (III) the number of rooms within the dwelling is increased,
- (IV) a permanent extension is added to the dwelling, or
- (V) where the European Union (Energy Performance of Buildings) Regulations 2012 (S.I. No. 243 of 2012) apply to the dwelling the BER, within the meaning of those Regulations, of that dwelling is improved.

The potential consequence of this Bill, will result in a further decrease of smaller investors/landlords as improvement work costs will not equate to a satisfactory level of return in most instances.

SCSI recommends the further scrutiny of the Bill is provided for to remove this issue from the legislation. There is also a concern that the proposed legislation would mean that improvement works would need to be carried out with and tenant in situ and therefore could lead to health and safety issues for all concerned.

Rent Pressure Zones (RPZ)

The application of RPZ controls to a previously rented unit which has come to the market for sale, is affecting the capital value of property assets. So if a new unit and a previously rented unit in a RPZ comes to the market for sale, then the investor will choose the new unit as it is exempt from the Rent Cap.

Occupation of property by landlord / family

Where a Part 4 tenancy is in place, regardless of the expiry of a fixed term lease, the tenancy may only be terminated by the landlord for the following reasons;

1. The tenant has failed to comply with the obligations of the tenancy (having first been notified, in writing, of the failure, and given an opportunity to remedy it)
2. The landlord intends to sell the dwelling within the next 3 months
3. The dwelling is no longer suited to the needs of the occupying household
4. The landlord requires the dwelling for own or family member occupation (not applicable to Approved Housing Bodies)
5. Vacant possession is required for substantial refurbishment of the dwelling
6. The landlord intends to change the use of the dwelling

The disruption caused to tenants and their families when an termination of tenancy is issued can be significant especially when young children are involved and are then uprooted from a community. However, to propose that compensation to a tenant should be awarded where a termination of tenancy by a landlord arise should be reconsidered and perhaps viewed as some form of break clause available to both parties i.e. a landlord would also be able to avail of compensation on foot of a break in the lease covenants.

Appendix 1: About the Society of Chartered Surveyors Ireland

Working in partnership with RICS, the pre-eminent Chartered professional body for the construction, land and property sectors around the world, the Society and RICS act in the public interest: setting and maintaining the highest standards of competence and integrity among the profession; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.

Advancing standards in construction, land and property, the Chartered Surveyor professional qualification is the world's leading qualification when it comes to professional standards. In a world where more and more people, governments, banks and commercial organisations demand greater certainty of professional standards and ethics, attaining the Chartered Surveyor qualification is the recognised mark of property professionalism.

Members of the profession are typically employed in the construction, land and property markets through private practice, in central and local government, in state agencies, in academic institutions, in business organisations and in non-governmental organisations.

Members' services are diverse and can include offering strategic advice on the economics, valuation, law, technology, finance and management in all aspects of the construction, land and property industry.