

**Submission re Proposed Amendment to the Residential Tenancies Act
2004**



A. Introduction

- i. Mercy Law Resource Centre (MLRC) is an Independent Law Centre which provides free legal advice and representation to people who are homeless or at risk of becoming homeless in the areas of housing and social welfare law. The Centre also seeks to advocate change in laws, policies and attitudes which unduly and adversely impact its client group.

Northside Community Law Centre (NCLC) is an Independent Law Centre. Operating since 1975, the Law Centre was the first Community Law Centre in the Republic of Ireland. The Law Centre provides free information, advice and representation to individuals and groups in its community who otherwise would not be able to access legal services and works to give power to the community through education, research and campaigns.

Ballymun Community Law Centre (BCLC) is an independent community based centre which addresses legal need within Ballymun through the provision of a holistic service. This includes provision of information, advice, assistance, representation, mediation and education as well as taking a strategic approach to tackling inequality. The Law Centre legal service areas include Housing, Social Welfare and Equality.

- ii. The Residential Tenancies Act 2004 (RTA 2004) does not currently apply to Local Authority tenancies, Voluntary Housing Association tenancies¹ or licenses. It established minimum obligations applying to private landlords and tenants; provisions relating to rent settings and review; security of tenure for tenants; and procedures for the termination of tenancies, including required notice periods linked to the duration of the tenancy. It also established the Private Residential Tenancies Board (PRTB) which provides independent and impartial mediation and adjudication and is a financially efficient venue for landlords and tenants to make complaints to if there have been any failures to comply with tenancy agreements.
- iii. We welcome the proposed extension of the RTA 2004 to include Voluntary Housing Association tenancies, but would submit that such an extension should also incorporate all tenancies and licenses.

B. Housing Associations

- i. As the law currently stands, Voluntary Housing Association tenancies fall outside the remit of the RTA 2004² and tenants of such housing associations have been excluded from bringing cases to the PRTB.

¹ Where such tenants have been assessed under Section 20 of the Housing (Miscellaneous Provisions) Act 2009 as being qualified for social housing support.

² Section 3(2)(c)(ii) Residential Tenancies Act 2004 as amended by section 100(2)(a) of the Housing Act 2009.

- ii. One of the current problems with Voluntary Housing Associations is that many use licences to accommodate their residents who often have special needs and either require support or have special conditions applied to them. The question is whether the PRTB will review disputes arising in respect of licences including the key matter of whether the agreement actually constitutes a licence or a tenancy. Currently, the only way to determine this and other disputes is by recourse to the courts which is expensive and not easy to access.
- iii. Additional issues could potentially arise because, in practice, access to and termination of tenancies and licences granted by a housing association can be subject to the approval of the Local Authorities e.g. refusals may be linked to whether one has been accepted onto the Housing List.
- iv. MLRC, NCLC and BCLC welcome the proposed extension of the RTA 2004 to include Voluntary Housing Associations. We submit that the proposed extension should include dwellings let by Voluntary Housing Associations where support services are provided together with accommodation. It should also include disputes concerning access to Local Authority Housing Lists and disputes arising in respect of the use of licenses by Voluntary Housing Associations.

C. Local Authorities

- i. The position of a tenant of a Local Authority tenant compares unfavourably with that of a private tenant. As Local Authority tenants are generally households on lower income, this discrepancy in treatment is more likely to affect lower income households.
- ii. Access to justice is therefore a serious problem for Local Authority tenants. If such a tenant has a dispute relating to any aspect of their tenancy, they have no system of review, appeal or independent enquiry. If a tenant wishes to complain about maintenance issues; the manner in which rent is being charged; alleged rent arrears; or other matters regarding breach of tenancy, there is no lower court to which tenants can go to force their landlord, the Local Authority, to take action or desist from the particular action. A tenant could potentially sue for damages for breach of contract in the District Court but in order to apply for injunctive relief they must go to the Circuit Court or High Court which are costly, extremely adversarial, and very intimidating particularly if a tenant has to represent themselves.
- iii. The discrimination in treatment between Local Authority and private tenants gives rise to issues under Article 14³ European Convention of Human Rights (ECHR). In *Larkos v Cyprus*⁴, a State tenant claimed a violation of Article 14 in conjunction with Article 8⁵ on the basis that he

³ This prohibits discrimination: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

⁴ *Larkos v Cyprus* (Application No. 2951/95) Judgment of the European Court of Human Rights of 18 February 1999.

⁵ This provides for a Right to respect for private and family life: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of

enjoyed less security of tenure than a tenant of a private landlord. The ECtHR held that Article 14 was applicable in that case. In this regard, the ECtHR accepted Mr Larkos' claim that he was, as a tenant renting accommodation from the State, in an analogous position to a tenant renting accommodation from a private landlord. In this case, the Court considered that no reasonable and objective grounds were provided by the State for not extending the protections available to private tenants, to State tenants.

- iv. MLRC, NCLC and BCLC propose that the RTA 2004 should be extended to Local Authority tenancies. Local Authority issues which could be covered by a tribunal include the following:-
- Evictions/Excluding Orders;
 - Admission to Housing List;
 - Allocations (to self) & objections (to others);
 - Transfers;
 - Applications for Priority;
 - Repairs/Maintenance;
 - Rent & Arrears;
 - Estate Management (where residents call upon a Local Authority to do something that falls within its area of responsibility – including action against Anti Social Behaviour (ASB));
 - Neighbour Disputes arising from an alleged breach of tenancy;
 - Licences-Licences have been used by Local Authorities to house people with special needs in circumstances where it is highly probable that a court would find the arrangement was in fact a tenancy.
- v. Making these matters subject to a tribunal would require harmonizing the rules/policies applied by different Local Authorities and making the rules publicly available. Some rules may need to be set on a regulatory/statutory basis. Over time, a jurisprudence would build up which should also be made publicly available. Legislation will be required to ground the jurisdiction of the tribunal in these matters.

D. Emergency Accommodation

- i. Emergency accommodation tends not to be subject to any kind of scrutiny, judicial or otherwise. One problem is that there is rarely an explicit legal basis for the resident's occupation of the property. At best, the resident will have an implied licence and will be entitled to significantly less rights than a tenant. In addition, users of emergency accommodation tend to lead transient lifestyles, making it much more difficult to exercise such rights as they have. Nonetheless, much can be at stake in one's occupation of emergency accommodation and people should have the right to have critical decisions about that occupation reviewed for fairness, etc.

disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

- ii. The key issue which arises in temporary emergency accommodation is termination of the licence (whether express or implied) due to breach of house rules (terms and conditions of the licence). This is more commonly known as being barred. A decision to bar a resident from a hostel is highly prejudicial to that person's interests and inimical to their entitlements under the licence agreement. Such decisions are subject to the legal requirement to observe fair procedures. There is a requirement for an independent forum to hear disputes arising from such licence agreements. Currently, such disputes can be taken to the courts, as a licence is a contractual agreement and therefore subject to the jurisdiction of the courts. However, seeking remedies in court is time-consuming and expensive, particularly where termination of the licence is concerned.
- iii. MLRC, NCLC and BCLC propose that the RTA 2004 should be extended to Emergency Accommodation. Issues which could be covered by a tribunal include the following:-
 - Access;
 - Conditions;
 - Availability of/entitlement to move-on options;
 - Sanctions (including barring).
- iv. The following issues arise if a tribunal is to deal with emergency accommodation:
 - The tribunal must be empowered to deal with licences as well as tenancy agreements;
 - As most licences will be oral and implied, a set of rules applicable to such licences should be drawn up and displayed publicly in each establishment. A copy could also be given to residents. These rules would deal with the legal entitlements of licensees and are distinct from house rules which will vary from one establishment to another;
 - A branch of the tribunal would need to be available to sit at short notice to hear disputes where an emergency decision is required.

E. Rent Supplement

- i. Rent Supplement has become one of the chief ways in which people are afforded access to housing. Issues regarding both the individual's entitlements and segregation within communities should be susceptible to review.
- ii. Rent Supplement has recently been transferred to the Department of Social Protection but there are discussions about transferring it to Local Authorities. Any issues arising therefrom should be brought within the jurisdiction of the PRTB. This is desirable as many of the issues regarding payment are linked to problems with being accepted onto the Local Authority Housing List. Issues regarding the tenancy are currently dealt with by the PRTB.
- iii. MLRC, NCLC and BCLC propose that the RTA 2004 should be extended to Rent Supplement. Issues which could be covered by a tribunal include the following:-
 - Entitlement to Rent Supplement;

- ASB objections;
- Conditions;
- Termination;
- Withdrawal of Rent Supplement.

F. Rental Accommodation Scheme (RAS)/Rental Accommodation Availability Agreement (RAAA)

- i. This is a tripartite arrangement between the Local Authority, the tenant and a private landlord. As regards the tenancy between the tenant and the landlord, any issues that arise currently fall within the jurisdiction of the PRTB. This raises a number of problems:
 - There is no provision for disputes between the tenant and the Local Authority to be reviewed. Such issues can arise in relation to access to the schemes, the operation of same or the ability to move on/transfer.
 - Difficulties arise in relation to allegations of Anti Social Behaviour (ASB) against tenants. Under the Housing (Miscellaneous Provisions) Act 2009, Local Authorities can direct landlords to evict tenants for ASB. This termination of tenancy is reviewable by the PRTB but it is unclear how far the jurisdiction of the PRTB extends. Will the landlord have to prove allegations of ASB or will it suffice to show a direction was received from the Local Authority? Will the Local Authority be required to produce evidence to show why they have required the tenant to be evicted? If the PRTB cannot review the substantial issues behind such a termination (and compel witnesses from the Local Authority to attend, produce evidence, etc.), the termination will be flawed in the same way as summary Local Authority evictions under s62 Housing Act 1966 are susceptible to judicial review. It would be cheaper, fairer and more efficient to allow a comprehensive review of the allegations by either the PRTB or the housing tribunal.
 - Difficulties also arise where the landlord requires the property back prior to the expiry of the lease. While the tenant can refer the relevant notice to terminate to the PRTB, the Local Authority often stops paying rent to the landlord on behalf of the tenant, although the PRTB may not have adjudicated on the notice to terminate yet.
- ii. MLRC, NCLC and BCLC propose that the RTA should be extended to include disputes with Local Authorities in respect of RAS and RAAA tenancies.

G. Other Matters

- i. Various other issues need to be considered in relation to the PRTB:
 - Financial resourcing – if there is an increase in workload before the PRTB ,will there be sufficient resources provided to allow the tenancies to be registered in a timely fashion; and to allow the PRTB carry out mediations; adjudications; tribunals and enforcements in a timely manner.
 - Enforcement (anecdotal evidence has it that the PRTB enforcement procedure is clogged up to the extent that it is of no use and landlords are freely ignoring its rulings).

- Quite often the quality of housing in the private rented sector is poor. The PRTB should interface more effectively with Local Authorities in enforcing standards. If adequate resourcing is not provided, particularly in light of an increased workload this issue will continue to be a significant problem.

H. **Conclusion**

- i. In creating different rules and rights for different tenants, particularly in respect of evictions and access to Court, the Irish State is at risk of interfering in both the Constitutional property rights and ECHR rights of tenants. There should be equality of outcomes for the person residing in all forms of rented accommodation.