Security and Agency in the Irish Private Rental Sector

Dr. Michael Byrne
Dr. Rachel McArdle
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Dr. Michael Byrne
School of Social Policy, Social Work and Social Justice, University College Dublin

Dr. Rachel McArdle
Department of Geography, Maynooth University

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Foreword by Aideen Hayden, Chairperson of Threshold

The private rented sector in Ireland is now home to over one in five households. This represents a significant change from the historical position where the vast majority of Irish people owned their own homes or rented from a local authority with the opportunity to buy under the tenant purchase scheme. In 1990, almost 80 percent of Irish people owned their own homes - that figure is now under 70 per cent. The difference is made up almost exclusively by a shift to private renting. There are many reasons why this has happened: a stagnant social housing sector, which largely removed the sector as a housing option, added to a serious affordability problem for aspiring homeowners. Housing at the beginning of this century became increasingly unaffordable for those on moderate incomes. We saw increased reliance on supports such as Rent Supplement for low-income households, growth in the Buy-to-Let sector, too many houses built in the wrong places, uncontrolled land prices and a fiscal crash of unimagined proportions. In the post-recession period the reasons are similar - a social housing sector which does not provide remotely sufficient housing for those who need it and a private sector which does not or cannot provide affordable housing for purchase.

Renting has become the only option for many: ‘generation rent’ has become a byword for a whole swath of society who see themselves as trapped in a place they don’t want to be. Numerous studies, including those by Threshold, tell us that our clients don’t want to be in the private rented sector but that they do not see themselves as having a choice. They feel insecure, unsure of their future and constantly fearful of what might happen. When asked, they voice a preference for homeownership or social housing because they want security and permanence. Many of those who leave homelessness and are housed in the rented sector see themselves experiencing the same uncertainties and threats that led them into homelessness in the first place, because as we know loss of a home in the private rented sector is the leading cause of homelessness.

However, security has many meanings, as this report outlines. Conditions in the sector have improved significantly in terms of legal protections such as security of tenure, rent regulation and minimum standards. However, too many properties are still in poor condition, tenancies can be terminated for many reasons through no fault of the tenant and rents are well in excess of what a mortgage would cost in most parts of the country. Laws are only as good as the capacity of the regulatory system or of the individual to enforce them. This is an important issue and one which this report addresses in a very timely manner. The capacity of the individual, their agency, to protect themselves is something that has not been addressed in any meaningful way. Threshold works at the front line of advocacy and we are only too well aware of situations where a tenant will leave their home, even where a notice of termination is not legal, because they cannot bear the stress and uncertainty of their position.

What the law does not address is the need to build capacity or the need to level the playing field because of the clear asymmetry in the landlord and tenant relationship. Our legal and regulatory protections do not address the concept of ‘home’ and the ontological need for security, which, as this report rightly points out, is lacking in the Irish rental sector over and above any other. As a society, we do not regard the ‘homes’ of renters as equal to other ‘homes’. This report notes very clearly the fear of retaliation felt by tenants if they seek to enforce their rights: the right to a home with proper standards, the right to security, the right to quiet enjoyment, the right not to be exploited and many others. The report concludes that we need greater protections for tenants over and above those that currently exist, protections which recognise the unequal power relationship between tenant and landlord, in a similar fashion to the legislation protecting employees. This report is an important first step to moving this very important issue forwards.

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Dr Aideen Hayden
Chairperson Threshold
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EXECUTIVE SUMMARY

- Recent years have seen significant reform of policy for the private rental sector, including increased security of tenure and rent price regulation. However, concerns have been raised about the effectiveness of these measures.
- Policy implementation and regulation for the private rental sector can be conceptualized as tenant-led to a significant degree. Tenants must play an active role in challenging perceived breaches of their rights and of the legislation, for example, by registering a dispute with the Residential Tenancies Board. The agency of tenants is thus an important issue in understanding the effectiveness of policy.
- This report presents qualitative research on the capacity of tenants to express agency and to remedy perceived breaches of their rights. It is based on in-depth qualitative research with 24 tenants in Dublin, Cork and Galway, as well as a range of expert interviews with frontline service providers and others.
- The report identifies a pattern to conflict within tenancies, described as the ‘landlord-tenant conflict journey’. This consists in four stages: initial relationship; conflict trigger; landlord reaction; and crisis management.
- Fear and uncertainty play a significant role in shaping tenants’ agency. The report finds that tenants fear conflict with their landlord, that such conflict has a significant impact on tenants’ experience of their home, and that conflict can generate significant distress and impact on physical and mental wellbeing. Fear of conflict constrains tenants’ agency.
- Tenants’ agency is limited by the absence of security of tenure and a lack of available alternative accommodation. These factors constrain tenants’ ability to challenge their landlord in relation to issues such as rent increases or minimum standards violations. Tenants also fear retaliatory penalization by their landlord. The report findings suggest that this fear is to some degree grounded, with a third of our sample experiencing retaliatory or penalizing action from their landlord.
- The report finds that market context shapes tenants’ agency. In the present market, tenants feel ‘easily replaceable’ and are aware of very significant obstacles to finding an alternative property. In addition, tenants are concerned about landlord selectivity and discrimination, particularly for tenants who are parents or in receipt of HAP. These factors contribute to tenants’ dependency on their current landlord, which further constrains agency.
- Analysis of the data presented suggests that the tenancy relationship is crucial to understanding tenants’ agency, and hence outcomes in the rental sector. The power of landlords to terminate tenancies and engage in other retaliatory behaviour limits the capacity of tenants to advocate for themselves and remedy breaches of their rights. The landlord-tenant relationship is thus an asymmetrical power relation.
- Policy reforms to the sector which are not cognizant of the vulnerabilities of tenants and do not include measures to protect tenants from the risks associated with advocating for themselves risk failing to meet their objectives.
- Policy implementation and the regulatory regime for the rental sector require greater recognition of the asymmetry between landlord and tenant.
- Greater understanding is required of the prevalence of retaliatory conduct on the part of landlords and additional policy responses may be required to respond to this issue.
CHAPTER 1

Introduction

In recent years a flurry of legislation has been introduced with the stated aim of creating a rental sector which is an affordable long-term tenure of choice for individuals and families. This objective, however, remains a long way off. Challenges of affordability and security continue to have devastating impacts for renters. There is an urgent need to respond to these challenges. This is particularly the case as the share of households living in private rental accommodation has doubled since 2006 and the sector has become an important part of the national social housing strategy. Moreover, the rental sector is playing a central role in the homelessness crisis.

Policy reforms seeking to respond to these challenges have, however, met with limited success. There are many factors involved in limiting the effectiveness of new legislation, such as the extremely tight market context and the high level of small-scale, ‘amateur’ landlords. One factor which has been given insufficient attention, however, is the inability of tenants to challenge breaches of the legislation. Tenants fear the consequences of taking action to advocate for themselves or contest breaches of their rights. Importantly, and as discussed in Chapter 4, much of the implementation and enforcement regime for the sector is tenant-led, in that it requires action on the part of tenants to address and remedy breaches of legislation. The ability of tenants to advocate for themselves, to challenge breaches of their rights and to seek support thus plays an important part in determining how effective policy is, how robust regulation is and the extent to which a culture of compliance can be created in the rental sector. Qualitative research into the extent to which tenants are actually in a position to express agency can thus play an important role in informing policy and practice.

Recent years have witnessed a significant new body of research and data which can inform policy and practice. This has predominantly focused on housing and rental market data, for example, rental price inflation and levels of investment in the private rental sector. The evidence base for rental sector policy has thus become stronger. However, there has been much less qualitative research on the experiences of tenants and the social dynamics within the rental sector. This is of particular importance as it is at this level that many of the issues around policy implementation arise.

The aim of the report is to understand tenants’ agency in the Irish private rental sector (PRS) in order to shed light on the role of tenants in policy enforcement, implementation and compliance. This report adds to our understanding of these issues by providing the first in-depth theoretical and empirical exploration of tenants’ agency and how that agency is shaped by the legislative context, market dynamics and other relevant factors. To create effective and appropriate policy for the sector, we need to understand how tenancies actually work in practice, how landlords and tenants make decisions and take action, and the factors which shape and constrain those decisions and actions.

The qualitative data presented in this report was collected in the summer of 2019. During this period, new measures were introduced which allowed the Residential Tenancies Board (RTB) to initiate enforcement action against non-compliant landlords in relation to a number of issues, including non-compliance with the Rent Pressure Zone rent caps. At the time of writing, these measures are only beginning to be implemented. While these measures represent a significant change to the regulation for the rental sector, the ability of tenants to challenge perceived breaches of their rights and to register disputes with the RTB will continue to be central to policy implementation and to the experience of tenants in the rental sector.
1.1 Methodology

The report is primarily based on in-depth, qualitative interviews carried out with more than 20 tenants in Dublin, Galway and Cork. Tenants were recruited with the help of project partners Threshold and a sample was constructed that reflects the makeup of the rental sector in terms of gender, family status, migration status, etc. The report does not aim to be representative of tenants as a whole. Rather, purposive sampling was employed to focus solely on those tenants who are experiencing an issue and who have come into contact with Threshold. The report thus seeks to provide a qualitative analysis of those tenants who experience a breach of their rights or an issue with their tenancy, and who attempt to remedy said breach.

Expert interviews were also carried out with six Threshold staff, barrister Tricia Sheehy Skeffington and Janette Fogarty (head of Dispute Resolution at the RTB). The report also reviewed the available 'grey literature', specifically reports produced by Threshold, the RTB, the Department of Housing and other stakeholders.

1.2 Structure of the report

The report begins, in Chapter 2, by presenting a conceptual approach to how we understand tenants' agency and specifically the relationship between 'home', security and agency. The policy challenges thrown up by the advent of what many have called 'generation rent' are in many ways new, and debate and analysis remains at an early stage. The development of a conceptual framework thus serves both to clarify the matters that form the focus of this report, but also to contribute to our wider theoretical understanding of 'generation rent'.

Chapter 3 provides an overview and analysis of the policy and market context of the rental sector. We examine the current legislative and regulatory framework, as well as recent reforms. Chapter 4 assesses the effectiveness of these reforms and presents an analysis of the current issues in the sector. It draws on existing evidence and grey literature from government agencies, third sector bodies and other stakeholders.

Chapter 5 presents the findings from qualitative and expert interviews. It puts forward the concept of a 'landlord-tenant conflict journey' and maps out the stages in this 'journey', with a view to understanding how the dynamics of conflict and contestation play out for tenants who experience breaches of their rights or face the possibility of losing their tenancy. It goes on to analyse the interaction of security and agency in the Irish rental sector, foregrounding the relationship between landlord and tenant as both a social relationship and a power relationship.

Chapter 6 discusses the implications for policy and practice arising from the report's findings and concludes the report.

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1 See Chapter 5 for further discussion of methodology.
CHAPTER 2

Security and agency in the private rental sector
CHAPTER 2

Security and agency in the private rental sector

2.1 Introduction

The growth of the rental sector over the last two decades has provoked a new body of research focusing on the political and economic shifts which explain the growth of the PRS (Kemp, 2015; Ronald & Kadi, 2017) and the role of processes such as financialization and neoliberalism (Byrne, 2019; Forrest & Hirayama, 2015). It has also examined the impacts of the decline of homeownership and the rise of renting, particularly with regard to inequality (Arundel, 2017). There has, however, been less attention within this body of literature on policy responses to the growth of private renting and on the experiences of tenants, two issues of particular importance to the present study.

In this chapter, we develop a conceptual framework for understanding the interconnected issues of security and of tenure and tenants’ agency. We begin with a discussion of security of tenure in the PRS and the concept of ‘secure occupancy’ advanced in recent literature, as well as presenting existing international qualitative research on the experience of insecurity in the PRS. We go on to examine other key issues, such as the landlord-tenant relationship and retaliatory conduct on the part of landlords.

2.2 From security of tenure to ‘secure occupancy’

2.2.1 Ontological security

Security of tenure can simply be understood as the conditions under which a resident may continue to occupy a dwelling. However, this simple formulation rests on a much deeper set of issues that relate to the importance of security to individuals and households. These questions are often addressed in the literature through the concept of ‘ontological security’, a discussion of which helps us conceptualise the relationship between security and ‘home’, particularly in the context of the PRS. Ontological security ‘identifies the interrelationships between the physical dimensions of housing (such as basic safety and security) and the psycho-social dimensions of home such as privacy, emotional security and identity’ (Hulse & Milligan, 2014: 638). For most people, ‘… home [is a] safe haven in which individuals can be themselves and from which they can derive an enhanced sense of emotional security’ (Walshaw quoted in Easthope, 2004: 581). Central to ontological security is the subjective experience of the reliability of things and places over time (Easthope, 2004).

Ontological security does not emerge spontaneously from the fact of inhabiting a dwelling, but rather through practices through which we construct a sense of ownership, control, stability, privacy and safety (Soaita & McKee, 2019). This occurs through the changes we make to a dwelling in terms of design and furnishing, through the organisation of our belongings within the dwelling in a particular fashion and through the establishment of routines of work, recreation, socialisation and rest.

Easthope (2004: 134) argues that ontological security is experienced at home when four conditions are met:

1. Home is a site of constancy in the social and material environment;
2. Home is a spatial context in which day to day routines of human existence are performed;
3. Home is a site where people feel most in control of their lives because they feel free from surveillance that is part of the contemporary world; and
4. Home is a secure basis around which identities are constructed.
The private rental sector, however, is ‘the least conducive tenure for establishing feelings of home within Anglophone societies’ (Bate, 2017:10). The lack of security often associated with the private rental sector is captured in qualitative evidence that highlights renters’ feelings of transience and impermanence. One study, for example, highlights how the subjective sense of insecurity feeds into a sense of renting as a temporary or transitory form of accommodation: ‘You don’t even get fully invested to get all your stuff out. You’ll still be kind of living in suitcases or boxes’ (tenant quoted in Soaita & McKee, 2019: 6). Fifteen out of the sixteen interviewees in that study referenced the feeling of living in a suitcase or box. Morris et al.’s study of Australian renters also found evidence of this, with one tenant stating that ‘you’ve always got that fear that you’re not going to have a roof over your head at some stage’ (tenant quoted in Morris et al., 2017: 662).

Other research has highlighted additional aspects of renting in the UK that affect tenants’ sense of home, including being forced to share with strangers, or landlords entering the property without permission (Hoolachan et al., 2017: 70). This can be seen to undermine ontological security by eroding the sense of control and privacy. Hoolachan et al (2017:70), for example, quote a tenant who states that their rented dwelling ‘is somebody else’s home and we are just living there!’ These issues were particularly acute for renters with children:

In the back of your mind you’re always wondering, when will I have to move? ... And the main thing is for the children … Like growing up you’d like to be able to have them in one home, you know, especially the little one … She doesn’t understand the concept of renting. She thinks it’s her house and she sees the [for sale] sign going up and … she just asks a million questions … Not having security is the biggest thing (tenant quoted in Morris et al., 2017: 662).

Ontological security as experienced in the home plays an important role in shaping individuals’ identity, self-esteem and, importantly, autonomy and agency (Madden & Marcuse, 2016). Autonomy and agency are linked to ontological security because the extent to which tenants have security and control over their dwelling impacts on their sense of ability to control and shape the future, i.e. agency. For example, Parsell notes that ‘[c]ontrol over a space is important to people’s understandings of what it means to be at home, because this control over a space also means the ability to exercise a degree of autonomy over their lives’ (quoted in Easthope, 2014: 583).

Ontological security is also related to social reproduction. Social reproduction includes all aspects of care and reproductive work, the daily routines and practices that individual and households undertake to sustain themselves over time, such as cleaning, cooking, childcare, etc. (Blunt & Dowling, 2006). Social reproduction, as has been argued by feminist geographers, is linked to place-based practices and relationships (Blunt & Dowling, 2006). In this sense home ‘anchors’ networks of relationships (Hoolachan et al., 2017). For example, relationships with family and friends in a given neighbourhood may be a key part of childcare arrangements, while local services are also central to social reproduction. The stability of routines, relationships and access to services and amenities over time is thus an important part of both ontological security and social reproduction.

2.2.2 Security of tenure

In terms of policy and regulation in the PRS, ontological security is primarily addressed through security of tenure. As noted, security of tenure relates to the conditions under which a resident may continue to occupy a dwelling, as well as the conditions under which that occupation may be brought to an end. Security varies across tenures, with the private rental sector typically having a more limited form of security of tenure than either homeownership or social housing (Kemeny, 2001).
The most limited conceptualization of security of tenure in the private rental sector is politico-juridical in nature, seeing security of tenure as a legal contract between landlord and tenant. Under such arrangements, ‘terms and conditions derive from property rights which relate to acquisition, use/ occupancy and disposal of real property.’ (Hulse & Milligan, 2014: 639). These terms and conditions may be stipulated in legislation or within individual contracts or leases. Van Gelder (2010) describes this as ‘de jure’ security of tenure. However, Van Gelder and others (Hulse and Milligan, 2014) have argued that de jure security of tenure is just one dimension. Tenants’ actual experience of security of tenure is not solely determined by the letter of the law, but by a wider set of factors. In this regard, Van Gelder (2010) argues for a tripartite conceptualisation in which de jure security of tenure is complemented by what he calls ‘de facto’ and ‘perceived’ security of tenure.

De facto security of tenure refers to the actual or empirical level of security experienced by a tenant, ‘regardless of the legal status in which it is held’ (Van Gelder, 2010: 451). It is influenced by a myriad of factors, including the extent of the rule of law, cultural context, the length or duration of a tenancy, the vagaries of the market, etc. De facto tenure may differ only slightly or indeed very widely from de jure security of tenure, a divergence which depends on national and local factors. Perceptions of security are also important in shaping tenants’ experience of security. Perceived security is primarily a subjective phenomenon. Where tenants feel insecure or perceive a risk of losing their home, their level of ontological of security is undermined, and this may of course affect the choices they take.

Perceived security of tenure may differ from both de facto and de jure security and is likely shaped by past experiences, the experiences of family and friends, media discourses and so on (Hulse and Milligan, 2014). In the Irish case, perceptions of security are likely to be affected, for example, by intense media coverage of the housing crisis and homelessness, as well as word of mouth.

2.2.3 Secure occupancy

Van Gelder’s framework usefully distinguishes between three dimensions of security of tenure. Hulse and Milligan’s (2014) concept of ‘secure occupancy’ develops Van Gelder’s framework in order to emphasize the factors that shape tenants’ experiences of security. Secure occupancy is a ‘multidimensional concept’ which focuses on the ways in which the actual security experienced by tenants is ‘shaped by the interaction of legislation/regulation in a variety of domains, government policies, market factors and the everyday practices of various actors, underpinned by cultural norms about rental housing.’ (Hulse and Milligan, 2014: 643). There are four groups of factors which are core to secure occupancy: legal, policy regimes, market factors and cultural norms (see Table 1 below).
The secure occupancy framework is particularly useful in that it does not privilege the legislative and policy basis for security of tenure, instead focusing equally on the often-neglected issues of market context and cultures. The existence of strong security of tenure provisions at a legislative level will have little impact on tenants’ experiences, for example, if market dynamics are such that rapid rent inflation leads to recurring loss of tenancy. Similarly, in some jurisdictions the legislation surrounding the private rental sector is not implemented in practice due to high levels of informality and non-compliance. Among other things, these are related to ‘cultures of renting’ which differ across jurisdictions: ‘Cultural norms become entrenched in the politics of rental housing markets and underpin the practices and behaviours that in aggregate constitute markets’ (Hulse and Milligan, 2014: 645). Typically, those jurisdictions which have had a strong emphasis on homeownership within the overall housing system, and where private renting played a very marginal role during the latter part of the 20th Century, are characterized by cultures of renting that emphasize the temporary and transitory nature of this form of housing.

2.2.4 Economic and social capital

Security of tenure is also impacted by the characteristics and contexts of tenants and the wider social structures within which tenants are embedded. Experiences of security vary systematically among tenants, in particular in terms of income, but also in terms of gender, race and ethnicity, geographies and other characteristics (Grotti et al., 2018). Morris et al. (2017) deploy Bourdieu’s concepts of economic and social capital to understand the resources tenants command in negotiating security of tenure.

Economic capital includes income and wealth, as well as the nature of employment and how secure it is. Economic capital impacts security of tenure in an immediate sense, as the ability to access and retain private rental accommodation is directly linked to income. Rental inflation is common across many of the jurisdictions where private renting has grown over recent years and decades, making economic capital particularly important in today’s rental market. Economic capital also allows tenants to access portions of the rental market which may be better quality, better located, but also more secure, for example, because provided by professional landlords.

<table>
<thead>
<tr>
<th>Dimensions of security</th>
<th>Domains</th>
<th>Factors</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>De jure</td>
<td>Legal</td>
<td>Lease terms</td>
<td>Length of rental contract; termination arrangements; rights and responsibilities of landlords/tenants</td>
</tr>
<tr>
<td>De facto</td>
<td>Tenancy conditions and rental property management</td>
<td>Rules that effect daily living (decoration of dwelling; pet ownership); housing quality and condition; noise controls</td>
<td></td>
</tr>
<tr>
<td>Market</td>
<td>Affordability</td>
<td></td>
<td>Rents relative to incomes; entry costs (deposits)</td>
</tr>
<tr>
<td>Policy</td>
<td>Subsidies</td>
<td></td>
<td>Rent subsidies; other financial supports</td>
</tr>
<tr>
<td>Perceived</td>
<td>Cultural</td>
<td>Norms</td>
<td>Actors’ views, institutional cultures and settings</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Psycho-social dimensions</td>
<td>Ability to feel at home, safety, privacy, control over environment</td>
</tr>
</tbody>
</table>

Note: This table is a selective reproduction based on Hulse and Milligan (2014: 644).
with high quality and long-term property management strategies. Finally, economic capital may also play a role in a landlord's perception of a tenant's social class (Kemeny, 2001).

Social capital refers to ‘the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance’ (Bourdieu, quoted in Morris et al., 2017: 655). Family, friendship and neighbour relations can play an important role in security of tenure. In a context such as the Irish one, where there are more than 170,000 landlords registered with the RTB, individuals may obtain a rental property through word of mouth. They thus may have a degree of friendship with a landlord which can strengthen security of tenure. Those who have limited social capital, in contrast, may fear that if they lose their current property, they may struggle to find a new one and they may have few family and friends to rely on in case of homelessness. This is likely to intensify significantly perceived security. In addition, being part of certain social groups may place tenants at risk of discrimination and stigma, for example, in the form of racism or discrimination against HAP or rent supplement claimants (Grotti et al., 2018; Threshold and the Society of St Vincent de Paul, 2019).

Hoolachan & McKee (2019: 23) find four groups are most likely to experience difficulty in the rental sector. These included: ‘those reliant on welfare benefits or low/insecure income; families; migrant/seasonal workers; and young professionals and students’. In the Irish context, research has noted that young people are at a higher risk of discrimination, poor standards and overcrowding. Non-EU citizens are at a greater risk of overcrowding, while African migrants are more likely to report discrimination (Grotti et al., 2018: x). This is of particular importance in analysing the private rental sector because ‘young people, non-Irish nationals and those of black ethnicity are highly concentrated in the private rented sector’ (Grotti et al., 2018: x). Yet, Stone et al. (2015) also found that, in the Australian context, some migrants may be more likely to have increased levels of social capital, which may provide a support to them. ‘The social networks (social capital) of the Bangladeshi, Pakistani and Indian communities, have tangible material and psychological benefit for new arrivals from their countries. This social capital mitigates the risks involved with migration and acts as a form of insurance’ (Stone et al., 2015: 61).

To understand the issue of security and how it impacts tenants it is thus important to move beyond narrow and legalistic definitions of security of tenure to a broader understanding of the multidimensional sets of factors that shape the experience of ‘home’ in the PRS. As discussed above, this can be conceptualised in terms of the extent of ‘secure occupancy’, on the one hand, and the economic and social capital of the tenant, on the other.

2.3 The landlord-tenant relationship

2.3.1 Conceptualising the landlord-tenant relationship

One of the most important aspects of rental housing is the relationship between landlord and tenant, it is thus important to conceptualise this relationship. In particular, international literature, as well as the research presented below, emphasises the significant power asymmetry which is central to the landlord-tenant relationship. This has important impacts for tenants on a number of levels, and, as discussed below, particularly on the questions of security and agency.

The most obvious form of power held by landlords is the power to evict or to terminate a tenancy. The grounds according to which a termination may occur differ across jurisdictions. In lightly regulated markets, landlords can often evict without any grounds (as in the case of the first six months of a tenancy in Ireland, and after the
first six months of a tenancy in England and Wales 2), or due to sale of property, refurbishment and other reasons. However, landlords can also undertake illegal evictions, for example, by changing the locks while the tenant is not in the house. Although a tenant may seek redress for this at a later point, they have limited options for preventing an illegal eviction. Landlords may also use some of the legally recognized grounds for termination spuriously. This, as demonstrated in the literature, can create a sense of permanent vulnerability among tenants (Shelter Cymru, 2013; Soaita & McKee, 2019).

Where a tenancy is terminated, landlords can continue to exercise power over tenants by withholding a deposit, leading to a potential risk of homelessness, or refusing to provide a reference, which can also jeopardize a tenant’s ability to obtain future accommodation. Rent increases are another mechanism through which landlords exercise power over tenants. Rent increases can cause tenants to reduce spending in other areas, including essentials such as healthcare, transport, education and food, or potentially make continuing their tenancy impossible. Landlords can also abstain from undertaking repairs or deal with issues relating to standards and maintenance. Landlords even influence the design, aesthetics and lifestyle choices, for example, banning pets or smoking, or preventing tenants from painting the walls of the dwelling or hanging pictures (Power, 2017). By entering a dwelling without permission landlords can exercise power over tenant's experience of privacy. Finally, from the very outset ‘landlord selectivity’, the power of landlords to choose or reject tenants, sets up a power dynamic.

From this perspective, it can be argued that ‘insecurity of tenure is not necessarily about transient living but about proprietors’ power over tenants, coded into legislative and regulatory frameworks…’ (Soaita and McKee, 2019). Similarly, Brickell (2012: 229) notes that ‘the intimate and personal spaces of home – and their loss – are closely bound up with, rather than separate from, wider power relations’. Desmond’s (2012: 117) ethnographic account of renting in Milwaukee captures this aspect of life in the rental sector powerfully:

[E]victions are not simply the consequence of tenants’ ‘misbehaviour’ or landlords’ financial accounting, nor are they governed strictly by formal or deterministic rules. Evictions also are the outcome of interactions among people occupying different positions in social hierarchies and possessing different dispositions and interactional styles, conditioned by these positions.

The relationship between landlords and tenants is thus central to tenants’ experiences. Research conducted by Shelter (2014) in the UK, including 128 participants, found that relationship with the landlord was one of the strongest influences on whether people were happy with their accommodation or not.

2.3.2 Retaliatory conduct

The relationship between the power of landlords and security of tenure is most often discussed in the literature in relation to retaliatory action taken by landlords. Retaliatory conduct by landlords refers to actions taken in order to penalise tenants for challenging their landlord or complaining to a third party, such as a local authority. In the international literature, this is most commonly discussed in relation to complaints relating to repairs and maintenance and the standards of dwellings, although retaliatory conduct can also take place in response to the challenging of rent increases (Lonegrass, 2014). Retaliatory conduct links together the issues of security of tenure, the power of landlords and the agency of tenants. It highlights the ways in which the relationship between landlords and tenants is a dynamic interaction taking place within particular contexts which constrain and empower both parties in different ways.

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2 No fault evictions are however due to be scrapped in England and Wales under proposed new legislation.
Retaliatory conduct most often takes the form of ‘revenge evictions’. This is a significant issue that impacts on tenants’ ability to advocate for themselves (Allen, 2011; Citizens Advice Bureau, 2007). In 2018, Citizens Advice found that in the England and Wales, compared to tenants who have not, tenants who received a notice of eviction were twice as likely to have complained to their landlord in the previous six months, five times more likely to have complained to their local authority and nine times more likely to have complained to an independent redress scheme in the same period. Also in the UK context, Shelter’s Safe and Decent Homes report found that over 300,000 tenants experience some form of landlord retaliation each year. In 2007, Citizens Advice conducted a survey of Environmental Health Officers and other local authority staff who deal with complaints from tenants in relation to standards issues, finding that 48% stated that tenants are put off using help because of fears of jeopardising their tenancy ‘always’ or ‘often’. Research by Shelter Cymru (2013) focusing on Wales produced similar results.

Retaliatory conduct, in particular revenge evictions, has been subject of significant public debate in England and Wales. In 2015, the British Government passed the Housing Deregulation Act, which was the Government’s attempt to protect tenants from retaliatory evictions (Citizens Advice, 2018: 4). It provided legal protection for tenants as well as wider housing reform. Prior to this, England and Wales were unusual, in that ‘no fault’ evictions were permitted and there was no legislation to protect tenants from ‘revenge evictions’. Yet in 2018, Citizens Advice stated that this legislation was not effective enough at preventing retaliatory evictions and it found that retaliatory eviction was still a likely outcome of complaining. ‘Of the Environmental Health Officers who have been in their role since before the Act was introduced, 90% have not seen any decrease in retaliatory evictions in that time’ (Citizens Advice, 2018: 10).

Retaliatory actions are a key example of the ways in which tenants’ agency may be constrained. This is particularly the case for tenants with ‘few alternative housing options’ who ‘devise strategies to ensure they do not upset their landlord. These include not complaining about poor living conditions and prioritising rent payments over basic needs’ (Hoolachan et al., 2017: 73). McKee and Hoolachan (2019) interviewed 19 actors in housing at the local and national scale in Scotland. One of these interviewees described the situation: ‘The tenants feel they’re in this really weird situation where they’re being ripped off. They’re living in a house that’s built for half as many of them as there are but they’re terrified about asking for repairs or anything because they feel that the landlords have all the cards…’ (quoted in McKee and Hoolachan, 2019:20). Hulse et al. (2011: 147) also note that weak security of tenure undermines tenants’ capacity to challenge their landlords, for example, in the case of repairs and maintenance:

> Whether tenants are in a position to take up these options in the event of nonresponse to maintenance requests may well depend on a number of factors, including the importance of the repair to them and the terms and conditions of tenancy. For example, in Scotland, where most private tenants now occupy their homes on Short Assured Tenancy terms … they are in a weak position to initiate such action ³.

There are a number of negative implications arising from retaliatory conduct. Of course, revenge evictions result in the loss of the home, and potentially homelessness. In addition, they constrain tenants’ ability and willingness to challenge landlords and/or make a complaint to the relevant authority (Lonegrass, 2014; Shelter Cymru, 2013). Moreover, they also constrain the work of those organisations which support tenants. As Citizens Advice (2007: 6) notes:

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³ Note that subsequent to this research there have been some changes to tenancy conditions in Scotland.
One of the frustration which CAB [Citizens Advice Bureau] advisers face when advising private tenants about disrepair is that any advice about their rights has to come with the warning that exercising these rights may result in the landlord issuing a notice to quit.

Shelter Cymru (2013: 7) also experience this problem:

> We have to advise our clients that if they choose to challenge their landlord to address disrepair, either through the local authority or through a civil claim, they may be making themselves vulnerable to eviction.

One of the implications of this is that public policy goals are hindered, as is the work of enforcement agencies, as both tenants and agencies supporting tenants are forced to navigate a balance between seeking to remedy issues and sustaining tenancies.

Recognising that the agency of tenants is curtailed by their vulnerability to retaliatory conduct, many jurisdictions have legislated to protect tenants. Australia, New Zealand and the majority of US states have such legislation (Lonegrass, 2015). Those countries which provide for robust security of tenure, such as Germany and Denmark, have no need for such legislation, as landlords cannot undertake evictions except in limited circumstances (Citizens Advice, 2007). The most common feature of anti-retaliatory legislation is that landlords are prohibited from initiating an eviction or terminating a tenancy within a certain time period (usually six months) after a complaint has been made in relation to standards and repairs (Shelter Cymru, 2013). There are exceptions. For example, in some jurisdictions this protection does not apply where the tenant is in rent arrears. Some jurisdictions provide additional supports, for example, also protecting tenants from retaliatory rent increases or reductions in services (Lonegrass, 2015).

There is also evidence to suggest that certain cohorts of tenants may be particularly vulnerable to revenge evictions. For example, there is evidence that low-income tenants face ‘revenge evictions’ more frequently (Hoolachan et al., 2017). Desmond’s (2012: 115) ethnographic research also finds that there are divergences in how tenants relate to landlords and manage conflict when it arises, and their risk of being subject to revenge evictions. Many low-income black women, he notes, ‘preferred to avoid direct confrontation with their landlord’. His research also suggests they had good reason to do so, as women who reported their landlord due to minimum standards violations ‘greatly increased their risk of eviction, for there are few things landlords detested more than a clipboard-in-hand building inspector scrutinizing their property for fine-grained code violations’ (Desmond, 2012: 115).

Retaliatory evictions are indeed common, and tenants are aware of this, and it shapes their agency especially with regard to advocating for themselves and their families: ‘Summoning a building inspector can sway landlords from working with poor tenants, who often are chronically behind in one way or another, to evicting them. These considerations often force low-income families to choose either living with roaches, lead paint, clogged sewers, exposed wires, no heat, broken windows, and other degrading and unsafe conditions or eviction’ (Desmond, 2012: 118).

Retaliatory evictions are a reminder of the ways in which security of tenure, ontological security, market dynamics and the power relation between landlords and tenants interact to curtail tenants’ agency, with clear implications for enforcement and regulation of the private rental sector. However, we must also be aware that while retaliatory evictions are a one-off event, they are simply an expression of underlying structures which are
ever-present within the experience of renting, at least in more lightly regulated rental regimes such as those found in the anglophone countries. Even where retaliatory evictions do not occur, tenants are likely to internalise the power dynamics inherent in their relationship with their landlord, their de jure and de facto security of tenure, and the wider market dynamics and cultural norms captured by Hulse and Milligan's (2014) concept of 'secure occupancy'. As such, tenants' experience, behaviour and subjectivity is strongly connected to these factors 4.

2.4 Conclusion

Security and agency exist as interconnected parts of tenants’ experiences. This chapter has reviewed the international literature in order to develop a conceptual framework that captures the ways in which various aspects of the PRS interact to constrain the agency of tenants. Throughout we have focused on anglophone countries, as they are characterised by more light-touch regulatory regimes and tenancy conditions and are thus most relevant for the Irish case.

Our conceptual framework captures three interacting sets of factors which shape tenants’ agency (see Figure 1 below):

1. Secure occupancy: the security experienced by tenants across a range of dimensions (de facto, de jure and perceived) and domains (policy, market, legal, cultural);
2. Economic and social capital: the resources tenants bring into their tenancy, which may help or hinder their ability to access accommodation and sustain a tenancy; and
3. Landlord-tenant relationship: more than a static or legalistic definition of tenancy arrangements, it is a social and power relationship shaping all aspects of tenant experience.

Figure 1 - Conceptualising tenants’ agency

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4 For an excellent ethnographic account which sheds insights into many aspects of this issue, see Desmond (2016).
This approach to the question of security starts from the conceptualisation of ‘home’ as a complex resource which is central to individuals’ sense of identity, stability, privacy and control. While housing and ‘homes’ are physical structures which meet the need for shelter and for everyday social reproduction (i.e. preparation of food, rest, etc.), the physical dwelling is deeply intertwined with ontological security. Ontological security in turn underpins emotional security, autonomy and agency. Moreover, we emphasise the importance of the landlord-tenant relationship in the experience of security and the ability of tenants to express agency. Bringing these diverse aspects of home and security together allows us to properly conceptualise the issue of agency within the private rental sector. It alerts us to the range of factors, structures and relationships that may enable or constrain tenants’ agency and therefore their ability to advocate for themselves. Understanding this, as argued below, can support more effective policymaking and implementation.
CHAPTER 3

Policy context of the Irish private rental sector
CHAPTER 3

Policy context of the Irish private rental sector

Recent years have seen a flurry of new measures and legislation in relation to the PRS in Ireland. This has been in response to two developments: first, the rapid growth of the rental sector and its emergence as a long-term tenure for a growing number of households; and, second, the rental sector’s role in the homelessness crisis. The legislative changes seen since 2015, however, have been the subject of debate as to their implementation, enforcement and effectiveness.

This section discusses the policy and legislative context of the private rental sector and its changes in recent years. It draws on relevant policy documents, existing reports and research from Threshold, the RTB and others, as well as expert interviews conducted as part of the present research. The chapter begins with an overview of the legislative and regulatory context of the private rental sector as established under the Residential Tenancies Act 2004 (RTA). It then moves on to a discussion of the amendments introduced in recent years. The effectiveness of these measures and the market context are discussed in the following chapter.

3.1 Background and legislative context

The RTA provides the principal legislative context for the PRS. It regulates most aspects of tenancies, provides for a register of tenancies, and establishes the Residential Tenancies Board and its dispute resolution service. The main components of tenancy arrangements, as set out in the RTA, include: the rights and obligations of landlords and tenants; the nature and duration of tenancies; the conditions under which tenancies can be terminated (and relevant notice periods); and the regulation of rent reviews. Minimum standards for rental accommodation are set out in a separate body of legislation, the Housing (Miscellaneous Provisions) Act 2014, with primary responsibility for this area resting with Local Authorities. In terms of the issues of interest to this report, one of the most salient features of the RTA is its setting out of a tenancy regime centring on:

- Four-year tenancies, known as Part IV tenancies;
- Circumstances under which tenancies can be terminated; and
- The regulation of rents according to the ‘market rent’ principal.

Under the terms of the Act, the protections associated with a Part IV tenancy do not take effect until six months into the tenancy period. Within the first six months, the tenancy can be terminated without any reason. In addition, the Act provides for tenancies to be terminated by the landlord under a number of other conditions, the most important of which are:

1. Non-Payment of rent or breach of tenant obligations;
2. The landlord requires the property for personal or family use;
3. The landlord intends to sell the property;
4. The landlord requires vacant possession in order to undertake substantial refurbishment of the dwelling;

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5 Interviewees included Gavin Elliott (Legal Officer with Threshold), Patricia Sheehy Skeffington (Barrister and expert in tenancy law), five Threshold advisors, and Janette Fogarty (Head of Dispute Resolution Services at the RTB).

6 It should be noted, however, that issues pertaining to standards and maintenance may be the subject of a dispute dealt with by the RTB’s dispute resolution service.

7 Subsequently extended to six years from 24th December 2016 under the Planning and Development (Housing) and Residential Tenancies Act 2016.
5. The dwelling is no longer suitable for the tenant; or
6. Anti-Social behaviour on the part of the tenant.

In terms of rent regulation, the 2004 Act provides for annual rent reviews. According to the original legislation, there was no set limit on the amount rents could be increased or decreased by, but they could not be increased above the ‘market rate’. In practice, this meant that where rent was increased above what the tenant believed was in keeping with the market rate, they could challenge this increase through the RTB’s dispute resolution service and by demonstrating that the rent review was above rents for comparable properties.

The RTA also provides for the establishment of the Residential Tenancies Board (RTB), which describes its role as ‘to regulate the rental sector’ (Residential Tenancies Board, 2018b), and sets out a number of its functions:

1. Resolution of disputes between landlords and tenants;
2. Provision of information and guidelines on good practice;
3. Maintenance of a registration of tenancies;
4. Maintenance of a rent index; and
5. Provision of advice to the Minister for Housing.

Finally, it should be noted that a number of issues were excluded from the Act. In particular, licensees do not enjoy the protections of the Act. Licensees include those renters who live and rent in the same dwelling as their landlord, for example, under the ‘rent a room’ scheme.

3.1.1 Policy implementation and enforcement under the RTA

The RTB plays the key role in terms of the regulation of the sector and as such in terms of policy implementation, compliance and enforcement. This takes place through the following avenues in particular:

- Maintenance of a registration of tenancies;
- Provision of information as to the rights and obligations of landlords and tenants, and all other matters pertaining to tenancies; and
- Dispute resolution.

The RTB’s regulatory role can be conceptualized in terms of two core dimensions: education and dispute resolution.

3.1.2 Education

The provision of information to landlords and tenants with regard to their rights and obligations and other relevant matters is of course central to the implementation and enforcement of policy. Section 151 (1) of the RTA sets out as two functions of the RTB the ‘development and publication of guidelines for good practice by those involved in the rented sector’ and ‘the collection and provision of information relating to the rented sector, including information concerning prevailing rent levels’.

The RTB describes its information and education function in terms of providing ‘high quality information to tenants and landlords as well as to the general public to help them understand their rights and responsibilities’ (Residential Tenancies Board, 2018b).
The RTB produces booklets with relevant information, such as *Guidelines for Good Practice on the substantial change exemption in the Rent Pressure Zone areas* and *Being a Good Landlord*. It also provides a detailed information and guidelines through its 'one-stop shop' website. The RTB also provides a telephone information line, email contact and a web chat service for one-on-one information and advice for landlords, tenants or third parties.

The RTB undertakes advertisement campaigns to inform landlords and tenants. For example, four such campaigns were launched in 2017 (Residential Tenancies Board, 2018a). It also holds 'stakeholder events', including information workshops. In 2017, the RTB launched a dedicated communications and research section with the objective of 'expanding provision of information to tenants, landlords, people working in the sector and the wider public to improve understanding of the sector and create a culture of knowledge around rights and responsibilities' (Residential Tenancies Board, 2018a: 11).

The education dimension of the current enforcement regime thus centres on the provision of information to individuals as well as 'creating a culture of knowledge around rights and responsibilities'. It is primarily voluntaristic, in that it relies on actors in the rental sector, both tenants and landlords, seeking and using information in order to voluntarily comply with legislation and good practice.

Although forthcoming changes will enhance other aspects of the RTB's enforcement function, information and education will continue to be a priority. According to the organization's strategic plan:

> While we will be taking on a new regulatory enforcement role, we will also be putting as much emphasis into supporting landlords and tenants by an increased focus on education and awareness (Residential Tenancies Board, 2018b: 4).

The RTB often emphasizes the importance of supporting landlords to understand and comply with legislation. This is indeed important, particularly given the large volume of legislative changes over recent years and the growing complexity of the RTA. This reflects the view that the Irish rental sector is dominated by non-professional landlords and is currently characterized by significant supply constraints, and that as such a sanction-led approach may risk driving landlords out of the provision of rental housing.

### 3.1.3 Dispute resolution

The second dimension of the regulatory regime is the RTB's dispute resolution function. This is described as a 'quasi-judicial' function, in that it 'replaced the courts in dealing with the majority of disputes between landlords and tenants' (Residential Tenancies Board, 2018b: 2). The RTB may make legally binding determination orders and award monetary compensation.

Dispute resolution can take the form of mediation or adjudication. Mediation aims to facilitate landlords and tenants in reaching a mutually satisfactory agreement. Adjudication, in contrast, involves the presentation of evidence and the adjudicator making a legally binding determination. The nature of that determination is primarily based on the provisions of the RTA. Adjudication can determine that a notice of termination is invalid, for example, or reverse an illegitimate rent increase.

Finally, where a tenant or landlord wishes to appeal the outcome of adjudication or mediation, the appeal will be heard before a Tenancy Tribunal (henceforth 'Tribunal'). This consists of a full re-hearing of the dispute, unless the parties agree to limit the appeal to certain issues. In the case of each of the three dispute types, the
process is designed to be relatively informal and to minimize the expense to the parties involved in the resolution of disputes. As such, legal representation is not required, although parties may engage such representation. In practice, landlords may be represented by estate agents or legal professionals, while tenants may be represented by an advocacy body or be accompanied by family or friends.

In 2017, 5,823 new disputes were registered with the RTB. This represents a 20% increase on 2016. 63% of these disputes were registered by tenants, 35% by landlords, and 2% by third parties (Residential Tenancies Board, 2018a).

We can conceptualize dispute resolution as 'tenant-led'. This is because it relies on tenants to initiate a dispute and thus depends on tenants having the information and agency required to challenge a perceived breach of their rights. This means that tenants’ agency, specifically their capacity to take action to challenge perceived breaches of the legislation, is central to the regulatory and enforcement regime associated with the PRS.

3.2 Recent legislative change

Since 2015, there have been a host of significant policy changes and amendments to the RTA. Chief among these are policy reforms introduced under the A Strategy for the Rental Sector and Rebuilding Ireland policy programmes. Many of the measures set out in those documents were given effect in a series of amendments to the RTA between 2016 and 2019. Taken together, the reforms introduced in recent years have introduced substantial changes in terms of security of tenure, setting of rents and the nature of the regulatory and enforcement regime. The major changes are summarized below under relevant categories. Further detail is provided in Table 2 below.

3.2.1 Rent reviews

Rent reviews were first reformed in the Residential Tenancies (Amendment) Act 2015 by then Minister Alan Kelly. This represented the first attempt by Government to moderate rent inflation and consisted in the permitted frequency of rent reviews being changed from 12 months to 24 months, as well as an extension of the notice period for rent reviews from 28 to 90 days. However, due to continuing high levels of rent inflation, further measures were introduced in the Planning and Development (Housing) and Residential Tenancies Act 2016. This Act introduced Rent Pressure Zones (RPZs) which are now the central plank of the Government’s strategy to contain rent inflation.

RPZs came into effect in December, 2016 and were adopted as an emergency measure with a duration of three years (later extended, as discussed further below). An area can be designated as an RPZ if it has experienced annual rent increases of 7% or more in four of the last six quarters. Within RPZs, rent reviews can take place once in a twelve-month period and are limited to a maximum increase of 4%. There are some exemptions from the 4% cap, for example, where a landlord undertakes renovations or refurbishments that constitute ‘substantial change’ to the dwelling or when a property is new to the market (meaning it has not been rented within the previous two years).

The most recent legislation, the Residential Tenancies Amendment Act 2019, further modified the RPZs by extending RPZ designations until 2021 and tightening the permitted exemptions. A definition of ‘substantial change’ has been provided which makes it clear that minor refurbishments or renovations are not grounds for an exemption, nor are works designed to bring a dwelling up to the minimum standards established by
legislation. In addition, properties which have been newly brought to market are no longer exempt with regard to rent reviews following the setting of the initial rent. Changes were also made to the designation process for areas outside Dublin, with the effect of bringing more arrears under the RPZ legislation.

3.2.2 Security of tenure

There have also been changes to security of tenure. However, while rent regulation has fundamentally changed on foot of the RPZ concept, which removes the basic market mechanism of price-setting from the rental sector, security of tenure has not undergone a qualitative change. The period of Part IV tenancies was lengthened from four to six years under the Planning and Development (Housing) and Residential Tenancies Act 2016 (the 2016 Act). ‘Further Part IV tenancies’ were also reformed, such that landlords may not terminate a tenancy within the first six months of a further Part IV tenancy without reason. The 2016 Act also established the so-called ‘Tyrrelstown clause’, which restricts the termination of tenancies where a landlord is seeking to sell ten or more units within a single development in a period of six months. The most recent amendments also provide for longer notice periods for terminations.

3.2.3 Regulation, compliance and enforcement

There have also been significant changes to the nature of regulation, compliance and enforcement and as such to the powers of the RTB and the scope of its remit. Some of these have been relatively minor or procedural changes. For example, under the most recent set of changes, landlords are required to notify the RTB if they apply a rent increase above 4% on the basis of a claimed exemption. Similarly, if a notice of termination is invalid due to a defect in the notice, the RTB can permit the landlord to remedy this via a remedial notice, adding 28 days to the termination period. The 2016 Act, however, also introduces a qualitative change in terms of the RTB’s role in regulation, compliance and enforcement in the private rental sector.

Under the new legislation, the RTB will be empowered to cause, of its own volition or on foot of a complaint, an investigation to occur in respect of possible improper conduct on the part of a landlord with regard to certain matters. Such matters include rent reviews and the provision of false and misleading grounds for the termination of a tenancy. This allows the RTB to proactively monitor and enforce important aspects of the PRS. The RTB will be able to undertake investigations with or without a formal complaint being lodged. New offences have also been created in relation to the issues the RTB may investigate.

The introduction of these new measures in part reflects a recognition, although not always explicit, that previous policy reforms have been undermined by significant non-compliance. They are thus designed to increase compliance in the sector by granting the RTB the capacity to initiate action, to identify breaches of the legislation and to sanction non-compliant landlords. In their Strategic Vision document, the RTB describe their changing role as follows:

One of the most important changes will be the expansion of the role of the RTB to no longer just provide dispute resolution services, but to also have a new regulatory enforcement role where the law is not adhered to. This means the RTB will now be able to proactively investigate potential breaches, with the power to apply sanctions if breaches are found. This will establish the RTB as an effective regulator for the market as a whole (Residential Tenancies Board, 2018b: 4).
At the time of writing, these new measures have yet to be put into practice and as such future research will be required to understand their impact. However, the extent of proactive enforcement by the RTB remains to be seen and depends, among other things, on resourcing. As such, it is likely that the active role of tenants, currently central to the enforcement and regulatory regime, will remain crucial.

Table 2 - Selected legislative changes 2015-2019

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<td>Definition of ‘substantial change in nature of accommodation’ provided, with respect to exemption from rent increase limit of 4%.</td>
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<td>Residential Tenancies (Amendment) 2019</td>
<td>Extension of the RPZ designations to 2021 and removal of some exemptions.</td>
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<td>Residential Tenancies (Amendment) 2019</td>
<td>Requirement for landlord to notify RTB when exemptions to RPZ restrictions applied.</td>
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<td>Residential Tenancies (Amendment) 2019</td>
<td>Creation of new offences: non-compliance with rent increase limit; knowingly/ recklessly furnishing information to RTB which is false/misleading to claim exemption from rent increase; and non-compliance with requirement to notify RTB of exemption from rent increase limit.</td>
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<td>Residential Tenancies (Amendment) 2019</td>
<td>Extension of notice periods.</td>
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<tr>
<td>Residential Tenancies (Amendment) 2019</td>
<td>If a notice of termination is invalid due to a defect in the notice, RTB can permit landlord to remedy it via a remedial notice, adding 28 days to the termination period.</td>
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<tr>
<td>Residential Tenancies (Amendment) 2019</td>
<td>Introduction of investigations of landlords by RTB-authorized officers and the imposition of administrative sanctions by RTB-appointed decision-makers.</td>
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<td>Planning and Development (Housing) and Residential Tenancies Act 2016</td>
<td>Rent Pressure Zones introduce 4% rent caps in designated areas that experienced annual rent increases of 7% or more in 4 of the last 6 quarters.</td>
</tr>
<tr>
<td>Planning and Development (Housing) and Residential Tenancies Act 2016</td>
<td>Restrictions on terminating tenancies where a landlord is seeking to sell 10 or more units within a single development within a period of six months (known as the Tyrrelstown amendment).</td>
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<td>Planning and Development (Housing) and Residential Tenancies Act 2016</td>
<td>Part IV tenancy period extended from 4 to 6 years.</td>
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<td>Planning and Development (Housing) and Residential Tenancies Act 2016</td>
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<tr>
<td>Residential Tenancies (Amendment) Act 2015</td>
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CHAPTER 4
Towards a long-term, secure and affordable tenure?
Regulation, enforcement and compliance
CHAPTER 4

Towards a long-term, secure and affordable tenure?
Regulation, enforcement and compliance

Having discussed the policy context of the Irish rental sector in Chapter 3, we can now analyse the extent to which recent changes have been successfully implemented. There is limited availability of systematic evidence. However, an analysis of the available evidence and data, as well as interviews with experts and key stakeholders, suggests significant shortcomings. In reviewing the available evidence, we also provide further insight into the policy and market contexts which play an important role in shaping the experiences of tenants and the reality of life in the rental sector.

The overarching aim of Government policy, as articulated in the Strategy for the Rental Sector document, is to transform the rental sector into what former Minister for Housing Simon Coveney called ‘a long-term tenure of choice for families’ (Department of Housing, 2016). A related aim is to address the homelessness crisis by reducing the number of tenants in the PRS becoming homeless. The two main components of this vision are security of tenure and rent price regulation, both of which are required to ensure the availability of affordable and secure housing. Increasing the supply of rental housing is a further aim of Government policy. The chapter begins with the issues of security of tenure and homelessness, with a view to assessing the extent to which meaningful security is enjoyed by tenants. The chapter then moves on to a discussion of the market context and the issue of affordability.

4.1 Security of tenure and homelessness

Despite the reform of the rental sector, the number of people who are homeless in Ireland has increased dramatically in recent years. At the beginning of the current period of reform, in 2015, there were 4,135 homeless people nationally. By March of 2019, this figure had risen to 10,305 (see Figure 2 below). In addition, the PRS continues to be the major source of homelessness:

[T]he overwhelming number of families becoming homeless had their last stable home in the private rented sector, and the crisis in this sector is the immediate cause of their homelessness – landlords selling up or being repossessed, shortage of properties to rent, scarcity of properties accepting rent supplement, and high rents 8.

Figure 2 - Number of people homeless in Ireland

Source: Department of Housing Planning Community and Local Government.
Note: Figures are for March of each year.

8 See www.focusireland.ie/resource-hub/about-homelessness/
Gambi et al. (2018) have provided a comprehensive analysis of families in the Dublin region who entered homelessness in March, June, September, and December of 2016 and 2017. The majority (68%) of such families identified private rental accommodation as their last stable accommodation. The proportion of families entering homelessness from the rental sector was far greater than any other tenure (see Table 3 below). The major causes for losing their accommodation cited by families who took part in the research also relate to the PRS. The most commonly reported reasons are related to either ‘properties being withdrawn from the market’ (31%), the majority of which relates to landlords selling their property, or ‘PRS-related issues’ (26%).

Table 3 below documents the specific reasons given by families for losing their last stable accommodation and the percentage of cases in which this was cited. If we group together those categories relating to insecurity of tenure, in that they relate to the termination of a tenancy in one way or another, they represent 39% of cases. We can also group together those categories relating to affordability of rents, which were cited in 10% of cases. These data suggest that rent increases, and particularly security of tenure, continue to represent the major drivers of homelessness, a conclusion echoed by Threshold (Threshold, 2018b) and other stakeholders.

<table>
<thead>
<tr>
<th>Table 3 - Last stable accommodation 2016 -2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private rental sector</td>
</tr>
<tr>
<td>Family home</td>
</tr>
<tr>
<td>Family member/ Friend</td>
</tr>
<tr>
<td>Social housing</td>
</tr>
<tr>
<td>Never had a stable home</td>
</tr>
<tr>
<td>New to the country</td>
</tr>
<tr>
<td>Homeowner</td>
</tr>
<tr>
<td>Other/missing</td>
</tr>
</tbody>
</table>

Source: Gambi et al., 2018

<table>
<thead>
<tr>
<th>Table 4 - Most commonly-cited reasons for leaving last stable accommodation 2016-2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most commonly cited reasons</td>
</tr>
<tr>
<td>Landlord selling</td>
</tr>
<tr>
<td>Landlord personal or family use</td>
</tr>
<tr>
<td>Bank repossession</td>
</tr>
<tr>
<td>Rent increase</td>
</tr>
<tr>
<td>Overcrowding (in PRS)</td>
</tr>
<tr>
<td>Notice to quit property</td>
</tr>
<tr>
<td>Substandard accommodation</td>
</tr>
<tr>
<td>Landlord renovating</td>
</tr>
<tr>
<td>Contract not renewed</td>
</tr>
<tr>
<td>Unable to afford rent</td>
</tr>
<tr>
<td>Property damaged in fire</td>
</tr>
<tr>
<td>Rent arrears</td>
</tr>
<tr>
<td>Landlord dispute</td>
</tr>
</tbody>
</table>

Source: Gambi et al., 2018

9 These categories are ‘landlord selling’, ‘landlord personal or family use’, ‘bank repossessions’, ‘notice to quit property’, ‘landlord renovating’, ‘contract not renewed’, ‘landlord dispute’.

10 These categories are ‘rent increase’, ‘unable to afford rent’, and ‘rent arrears’.
Data from the RTB also help to provide a picture of the present dynamics in the rental sector. The RTB received 5,823 new applications for dispute resolution services in 2017. This represented a 20% increase on the previous year and is the highest amount of applications ever received in a single year (Residential Tenancies Board, 2018a). As can be seen in Table 5 below, applications and hearings have been increasing steadily in recent years. This increase does not appear to be linked to an increase in the number of tenancies, as tenancies did not increase between 2015 and 2017. It may, however, be related to new legislation brought in during this period. As part of Threshold’s work in providing advice and advocacy, they received 208,069 website visits, 73,126 calls and brought 90 RTB cases in 2017 (Threshold, 2018a). The number of callers increased from 71,319 in 2016 and 32,813 in 2015.

Table 5 provides a breakdown of dispute types using RTB data. The dispute types which relate directly to security of tenure, ‘invalid notice of termination’ and ‘unlawful termination’ combined made up 1,996 dispute applications in 2017, representing 34.2% of all cases. Those most directly related to affordability, rent arrears and ‘rent more than market rent’, when combined equal 2,028, or 34.8% of disputes 11.

Threshold argue that ‘the issue of security of tenure is the dominating issue for tenants of the private rented sector...’ (Threshold, 2018b: 2). Tenancy terminations made up 38% of queries dealt with by Threshold in 2018 and 32% in 2017. Sale of property was the largest grounds for termination, representing approximately 40% of tenancy termination cases in 2017 and 2018 (Threshold, 2019: 2).

<table>
<thead>
<tr>
<th>Table 5 - Breakdown of RTB disputes, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td><strong>2015</strong></td>
</tr>
<tr>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Adjudication/mediation applications</td>
</tr>
<tr>
<td>4,023</td>
</tr>
<tr>
<td>4,837</td>
</tr>
<tr>
<td>5,823</td>
</tr>
<tr>
<td>Adjudication/mediation hearings</td>
</tr>
<tr>
<td>2,704</td>
</tr>
<tr>
<td>3,324</td>
</tr>
<tr>
<td>4,638</td>
</tr>
<tr>
<td>Tribunal applications</td>
</tr>
<tr>
<td>575</td>
</tr>
<tr>
<td>630</td>
</tr>
<tr>
<td>627</td>
</tr>
<tr>
<td>Tribunal hearings</td>
</tr>
<tr>
<td>436</td>
</tr>
<tr>
<td>513</td>
</tr>
<tr>
<td>457</td>
</tr>
</tbody>
</table>

Source: Residential Tenancies Board, 2018a

<table>
<thead>
<tr>
<th>Table 6 - Selected dispute applications by type, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rent arrears &amp; rent arrears and overholding</td>
</tr>
<tr>
<td>1,547</td>
</tr>
<tr>
<td>Invalid notice of termination</td>
</tr>
<tr>
<td>1,505</td>
</tr>
<tr>
<td>Deposit retention</td>
</tr>
<tr>
<td>1,234</td>
</tr>
<tr>
<td>Breach of landlord obligations</td>
</tr>
<tr>
<td>1,011</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td>1,002</td>
</tr>
<tr>
<td>Overholding</td>
</tr>
<tr>
<td>738</td>
</tr>
<tr>
<td>Standards &amp; maintenance</td>
</tr>
<tr>
<td>603</td>
</tr>
<tr>
<td>Breach of tenant obligations</td>
</tr>
<tr>
<td>507</td>
</tr>
<tr>
<td>Unlawful termination</td>
</tr>
<tr>
<td>491</td>
</tr>
<tr>
<td>Rent more than market rate</td>
</tr>
<tr>
<td>481</td>
</tr>
</tbody>
</table>

Source: Residential Tenancies Board, 2018a

11 Note that this data includes disputes registered by both landlords and tenants.
With regard to the outcomes of disputes, 41% of notices of termination reviewed were found to be invalid. As documented in Table 7 below, for those terminations issued on the grounds of intention to sell, family use and refurbishment, more than half were found to be invalid. With regard to disputes relating to deposits, in 92% of cases the deposit was partially or wholly refunded to the tenant. In addition, the RTB received on average five calls a week alleging illegal eviction (Residential Tenancies Board, 2018a).

<table>
<thead>
<tr>
<th>Notice of termination disputes, 2017</th>
<th>Valid</th>
<th>Invalid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rent arrears/overholding</td>
<td>78%</td>
<td>22%</td>
</tr>
<tr>
<td>Intention to sell</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>Family use</td>
<td>48%</td>
<td>52%</td>
</tr>
<tr>
<td>Refurbishment</td>
<td>26%</td>
<td>74%</td>
</tr>
</tbody>
</table>

Source: Residential Tenancies Board, 2018a

There are unfortunately no data on the number of tenancy terminations issued each year. However, data from the Household Budget Survey, which captures duration of residence, suggests that there is a large ‘churn’ of private rental tenancies. As Figure 3 below demonstrates, more than 55% of households within the PRS have been resident in their current home for less than three years. This contrasts with just under 15% across all households. For households who own with a mortgage, the figure is just 5.5%, while for local authority tenants it is 11.5%. 82.5% of renting households surveyed have been resident for five years or less, compared with 24.4% across all households and 11.3% for households who own with a mortgage. Of course, there are many reasons contributing to this divergence between tenures. Rental sector households are on average younger and therefore likely to have formed a household more recently. Moreover, tenants may move due to changing preferences, such as location of employment or education. Nevertheless, the difference between privately renting households and others in this respect is significant, suggests considerable ‘churn’ and that relatively short-term tenancies are the norm.

This conclusion is also supported by recent research from Corrigan et al. (2019). Their survey of renters found that 48.4% of renters surveyed reported that they were worried that they will not be able to live in their current home for as long as they wish, while 73.5% were worried about the cost of renting becoming too high or unaffordable. Recent research published by the RTB presents a more positive picture. Qualitative and survey data presented by Coyne Research (2019) finds that 46% of tenants categorise their relation with their landlord as ‘very positive’ and 34% as ‘somewhat positive’. Moreover, 28% describes themselves as feeling ‘very secure’ in their rented accommodation and 51% as ‘fairly secure’. Nevertheless, 15% described themselves as feeling fairly insecure and 6% as very insecure.
Affordability has been a major area of Government policy over recent years. As discussed below, the available evidence suggests mixed success in terms of the immediate aims of the Rent Pressure Zone legislation, i.e. limiting annual rent increases to 4%. However, in terms of the wider question of affordability, the situation has continued to deteriorate. This section provides an overview of the key market dynamics in Ireland based on available evidence, and reviews the effectiveness of recent policy reforms aimed at achieving greater affordability and predictability.

Rental inflation has been rapid since 2013/2014 and represents one of the key challenges in the rental sector. Given this, and the fact that housing costs make up a growing part of household expenditure (Corrigan et al., 2018; Turnbull, 2018), it is unsurprising that recent analyses, suggest that there are deep, structural affordability issues in the Irish private rental sector. Nugent (2018) examines the relationship between housing costs and wages for young renters under a variety of conditions. A single room in shared accommodation within Dublin City Centre costs an average of €632 per month, equal to 42% of the take-home pay of a minimum wage employee working full-time. In 2017, the cheapest one-bedroom apartment anywhere in Dublin County was €1,060, just under 50% of the median Irish net take-home pay. The average cost of a two-bedroom apartment in North County Dublin, one of the less expensive areas within Dublin, is €1,219. This represents 30% of the take-home pay of two employees in the middle of the national wage distribution.

Source: Household Budget Survey, 2015
A recent ESRI study (Corrigan et al., 2018: 2), shows that high housing costs, a feature of housing in Ireland more generally, particularly effect private renters: ‘In 2014-2015, 16% of households had high housing costs, but this figure was double for private renters and 70% for private renter and mortgaged households in the lowest quarter of the income distribution’. Moreover, examining the period 2005-2015, they find that private renting households in the bottom 25% of the income distribution have always faced high housing costs:

While rental price inflation has been high in the very recent period, the fact that low income households in the private rental market have always had high average rental costs suggests affordability challenges are structural rather than cyclical in nature. The recent increase in rental prices are likely to therefore have exacerbated a structural issue (Corrigan et al., 2019: 7).

The cost of rental property is just one of the market factors which may shape the options available to tenants. Another significant factor is simply the availability of properties. Many commentators have argued that there is a significant miss-match between supply and demand in the rental sector. This is reflected in rental inflation (Lyons, 2019). It is also reflected in the fact that there are now as many as 460,000 adult children living in the family home in Ireland, a figure which has doubled since 2006 (Nugent, 2018).

Figures from recent Daft.ie rental reports also suggest that supply of rental properties is at unprecedented low levels. On May 1st of 2019, there were 2,700 properties available to rent nationally, the lowest figure recorded since the series began in 2006 (Lyons, 2019). Even at the height of the Celtic Tiger, when rental inflation was high, the number of properties on the market bottomed out at just under 4,400 in 2007 (Lyons, 2019). Indeed, the number of properties on the market was below 4,000 throughout the recent period (Lyons, 2018).

Concerns about the supply of rental property are echoed by McCartney, who has developed a method for calculating vacancy rates in the Irish PRS (McCartney, 2017). He estimates that since 2014, the vacancy rate has remained below 2% in Dublin. Since 2015, vacancy rates outside the capital have converged with those in Dublin and were less than 1.5% in 2016. McCartney also estimates a ‘natural vacancy rate’ (NVR) for the Irish private rental sector. The NVR is the vacancy rate at which rental growth is zero, i.e. market equilibrium, and McCartney calculates an NVR of 5.77% for the Irish PRS nationally and 5.7% for Dublin:

The practical implication of this analysis is that private rents are likely to keep rising in all locations until increased supply and/or reduced demand returns the vacancy rate to around 5.75%. This means that the vacant stock would need to increase from its present level of 4,626 units to 18,267 units – a rise of almost 300% – before rental growth would cease. In Dublin, the vacant stock would need to rise by over 5,250 units before the market is restored to equilibrium (McCartney, 2017: 9).

The data on rental inflation, affordability and supply levels provide important insights into market dynamics. Rent levels are at an all-time high and have increased rapidly in every quarter since 2014. Wage increases have trailed far behind rents, leading to acute affordability issues. To make matters worse, even for those who can afford to rent, the number of properties on the market is far below the levels of demand. These interrelated factors – prices, supply and affordability – make finding affordable accommodation extremely challenging for tenants. This, in turn, is likely to make tenants more dependent on their current landlord and means the cost of losing their current home could be extremely high.

Concern with rapid rent increases and attempts to ensure greater affordability within the sector have been present since 2015. The first attempt to amend legislation in relation to these issues was the change of the frequency of rent reviews from once in a 12-month period to once in a 24-month period. This legislation was introduced by the then Minister Alan Kelly in 2015 and was described by the media at the time as a ‘rent freeze’.
Upon the introduction of this legislation, Kelly suggested renters could benefit from savings of up to €1,650 (Holland, 2015). Some tenants may indeed have enjoyed such savings; however, the objective of ensuring affordability was not met, as prices continued to increase rapidly thereafter.

The RPZ legislation, introduced in 2016, was a more robust attempt to moderate price increases and to ensure predictability. The Strategy for the Rental Sector, which introduced RPZs, set out to 'address unsustainable rent inflation' by moderating rent price increases. The 'rapid rate of inflation' in some areas is described in the Strategy document as 'the most significant challenge facing the sector' (Department of Housing, 2016: 10). Rent inflation is attributed to the lack of supply in the sector and in terms of housing more generally, and consequently the Strategy suggests that 'the most effective way to reduce and stabilize rents in the medium to long term … is to increase supply' (Department of Housing, 2016: 2). This focus on supply as the avenue through which to achieve affordability provides the rational for the RPZ policy as a targeted and 'time-bound intervention'.

RPZ status, as originally formulated, was to last three years, after which it would expire. Thus, the Strategy for the Rental Sector appears to have been based on the idea that over the three-year period following the original RPZ designation at the beginning of 2017, increased supply of rental property would moderate or even reduce rent levels. The recent extension of RPZ status beyond its original horizon thus suggests that the Strategy’s objective to moderate rents through increased supply has not materialized. Annual rents continue to grow significantly (see Figure 4 below).

Recent analysis from the ESRI in conjunction with the RTB has shed light on the impact of the RPZ legislation by examining trends in rent price inflation in both RPZ and non-RPZ regions and setting these in the context of macroeconomic developments (Ahrens et al., 2019). The research compares the seven quarters running up to the introduction of the RPZs to the seven quarters since their introduction for which data is available. The research finds evidence of a significant impact of the RPZ measures:

Indeed, the rate of price inflation across all RPZs fell from just over 9 per cent for the seven quarters before the regulations to just under 6.4 per cent in the seven quarters since the regulations – a drop of approximately 2.6 percentage points. In the non-RPZ areas, the average rent growth before and after the policy is virtually the same, with only a 0.24 percentage point decline (Ahrens et al., 2019: IX).

The research also analyses property level changes, and finds that within the RPZ the proportion of tenancies experiencing a rent increase above 4% decreased from 73.2% in Q4 2016 to 42.5% in Q3 2019. Thus, there is ‘strong evidence that the RPZ reduced the number of tenancy agreements with annualised growth rates exceeding 4%’ (Ahrens et al., 2019: 35).

Nevertheless, average rents nationally and in Dublin continue to grow at high rates, and in both cases significantly above the 4% threshold. Even within the RPZs, the research cited above finds growth rates exceeding 4%. It should be noted that certain properties are exempt from the 4% cap within the RPZ. Nevertheless, this research shows that more than two in five tenancies are receiving increases of greater than 4%. As Ahrens et al. (2019: 35) note:

It is striking that the ratio of above 4 per cent annualised growth remains at a high level across Ireland even after the introduction of the RPZs … there is a concern that the effectiveness of RPZs in reducing rent inflation is undermined by a high share of tenancy agreements that are not in accordance with the 4 per cent cap, either due to non-compliance or for other reasons.
Daft.ie data on annual average rent increases at the level of postcodes also suggests significant rent increases continue to be an issue. Focusing in on some of the Dublin postcodes with the highest concentration of renters, Figure 5 shows average rents in Q4 2011 to 2018. Rental inflation in all of these postcodes continues to be alarmingly high. Dublin 6 saw annual rents increase by 10.4% between Q4 2016 and Q4 2017, and by 11.25% the following year. Dublin 7 saw a huge increase of 13.5% between Q4 2016 and Q4 2017 and of 9.9% the following year.

Source: Residential Tenancies Board, 2019

Source: Daft Rental report data available here: http://www.ronanlyons.com/data/
The above data suggest there is likely a substantial issue with non-compliance with the RPZ rent caps. This is supported by some additional evidence from a variety of sources. A recent survey of Threshold focusing on households in receipt of HAP found that 41% of those whose rent had been increased in the previous 12 months had received rent increases of more than 4%, and 23% had received rent increases of more than 10% (Threshold, 2019b). Other research suggests that more than half of tenants within RPZ are not aware of any restrictions on rent increases (Coyne Research, 2019). In addition, of those rent reviews which were a subject of RTB disputes, 77% were found to be invalid in 2017 (Residential Tenancies Board, 2018a). This may suggest ‘teething problems’ as the legislation is still very new, but given the extent of the housing and homelessness crisis it is nonetheless concerning.

In their review of the RPZ measures and the Rebuilding Ireland strategy, Threshold (2018b) note that rent inflation continues to be one of the most significant challenges with regard to security of tenure. Rent reviews were the second most common query dealt with by Threshold in 2018. The organisation does note, however, that recent RTB Rent Index reports have suggested that rent increases are greater for new tenancies than for tenancy renewals. This, they argue, ‘indicates to us that RPZ legislation can work when enforced and in the case of renewed tenancies as the sitting tenant is in a position to enforce the rules’ (Threshold, 2019a: 12).

In terms of enforcement and compliance, there are two principal weaknesses of the RPZ legislation:

1) New tenancies

The 4% annual rent cap applies both within and between tenancies. As such, a new tenant is entitled to know the previous rent on their property. However, there is no way for a tenant to verify whether this figure is correct, or more generally to know whether or not the rent has been increased above the limits imposed by the RPZ legislation. This limitation draws our attention to some of the ways in which a tenant-led regime can be problematic, i.e. it is hindered where tenants’ knowledge is limited:

Present legislation facilitates what we have identified as “de facto decontrolled rents” between tenancies… On creation of a new tenancy, the incoming tenant has no way of confirming the previous rent on the property or when it was set. Evidence from our advice line suggests that people are paying more than the permitted 4% increase … Without accurate information, tenants are unable to determine the legally permitted rent and therefore are unable to enter into a contract with the landlord as an informed consumer. Without this knowledge, they are unable to assert their rights to challenge an illegal increase. The result is that the RPZ measures are undermined and rents continue to rise” (Threshold, 2018b: 4).

Moreover, even for those tenants who are aware that an initial rent has been set in breach of the legislation, they may hold a reasonable fear of challenging this lest they lose their new tenancy. This is particularly concerning given that within the first six months of a tenancy tenants enjoy effectively no protection.

2) Security of tenure and substantial renovation

The ‘substantial’ renovation exemption from the RPZ has been subject to widespread commentary. 'Substantial renovation' was poorly defined in the RPZ legislation of 2017 and as such was subject to abuse. Moreover, it created an incentive for the termination of tenancies, so-called 'renovictions'. However, a definition of substantial renovation has now been provided in the recent amendments to the RTA, and this may close this avenue of illegitimate rent increases.
This draws our attention to the wider relationship between security of tenure and rent regulation, as Threshold note in their submission to the review of Rebuilding Ireland:

[R]ent predictability without proper security of tenure is likely to significantly blunt the effect of rent predictability measures ... Security of tenure must be robust if the RPZs are to be successful; the two principles cannot be separated (Threshold, 2017: 9).

In addition to these two principal enforcement issues, there have also been suggestions that the general lack of availability of property in the rental market operates as coercive force limiting tenants’ ability to challenge infringements of the legislation, and as such enforcement:

In circumstances where there is limited supply, landlords may demand unlawful rents with impunity, secure in the knowledge that either the tenant accepts the unlawful rent or does not accept the accommodation (Threshold, 2017: 8).

Current market dynamics curtail tenants’ choices and thus their agency. This is significant given that, as discussed, the current enforcement regime is largely tenant-led. This is all the more important because the existing evidence suggests that market dynamics are unlikely to undergo significant change in the foreseeable future. Housing supply is increasing, but remains significantly below estimates for required levels of supply from the Housing Agency and other sources. The supply of rental units, and thus the vacancy rate, is also low in relation to historical comparisons and projected demand. The likelihood of tight market dynamics in the long term has implications for how we think about enforcement. The available evidence suggests that in considering enforcement we should assume that tenants will face significant challenges in finding alternative accommodation.

4.3 Additional issues

In addition to security and affordability, there are of course many other issues that impact on tenants. These include anti-social behaviour, the right to peaceful and exclusive occupancy, landlord selectivity, deposit retention and so on. However, the two issues which have been most widely discussed and for which we have the best evidence relate to minimum standards within the sector and the issue of discrimination. We include a brief discussion of these issues here.

Failure to comply with minimum standards in the rental sector is perhaps the most widespread issue of non-compliance. The National Oversight and Audit Committee (2016) found that in 2014, 13,913 rental properties were inspected, just 5% of all registered rental properties. More than half (55%) of inspected properties were non-compliant. Some local authority areas had a 100% failure rate with regard to minimum standard compliance. In 2015, 65% of dwellings inspected were non-compliant (Threshold, 2018b). Inspections are required for all dwellings rented under the HAP and RAS schemes. 16,261 properties were inspected in 2017 and 79% did not comply with minimum standards. Notices to landlords were issued in just 4.5% of these (Threshold and the Society of St Vincent de Paul, 2019).

Under HAP, inspections are to be carried out within the first six months of the tenancy. However, many Threshold advisors ‘have heard from tenants that these inspections often don’t happen until much further into the tenancy, when the landlord is directed to make repairs the work is often not undertaken and the Local Authority does not follow up’ (Threshold, 2019b). In a recent survey by Threshold of HAP recipients, just 40% reported having their home inspected by the local authority. Of these, 23% reported that although inspections had taken place the landlord had not addressed the issues identified.
A further issue relating to the HAP scheme is that of discrimination, which is now prohibited under equality legislation. In 2017 and 2018 the Workplace Relations Commission (WRC) received 172 complaints from tenants in relation to this issue, 65% of which were ruled in favour of the complainant (Threshold, 2019b). In Threshold’s own research, 45% of tenants surveyed had encountered landlords refusing to accept HAP. Indeed, in relation to the HAP scheme in general, ‘[t]he greatest level of dissatisfaction by all respondents [with HAP] was in the difficulty to find a landlord willing to accept HAP’ (Threshold, 2019b).

4.4 Conclusion

This section has presented a discussion of the available evidence on the effectiveness of recent legislation and how the sector has changed since its introduction. As discussed throughout, the available evidence suggests significant issues in many aspects of the rental sector. The data on homelessness and on duration of tenancies suggest that tenants do not enjoy secure occupancy. Evidence on rent increases indicate significant levels of non-compliance with the RPZ rent caps may an issue. It is certainly clear that the objective of ensuring affordability in the sector remains a long way off. One of the most noticeable features of the rental sector in recent years has been the tendency for the issues in the sector to worsen in spite of a raft of new legislation.

There are no doubt many factors which help explain these challenges, but one of the most common issues identified by stakeholders, Threshold advisers and indeed tenants themselves (as discussed in Chapter 5) is the weakness of de jure security of tenure under the RTA. Threshold have noted that they are ‘concerned that legislation providing security for tenants remains inadequate, particularly in the context of loopholes allowing tenancies to be terminated, sometimes in spurious circumstances’ (Threshold, 2017a: 6). The weakness of security of tenure permeates the entire issue of compliance as it restricts the capacity and willingness of tenants to contest perceived breaches of their rights or of legislation in other aspects of their tenancy (discussed further in Chapter 5). Many commentators have suggested that this has a direct bearing on the implementation of the RPZ legislation. The legislation was predicated on the assumption that tenants would be in a position to demand information with regard to the rent of a previous tenancy (in the case of a new tenancy) and to contest a rent increase over the 4% cap. However, there does not appear to be any evidence to suggest that tenants are in fact in a position to do this, in part because of their fears around security of tenure.

Of course, compliance with the RPZ legislation is also affected by market conditions and supply. Due to severe supply constraints, tenants have weak bargaining power. As with weak security of tenure, this issue can affect compliance with all aspects of legislation. Market dynamics and legislative provisions around security of tenure have thus interacted to shape the effectiveness of legislative change in recent years. Throughout the consultation process for the Strategy for the Rental Sector, many contributors emphasized the relationship between rent regulation and security of tenure. Weak security of tenure is not compatible with rent regulation, as it may create incentives for evictions or generally undermine compliance, as discussed above. In their contribution to the review of Rebuilding Ireland, Threshold argue that:

[R]ent predictability without proper security of tenure is likely to significantly blunt the effect of rent predictability measures ... Security of tenure must be robust if the RPZs are to be successful; the two principles cannot be separated (Threshold, 2017b: 9).

In the next chapter, we turn to our analysis of the qualitative data to shed light on how the policy and market context discussed in this chapter and the last interact with tenants’ experience to shape their capacity to express agency.
CHAPTER 5
Findings and analysis: power, conflict and agency
CHAPTER 5

Findings and analysis: power, conflict and agency

This chapter presents and analyses data from qualitative interviews. The majority of the data presented here emerged from interviews carried out with tenants. This is complemented by data derived from interviews with Threshold advisors based on their frontline experience.

The chapter is divided into two sections. The first section describes what we call the ‘landlord-tenant conflict journey’. This concept attempts to map out the experience of tenants who face a breach of their rights or of legislation, or who are faced with some form of conflict relating to their access to and enjoyment of their home. This allows us to situate tenants’ agency within the context of the tenancy relationship during periods of stress, strain or complete breakdown. The second section focuses more specifically on understanding tenants’ agency and the limitations that may affect it. The focus here is on the relationship between landlords and tenants, which we argue is crucial in understanding tenants’ agency and therefore their ability to advocate effectively for themselves.

5.1 Methodology

The methodology employed combines in-depth qualitative interviews with tenants with expert interviews. In total, 24 tenants were interviewed: 16 in Dublin, 6 in Galway and 2 in Cork. It was not possible to conduct all interviews face-to-face due to the time constraints of the researchers (which prevented travel to Galway) and the preference of a number of tenants (some of the Dublin-based interviewees). All of the interviews conducted in Cork were face-to-face. Those conducted with Galway tenants were all conducted over the phone. While in Dublin five were conducted over the phone and the remainder face-to-face.

Due to our focus on the ways in which tenants’ experience, including at a subjective level, shaped their ability to express agency, a semi-structured interview style was selected to ensure that those issues of most importance to the interviewees were allowed to emerge during the interviews. All interviews that were conducted face-to-face took place in Threshold offices. They were recorded and anonymised. The interviews typically lasted between 45 and 90 minutes and were recorded and later transcribed. All interviews were conducted on an anonymous basis, with pseudonyms used for quotations. Many of the interviewees did not speak English as their first language. Linguistic errors are kept in the transcriptions quoted below, with occasional clarifications added where required. Data analysis was carried out via thematic coding using MAXQDA software.

The research does not aim to produce a representative account of the general population of tenants. Instead, our interest is specifically in the ability of tenants to respond to perceived breaches of their rights and to effectively advocate for themselves and protect their tenancies. As such, we were mostly interested in those tenants who experienced an issue with their tenancy, such as a breach of their rights, and attempted to address or remedy that issue. Thus, a purposive sampling strategy was adopted that selected tenants who (a) were experiencing or had recently experienced a significant issue in relation to the tenancy, and (b) were attempting or had attempted to remedy the issue. The authors received the collaboration of Threshold, who were able to identify service users according to these criteria.
In addition, the sampling strategy sought to select a sample of interviewees that reflected some of the most significant demographic characteristics of tenants, particularly in relation to migration status, family status and receipt of HAP or other rent subsidy. These characteristics are presented in Table 8 below. However, the sample diverged from the general tenant population in two senses. First, 71% of interviewees were in receipt of a rent subsidy, significantly higher than the general population of tenants. This may reflect that such tenants are particularly vulnerable and are more likely to experience an issue with their tenancy. Second, the average age of interviewees was 45.5 years. Our sample was thus older than might have been expected. This may reflect that the fact that those tenants who contact Threshold with a view to challenging their landlord are more likely to be older or what we might call ‘seasoned’ tenants who have learned through experience the importance of seeking support and/or advocating for themselves. Such a conclusion is also supported by the average years renting of interviewees at 14.5. Alternatively, it may reflect the fact that older tenants are less flexible than younger tenants and are thus more likely to take action to protect their tenancy, and may have fewer alternatives, such as returning to the family home.

It should be noted that a large majority of tenants interviewed dealt exclusively with a landlord, although some engaged with an estate agent during the letting of the property. The findings below are therefore relevant above all to tenancies which are managed directly by the landlord. Moreover, small-scale or ‘amateur’ landlords predominated. It is reasonable to assume that the experiences of tenants with institutional landlords will differ in important respects from the findings presented below. Although institutional landlords continue to represent only a small part of the rental sector, their rapid growth calls for further research into this area.

It is important to bear in mind that our sample only includes tenants who are both experiencing a significant issue and are attempting to remedy that issue. Thus, it does not include two important cohorts of tenants: on the one hand, those tenants who do not experience an issue or who have been able to remedy an issue without seeking support; second, those tenants who may be experiencing significant issues but who have not been able to seek support. This latter group may well be the most vulnerable group of all, and it is likely that their ability to express agency is even more compromised than that of our sample.
Table 8 - Interviewee characteristics

<table>
<thead>
<tr>
<th></th>
<th>Number</th>
<th>Proportion (rounded to nearest whole number)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total sample size</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>Interviewees - Dublin</td>
<td>16</td>
<td>67%</td>
</tr>
<tr>
<td>Interviewees - Galway</td>
<td>6</td>
<td>25%</td>
</tr>
<tr>
<td>Interviewees - Cork</td>
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<td>8%</td>
</tr>
<tr>
<td>Non-Irish born</td>
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<td>54%</td>
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<td>Female</td>
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<td>58%</td>
</tr>
<tr>
<td>Male</td>
<td>10</td>
<td>42%</td>
</tr>
<tr>
<td>Parent</td>
<td>11</td>
<td>46%</td>
</tr>
<tr>
<td>Lone parent</td>
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<td>20%</td>
</tr>
<tr>
<td>Unemployed or disability</td>
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<td>42%</td>
</tr>
<tr>
<td>HAP or rent subsidy recipient</td>
<td>17</td>
<td>71%</td>
</tr>
<tr>
<td>Average age</td>
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</tr>
<tr>
<td>Average properties</td>
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<tr>
<td>Average years renting</td>
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<td></td>
</tr>
<tr>
<td>Average tenancy duration</td>
<td>2.2 years</td>
<td></td>
</tr>
</tbody>
</table>

In addition to tenants, the research also included expert interviews:

- Six Threshold advisers;
- Gavin Elliott, Legal Officer, Threshold;
- Tricia Sheehy Skeffington, Barrister and expert in Irish tenancy law; and
- Janette Fogarty, Head of Dispute Resolution at the RTB.

Interviews with Threshold advisers focused on their experience of supporting tenants and the obstacles that face tenants who seek to advocate for themselves or respond to issues with their tenancy. The remaining expert interviews focused on understanding the regulatory context and the challenges that are faced at this level. The final component of the methodology was the presentation of draft findings to Threshold advisers and Threshold staff to seek further input and identify any potential issues of interpretation.

5.2 Mapping the landlord-tenant conflict journey

All of the tenant interviewees experienced some form of conflict with their landlord, usually over an eviction, rent increase or standards and maintenance issues. This section sets out a ‘map’ of tenant-landlord conflict which identifies the steps or stages that characterise conflict between landlords and tenants. This helps to contextualise how tenants experience conflict, and the options and constraints that shape tenants’ agency at various stages of conflict. Based on the qualitative data, we have identified a number of key stages. These are discussed in turn.

5.2.1 Initial relationship with landlord

This refers to the outset of the tenancy and the period of the tenancy prior to the emergence of significant conflict. For almost all tenants, this period was characterised by a personal and informal relationship with the landlord, often described as ‘friendly’. Many tenants report, for example, landlords collecting rent in person, joining them for tea or something to eat, bringing gifts following the birth of a child, and otherwise engaging
in social and friendly behaviour. For example, when asked about their relationship with their landlord prior to the conflict, interviewees responded:

[H]e’s [the landlord] coming in our house. We drink a coffee or drink a tea. We go in his house and drink a cup. We’re very friendly (Pawel, 40, Dublin).

For the Christmas he give me the present of the little box with a sweet or something, the card, you know (Agustina, 48, Dublin).

In at least three instances, tenants had some kind of social connection with their landlords, for example, meeting them through their place of work, through a mutual friend or through family networks. This reinforced the informal nature of the tenancy relationship.

In many instances, interviewees cited ‘minor’ issues, usually in relation to standards and maintenance or invasive behaviour by the landlord (e.g. entering without permission), but reported not experiencing these as significant at the time. For example, a university student living in Galway described his initial relationship with his landlord as follows:

[H]e was polite enough, you know … it was [very civil], you know. There was nothing—there was no resentment towards each other. But we’d see him on a monthly basis just for our monthly inspection, but there was nothing bad between us, you know. (Alan, 19, Galway)

This suggests that the tenant experienced the relationship as without issue, despite the fact that he also reported that the landlord conducted monthly inspections, including of bedrooms, which could be considered an invasion of privacy. Similarly, James, when asked what kind of relationship he had with his landlord during the early stages of the tenancy, replied:

A good relationship, you know what I mean … But I had to get him to put a bolt inside the door years ago because he just walks in and out of the flat when he wants.

The initial period for all tenants was characterised by informal, often interpersonal relations with their landlord, but in which there may have been breaches of the legislation or the rights of tenants. This suggests that the establishment of an informal relationship with a landlord at the outset of a tenancy may not be in the best interest of tenants, for example, by encouraging tenants to overlook issues considered ‘minor’.

5.2.2 Conflict trigger

In almost all interviews, tenants report experiencing an event associated with the deterioration of the tenancy relationship. We term such events ‘conflict triggers’. In many cases, the conflict trigger was not the first issue experienced. In fact, in some cases, tenants had experienced significant and severe breaches of their rights before the conflict trigger occurred. The defining characteristic of conflict triggering events within tenancies was that they were of such significance that tenants felt they must take action. Typically, they involved a notice of termination, a rent increase or the deterioration of standards and maintenance issues.

Threshold advisers also reported that many tenants will not take action to challenge breaches of rights or other issues until they have no alternative, for example, when they have already been served a notice of termination and the tenancy coming to an end appears inevitable. As discussed further below, tenants are reluctant to challenge their landlords or otherwise take action due to concerns about losing their tenancy or provoking
some form of retaliation or penalisation from the landlord. Conflict triggers are thus often 'last straws'. This is supported by interviews carried out with Threshold advisers, who noted that many tenants contact them 'in the 11th hour'.

Conflict triggers were not usually strictly linked to breaches of the legislation. For the most part, tenants indicated they were willing to accept breaches of legislation and their rights. It was only when such breaches jeopardised the continuation of the tenancy that tenants typically took action and conflict was triggered. Indeed, in most cases, the conflict trigger was a notice of termination.

Tenants often experience finding out their tenancy is in jeopardy as a shock, and it can trigger stress, anxiety and panic:

Interviewer: And what did you think when you got that [notice of termination] first? What was your first thoughts, first reaction?

Interviewee: I read the first sentence, I put it down, and I walked over to my sink and nearly puked (James, 53, Dublin).

[L]ast year we returned from holidays and the day we returned we found a letter in the post box where the landlady was informing us that … Basically she wanted to get rid of us. She was suggesting that she's selling the building. And, yeah, just shocking. You know, we returned from holidays with two kids and you just find out that in a few months you've to move out. And there is nowhere to actually move out because there is a housing crisis in every big city in Ireland. There's nowhere to go really' (Lisa, 34, Galway).

So it was a really, really shite situation [receiving notice of termination]. Really, like. Yeah, I actually did lose it, as in I got really sick. And it just triggered, like, some things that were going on … And it was just horrific (Dave, 27, Dublin).

Tenants typically contacted Threshold as soon as conflict was triggered.

We got a notice of termination … and like out of the blue the landlord just said in the letter that circumstances changed so we have to move out and we have like six months. So we were like that's probably not right. So that was the reason we contacted Threshold, just to make sure that it's a valid notice of termination and just to see what kind of options we have (Maria, 32, Dublin).

So I was given the termination notice. So then that's when I contacted Threshold, because obviously I had nowhere to go (Dave).

Some tenants were aware of Threshold already, while others received advice to contact Threshold either through the RTB helpline, Citizens Information or through a friend. Generally, tenants contacted Threshold seeking information and advice initially, to clarify their position and understand their options.

5.2.3 Landlord reaction

Once tenants have communicated with their landlord that they are unwilling to comply with a notice of termination or rent increase, or otherwise challenge their landlord, the tenancy typically becomes conflictual. This can encompass a wide range of issues, including heated discussion, the receipt (by the tenant) of multiple letters, messages or phone calls, and low-level haranguing or harassment by the landlord. As discussed in greater
detail below, in some cases, tenants’ attempts to assert their rights, either through contact with Threshold or with the RTB, resulted in retaliatory action by the landlord, including eviction, issuing of a notice of termination, rent increase or changing tenancy arrangements (such as preventing tenants from having a pet).

Maria (32, Dublin) stated the following:

So two weeks before the due date when we had to move out, we responded to the landlords that the notice of termination you sent is invalid, meaning that we won't move out. And since then everything started. So at least every month… we’re being harassed with an email or a letter or something that we have to move out. And a few other things also happened. They don't want to fix anything …They just don't want to do anything, but they just want to get rid of us …

In some instances, as above, landlords attempt to apply pressure to tenants to obtain compliance with a notice of termination or rent increase. In others, landlords may register a dispute with the RTB themselves. In all cases, tenants report that the tenancy relationship deteriorates to the point where the situation becomes stressful on an ongoing basis. In other words, the tenancy has in effect broken down.

5.2.4 Crisis management

In this final stage of the conflict, the tenant typically finds themselves in a position of ‘crisis management’ in which they confront a ‘trilemma’. Firstly, they are seeking, to the extent it is possible, to advocate for themselves with a view to upholding their rights, for example, by contesting a notice of termination or rent increase. Secondly, they are seeking to manage the level of conflict with the landlord in order to maintain the tenancy and to avoid conflict becoming unmanageable. This includes managing the associated emotional strain. Thirdly, they seek alternative accommodation on the assumption that the likely outcome is the ending of the tenancy. Tenants thus adopt a mixed strategy, asserting themselves to a certain extent while hoping to avoid ‘rocking the boat’, and at the same time preparing an exit strategy by finding a new property.

The most notable characteristic of this phase is the feelings of stress generated by the potential loss the tenancy as well as the conflict with their landlord, accompanied by a sense of frustration and hopelessness at the inability to find another property. Many tenants report extreme levels of stress, including impacts on mental health, family life, work, children, etc.

I can't sleep really. I have actually heart race and it is an—it has an effect. As well, whenever you have to actually deal with them [the landlords] we get, not aggressive, but we get tensed up as well, like… we regret, then, shortly afterwards, but it is there and we are not feeling comfortable with it (Maria).

It was really hard because I was spending almost all my money on buses, you know, to go and come to the viewings, sending emails, internet, you know … And like I said, like, from the stress—because in the night time maybe I was not sleeping very good and, you know, being stressed, sending emails (Marisa, 35, Dublin).

Tenants reported extreme levels of difficulty with regard to securing alternative housing, and this generated a feeling of stress, frustration and hopelessness. In many cases, tenants described ‘refreshing Daft.ie constantly’, sending hundreds of emails to secure viewings, and attending viewings, all to no avail. This was combined with the cost of rent, which many tenants described as being beyond their ability to pay. For example, one tenant, who was living with her father and younger siblings and had already received both a large rent increase and subsequently (having challenged the rent increase) a notice of termination, stated that:
And we're already starting to look for a different house, but of course there's one or two only on the market and there is a million people [looking for it]. So we're still looking now … (Agnes, 22, Galway)

This issue was experienced across the board, but was particularly acute for those on HAP, parents with children, and lone parents:

I was looking - looking, looking, looking - and, like I say, you send forty emails, you might get three replies. You go to two viewings and there's a queue out the door of people who are standing there with cash in their hand. I go in asking them to sign a form for HAP and they just don't want HAP. People genuinely don't want HAP (Dave, 27, Dublin).

I'm a very flexible person, as you can tell … I've rented thirteen properties in fourteen years… but the problem is that there is nowhere to go, and especially if you have children. Landlords are not interested. I mean, as long as you are like professionals or couple without children, that's, you know, that's an advantage (Lisa, 34, Galway).

An important component of the crisis management stage is persistent uncertainty with regard to the outcome of the conflict as well as with regard to the tenant's future housing needs:

It's just so frustrating, like. It was weeks building up to it. Then of course … I just need to know, like, whether I’ll have a home or not, like, you know, next week (Dave).

So we're just basically waiting what's going to happen and there's no way to plan anything right now. I mean, we tried, but it's like, you think everything's okay for a month or maybe month-and-a-half and then—bam!—you're getting another letter [from the landlord]…(Maria, 32, Dublin)

For eight of our interviewees, registering a dispute hearing at the RTB was a part of their crisis management experience. In almost all cases, this generated further stress, as tenants worried about appearing in a court-like situation and in some cases having to encounter their landlord face-to-face. This was the case for this couple:

Interviewer: And how did you feel about the [RTB] adjudication?

Mateo: It's strange because I never was in front of the judge, never … It's horrible, you know.

Agustina: It was too many stress. Too many.

Maria (32, Dublin) expressed similar sentiments about her experience of dispute resolution at the RTB:

But even going to the RTB, the hearing or adjudication or something, that was even stressful for me, you know, because I thought they might have come as well, the landlords. I was actually hoping and praying for them not to come in, so I wouldn't have to see their faces. So they never showed up, which was okay. But still talking about kind of all these problems and issues, it's stressful. (Maria, 32, Dublin)

In as many as three cases, tenants declared their intention to emigrate due the seeming impossibility of finding alternative accommodation 12.

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12 In two cases these were migrants returning to their country of origin, in another it was an Irish born tenant emigrating abroad for the first time.
The tenancy conflict journey, as described above, typically involves a significant deterioration in the landlord-tenant relationship, usually after an event which jeopardizes the sustainability of the tenancy, such as a notice of termination or a rent increase. Once the tenancy enters a crisis period, the tenant is faced with a series of challenges, each of which have to be managed carefully and have considerable impact on the tenant.

Tenants struggle to assert themselves because of the stressful nature of what is often a highly informal and indeed interpersonal conflict with their landlord. They also seek to balance their desire to assert themselves and, ultimately, to sustain their tenancy with a fear of provoking further conflict and retaliatory conduct, which might further undermine their possibilities of remaining in the dwelling. In the midst of this already challenging situation, an extremely tight housing market characterized by high levels of landlord selectivity and apparent discrimination makes resolving the problem by obtaining an alternative dwelling difficult, stressful and deeply frustrating.

5.3 Security, agency and the landlord-tenant relation

From the above discussion, we can begin to appreciate the ways in which tenants’ agency may be comprised. This section discusses the different ways in which tenants experience limitations and obstacles with regard to expressing agency, challenging their landlord, seeking support or otherwise advocating for themselves. It argues that at the heart of these limitations is the structure of the tenant-landlord relationship. This relationship is crucial to understanding the experience of renters. Our findings suggest that this relationship should be conceptualised as a both a power relation and a social relationship.

5.3.1 The asymmetric nature of the landlord-tenant relationship

The landlord-tenant relationship is highly asymmetric, and this fact is evident from the outset of a tenancy. Tenants often begin a tenancy having suffered a difficult process of finding a property and ‘literally begging’ to be offered the tenancy. As one tenant put it:
I mean, before, you went to see a house or a flat and then you thought about it and then you agree to either rent it or not. Now you're begging. You are begging. You are begging to be housed (Lucia).

This experience is more than just a practical difficulty in obtaining a dwelling; it impacts tenants on a subjective level. Anne, a single parent with two children, one of whom had a significant disability, described her experience of attempting to find a property and experiencing dozens of rejections:

That was really tough. It was really tough now, I have to say. I felt, yeah, I felt like a complete failure.

The subjective experience of attempting to find a place to live, and the feeling of frustration associated with that, was captured by James who described the feeling of ‘passivity’:

You apply. You have to passively wait to be contacted for a viewing. Then when you go for the viewing, you get handed a form. You fill in the form, you hand it to the person, whether it’s the landlord or the estate agent, and again you have to sit back and basically wait for them to go, ‘I’ll pick that person’... You have to sit there passively and wait. You’ve no control over the situation.

The feeling of lack of control over something as fundamental as access to a home heightens the sense of dependency on a landlord. This was articulated by one interviewee in terms of the ability of landlords to ‘pick and choose,’ and demand information from tenants:

They organise kind of interviews for people interested in the property and in order to pass the interview—you know, there could be like fifty or eighty or even a hundred people turn up for an interview, you know … And whoever gets the property is a person who earns the most, you know, has no children and no pets … because landlords, they want to see your payslips, you know, this kind of stuff (Lisa, 34, Galway).

The above quote reflects a view expressed by nearly all tenants: landlords seek professional couples with no children and who are not in receipt of HAP or any other rent subsidy. Tenants often describe themselves in relation to this norm, i.e. in terms of how they deviate from it. For example, James referred to his tattoos and appearance as making it impossible for him to find a place, while others referred to being parents, being on HAP, being on disability allowance and so on.

Throughout the interviews, reliance on HAP came up repeatedly as a source of discrimination and the view that ‘landlords don’t want to know’ (James) was common. Five tenants, or almost 30% of interviewees, in receipt of a rent subsidy reported being told by a landlord that they would not accept HAP. Some tenants who were migrants also raised the issue of racism and discrimination, with one interviewee commenting that it was more difficult to gain the trust of potential landlords as a black man.

Within an already established tenancy, landlords also exercise control over many aspects of the dwelling. This includes decoration, visitors, pets, etc. One tenant described requiring permission to have guests in the house. Several raised the issue of pets and having to give up a family cat or dog. One tenant described how the family’s dog had had an enormously positive impact on her autistic son, but the dog would have to be given up as her new landlord did not accept pets.
Exercising control over the minutiae of tenants’ lives is linked to an aspect of Ireland’s renting culture. Tenants and Threshold advisers report that landlords often act as if the property is ‘their home’ rather than the tenant’s. This is also reflected in the very common experience of invasive behaviour by landlords (experienced by 12 interviewees), including entering dwellings without the tenant’s permission:

I work in the night, so I sleep ... And I heard boom, bang, talking, blah, blah, blah. And the door was slightly open. And I looking outside and the landlord with his little son [were there] … So it’s like the privacy is gone at that stage (Igor, 37, Dublin).

Given the difficulty tenants face in obtaining a tenancy, they are aware that there are very high levels of demand for rental housing and an extremely tight market. As such, tenants feel ‘easily replaced’, a point made by numerous interviewees:

[T]here's so many people now looking for places that we're easily replaceable, you know… [The landlord] can easily get rid of us and increase the rent three months after we move out, you know. Because they could definitely do that (Maria, 32, Dublin).

I know that there's a rent pressure zone there, but that particular landlord is quite able to bring somebody in who's foreign and say the rent is—like we're paying eight hundred and ninety now at the moment and, you know, he could easily get closer to two thousand for it (Damien, 46, Cork).

As noted by interviewees, because landlords work in the sector, they have a better understanding of the legislative context, rights and obligations, etc. Landlords are also often in a position to avail of legal support, for example, at RTB hearings or in the drafting of Notice of Terminations.

From the outset of a tenancy and throughout all of the above-mentioned aspects of the landlord-tenant relationship, tenants experience a significant asymmetry. This asymmetry is associated with a lack of control over their dwelling and a belief that landlords have significant power in how they allocate properties and as such significant have power over the tenancy. This is experienced at a subjective level in everyday ways by tenants, from being unable to keep a pet to landlords entering their home without permission, and thus to establish the feelings and privacy and security associated with ‘home’ and ontological security.

5.3.2 Fear of conflict

The most immediate obstacle tenants’ face is fear of the consequences of challenging their landlord, in particular loss of tenancy. However, in addition to concern about the consequences of conflict, tenants may also wish to avoid conflict itself due to the associated stress. For example, Alan, a student in Galway, stated that:

I could contact Threshold and maybe the RTB, bring it up as an issue. I’m pretty sure my landlord is unregistered, because she takes everything in cash … But I’d just be afraid of causing conflict.

Similarly, Dave (27, Dublin) noted that:

It was about a year of me contacting him before I actually did decide to go on to the RTB or Threshold, and if the Council didn't come out [to inspect the property] I probably wouldn't have [gone to Threshold/RTB], just out of fear of what could potentially happen, you know… [I]n my head … I was like, you know, he's obviously not going to like this [complaint], you know. I felt like as if I was going to be annoying him and I was going to be kind of stirring up something that I didn't want to be stirring up.
In some cases, unease around a potential conflict with a landlord was linked to the interpersonal nature of the relationship. For example, Sara (36, Dublin) describes how the fact that her landlord was an ‘old man’ made her feel guilty about raising complaints. A degree of empathy or identification is indicated in the following quote:

**Interviewee:** Like everyone says to me ‘grow a pair and tell him your fucking rights’ ... But it's not that easy. I don't like confrontation and... I mean, he's an older man as well ... Even though he's doing this to me I don't want to be arguing, you know what I mean?

**Interviewer:** Yeah. And how does it feel that he is an older man?

**Interviewee:** I don't know, it makes me feel guilty kind of sometimes. But, I don't know, it's hard to explain. I'd just rather keep the peace, you know what I mean?

The research findings suggest tenants have good reason to be reluctant to enter into conflict as landlord-tenant relationships often deteriorate significantly. This can include ongoing arguing and can become quite heated and emotional:

> Normally I'm a very strong woman, you know. But every second day he [the landlord] coming to my door, you know: 'If you don't give me that [rent] price you have to go out ... And every second day he coming (Agustina, 48, Dublin).

The messy, emotional, interpersonal and informal nature of conflict all pose challenges for tenants. Tenants can often feel particularly upset at what they perceive as unfair treatment, particularly because of the interpersonal nature of their relationship with their landlord. For example, Maria states her frustration with the fact that her landlords do not take into account her young baby:

> It's killing me that, you know, I have to fight for a right to actually stay in the house where I live for the last two years, with a little baby, and the landlords know about it and they still don't really care. They have two kids themselves.

She knows how many children her landlord has and appears to expect a degree of empathy or understanding arising from the fact that both she and her landlords are parents. A number of interviewees stated that they felt their landlord could have behaved in a more sympathetic or understanding fashion specifically because the landlord was aware of their personal lives. For example, having recently had a child, the special importance of a family dog or similar issues.

In addition, because the conflict relates to their home, it is very hard for tenants to compartmentalise, as indicated by Agustina (48) and her partner Mateo (43):

**Interviewer:** Do you feel like it's your home?

**Agustina:** No. No.

**Mateo:** Not anymore.

**Agustina:** For the last year, no [i.e. since conflict commenced].

**Mateo:** Not anymore.
When asked ‘why does it not feel at all like home anymore?’ Mateo replied, ‘because it’s really stressful, because we know he’s [the landlord] coming every month.’ Similar sentiments were expressed by other tenants. Aoife (45, Dublin) stated:

**Interviewer:** Do you feel at home in your current place?

**Interviewee:** No, definitely not. No, we just go there to put our head down basically. Yeah, we just come and go and put our head down. I’m just thankful that there’s a roof over our heads, to be honest with you, you know what I mean. No, it’s not home.

**Interviewer:** No?

**Interviewee:** It was home when we got there. Even though it was in bits we said, right, we’ll make it our home. And we’re right where we want to be, because I’m from [nearby neighbourhood]. Only five minutes from where I’m living is where I was living all my life. So it was great seeing everyone again, do you know what I mean? And I knew the kids would settle in school. And they have, they’ve made great friends. But no, since all this happened [referring to conflict with landlord] it’s not the same. No, it’s just a house. It’s not a home and it’ll never be a home ….

The ways in which tenants experience conflict with landlords recalls the relationship between home and ontological security discussed in Chapter 2. Conflict disrupts home as a ‘haven’, as a retreat to a place of control, security and safety. This is particularly the case because the conflict is itself related to the tenant’s home and potentially jeopardizes the future of that home. Thus, the very fact of conflict undermines one of the core functions of the home. Conflict, and the potential thereof, acts as a disincentive for tenants in expressing agency and addressing perceived breaches of their rights.

5.3.3 Fear of termination and rent increase

The most tangible, immediate and direct way in which tenants’ agency is curtailed is through fear of receiving a notice of termination and, to a significant but somewhat lesser extent, a notice of rent increase. As one Threshold adviser noted, ‘the vast majority of tenants’ main concern is protecting their tenancy’. Almost all tenants reported a fear of being issued with a notice of termination or experiencing an illegal eviction. The possibility of losing a tenancy as a consequence of challenging a landlord is also something Threshold advisers are aware of. For example, they take into account whether a tenant is in the first six months of their tenancy or coming towards the end of their tenancy cycle, as both are periods in which tenants are particularly vulnerable to termination.

Many tenants explained that they had been reluctant to challenge their landlords due to fear of losing their tenancy. Agnes (22), from Galway, believed that if she raised any issues with her landlord, ‘she’d put us out … She would have said, well, go find a different place then if this doesn’t suit’. This was a recurring theme throughout the interviews:

And then I was researching on internet and I call [Threshold]. And then first I was over here [in Threshold’s offices], I don’t know, 2018? … And the lady was telling me that we can report that to RTB … I was a little bit, you know, confused about this. The landlord might throw me out (Pawel, 40, Dublin).
So I had to put up with that because, as I say, you know, there wasn’t any other options there, you know, even though I kept looking [for another property]. But there wasn’t any other options, like. So, I mean, it’s like you complain, but you complain and you’re going to kick yourself a little bit, you know? Because, like, if you complain too much then you go out [of the property], you know? (Lucia, 41, Cork).

Fears of receiving a notice of termination were mainly related to fears of homelessness and fears of the stress of trying to find an alternative property, as well as the likely cost of rent in any such property. Threshold advisers commented that tenants are aware there is currently an extremely tight market and this affects their decision-making. Many interviewees referred to the difficulty of finding alternative accommodation and as a result having ‘no choice’:

Yeah, because, like, I’m on the disability, you know, after the accident. So with that money I cannot find anything else. That was the problem. I was afraid to report him to RTB. (Pawel, 40, Dublin)

Similarly, many tenants cited a fear of homelessness:

Even though we know we are in very bad situation with this house … With very small money … what can you do? And situation in Ireland now is very bad, you know? … And we have a problem with health, you know, as well. So we don’t know what step to take … If we report him we can lose place to stay … and maybe go homeless, you know? (Dorota)

Another interviewee, who lives with her father, stated that while she wished to challenge a rent increase she perceived as invalid, her father was afraid of becoming homeless:

Well, we both said it [the rent increase] is not kind of right, because it’s already very expensive for himself [interviewee’s father] and the two smaller kids. But I said to him I don’t think it’s right, because—well, in school we learned that [rent increases] needs to be X percent or something, and I heard other people saying that too. But he was kind of worried about getting on the street (Agnes, 22, Galway).

In addition, many tenants also had experiences of searching for a home for months to no avail, of sending hundreds of emails and receiving no responses, etc., as discussed above. Fears associated with losing a tenancy are particularly intense for tenants with children and/or in receipt of HAP. Both these cohorts viewed their chances of finding a property in competition with ‘professional couples’ as being close to zero:

We were kind of panicking. You know, one child. All these [property listings], you know, no pets, no children. That’s usually when you are searching apartment, you know. So you already felt your options were limited (Igor, 37, Dublin).

As another interviewee put it, ‘[a]s soon as you have children there’s no chance you can get something. (Lisa, 34, Galway)

It was also notable that a number of tenants made the point that they believed their landlord would be able to terminate their tenancy and ‘get them out’ irrespective of legislation protecting security of tenure. Threshold advisers also stated that the prevailing perception among tenants is that landlords can end a tenancy at will. Maria, for example, stated:

So they [the landlords] went to the solicitor, prepared their strategy to just basically kick us out … They’re going to definitely try something more … They just don’t care.
The following tenant challenged a notice of termination successfully at the RTB. However, she continued to feel that her tenancy was in jeopardy:

Interviewer: [Y]ou found out that you were successful with the RTB case. But you said that even though you were successful with the case, you still felt stressed because you didn't think that the issue was going to be over?

Lisa: I just sensed it. I was convinced that that was just temporary for us and I knew that [the landlord] would come up with a new plan of how to get rid of us. I just knew it.

Interviewer: What made you think that way?

Lisa: I don't know. It's just maybe I have good intuition … I just knew it wasn't the end, because if a landlord is determined to sell his property he will do what it is in his power or in her power to do that, you know … So nothing can stop him.

One interviewee even noted that his landlord, when challenged on the legality of a rent increase, replied: 'Fuck the law'!

5.4 Retaliatory conduct and penalization of tenants

The final form in which the challenges and complexities of the landlord-tenant relationship emerged in the qualitative interviews was the issue of retaliatory conduct and penalization. Retaliatory conduct, as noted, refers to any action undertaken by a landlord as retaliation for a tenant challenging the landlord, seeking support or otherwise expressing agency or seeking to advocate for themselves. As noted in Chapter 2, there is a small body of literature internationally on the subject of retaliatory evictions in the PRS.

Retaliatory conduct aims to influence tenants' behaviour, for example, by pressurizing tenants into complying with a rent increase, leaving a property altogether, or desisting from challenging a landlord. Retaliatory behaviour includes evictions and notices of termination, rent increases, refusal to carry out maintenance works, changing tenancy arrangements in such a way as to disadvantage the tenant (such as preventing tenants from having a pet), as well as generating conflicts needlessly. Retaliatory conduct can also include harassment or intimidation.

In terms of the legislative context, the 'penalisation of tenants' is prohibited under the Residential Tenancies Act. The Act states that:

[A] landlord of a dwelling shall not penalise a tenant for: (a) referring any dispute between the tenant and the landlord to the [RTB]; (b) giving evidence in any proceedings under Part 6 to which the landlord is a party (whether the tenant is a party to them or not); (c) making a complaint to a member of the Garda Síochána or to a public authority in relation to any matter arising out of, or in connection with, the occupation of the dwelling or making an application regarding such a matter to a public authority; or (d) giving notice of his or her intention to do any or all of the things referred to in the preceding paragraphs.

The Act defines penalisation as subjecting a tenant 'to any action that adversely affects his or her enjoying peaceful occupation of the dwelling concerned'.
Despite this legislation, Threshold advisers noted that ‘landlords shouldn’t penalize a tenant for going to the RTB, but they do’. Moreover, our findings suggest that retaliatory conduct is not uncommon. Indeed, 33% of interviewees reported experiencing retaliatory conduct. In almost all cases this involved the receipt of a notice of termination and/or illegal eviction. Some interviewees were unwilling to raise any issue with their landlord, even in relation to basic standards and maintenance issues. In some instances they were concerned that contacting their landlord might lead to a rent increase. In others there was concern about how their landlord might treat them:

> And the abuse I used to take down the phone off him [her landlord]. So then I stopped taking his calls. Because I knew his rent was going in every month. I don't ask him for money for paint. I never ask him to maintain the garden—I done it all myself—or when the ex-husband was there. And sometimes if I had a problem with the plumbing I'd pay the plumber myself. Always did. Never rang him for money for the plumber or anything because the abuse I'd get down the phone (Aoife, 45, Dublin).

Refusing to deal with standards and maintenance issues also occurred as a form of retaliation in itself in the following case, in conjunction with what the interviewee perceived as low-level harassment:

> So two weeks before the due date when we had to move out we responded to the landlords that the notice of termination you sent is invalid, meaning that we won't move out. And since then everything started. So at least every month… we're being harassed with an email or a letter or something that we have to move out. And a few other things also happened. They don't want to fix anything … They just don't want to do anything, but they just want to get rid of us with probably no reason, you know what I mean, to increase the rent… So they just basically want us out, but before we even move out they don't want to fix anything in the house for like, well, over a year now (Maria, 32, Dublin).

Some tenants were threatened or issued with notices of termination as a form of retaliation. Agnes (22, Galway) and her family initially refused to comply with an invalid rent increase, in response to which the landlord issued a notice of termination:

> She told us later on [about the notice of termination]. I said to her, ‘I’m not giving anything extra [in rent] while she hasn't got the rights …’ And then I went down to Threshold and told her [the landlady] about it, and then she said, ‘If this doesn't suit you, try to find a different place.’ She gave us I think one month to leave, or two.

Two interviewees received notices of termination because they had requested inspections from DCC Environmental Officers. As Derek put it, ‘[w]hen I filed that report [with DCC Environmental Officer] the landlord made damn sure I was out of the place’.

In the following case, challenging a refusal to accept HAP also led to the receipt of a notice of termination:

> So she kept refusing [to accept HAP] until I saw the ruling … I think it was the Working Relation Commissioners’ [referring to the Workplace Relations Commission] ruling in favour of a tenant who was refused by the landlord to accept HAP. So I got the link, I sent it to my [estate] agent and said, ‘Look, that's that ruling. You still refusing to accept HAP?’ And they said, ‘Yeah, the landlady is a hundred percent sure that she's going to refuse—that she refuses HAP.’ … So, you know, I came back here and, you know, like we started the case [with the WRC] … So she [the landlady] got scared. So she gave me a notice that I have to move out of the house because she was going to sell the house. All that was, you know, a response to me, like because I was threatening—well, she said that we were
threatening her to bring her to the Workplace Relation place … and the RTB as well … so she got scared and then she gave me a notice that I have to emigrate [sic] the property. (Lucia, 41, Cork)

Fear of retaliatory conduct can have a very immediate and negative impact on tenants, particularly by causing ongoing stress in relation to their dwelling:

I’m nervous of him knocking on the door and what he’s going to do. Like, he did threaten to take over the property if I didn’t move in three months … But I know I can call the guards if it comes to that, you know what I mean … But I just don’t know how nasty it’s going to get (Sara, 36, Dublin).

In the most extreme case which emerged in our interviews, a 35-year-old tenant of African origin was subjected to a campaign of intimidation and harassment, including physical intimidation, from both his landlady and her partner, causing him to ring the Gardaí on several occasions.

Throughout the interviews, it was evident that tenants did not feel they could challenge their landlord or advocate for their rights without fear of penalisation. Our findings suggest a strong belief among tenants that landlords will respond negatively to any such challenges and that existing legislation or protection does not represent a real obstacle to landlords’ ability to engage in retaliatory conduct. Challenging a rent increase, refusal to accept HAP, or any other issue was very much seen by interviewees as embarking on a path of conflict in which the likelihood that the tenancy would be jeopardized is high. It is thus a course of action tenants are reluctant to take and do so only when they view themselves as having little or no alternative.

Interviews with Threshold advisers also revealed that retaliatory conduct and penalization are common aspects of conflict between landlord and tenants. Advisers experience this very frequently, from landlords ‘hassling’ or ‘harassing’ tenants, to the direct issuing of notices of termination as penalization. Landlords often mobilize issues which had previously been unproblematic in the tenancy, such as the tenant’s dog or minor modifications made to the property, as leverage over tenants as a form of retaliation. Indeed, Threshold advisers report that retaliatory conduct is so widespread that they must always take it into account in order to sustain tenancies. For example, advisers on some occasions advise clients not to reveal to their landlord that they have contacted Threshold at all, as even this may trigger an adverse response. This gives a sense of the extent to which penalization and retaliation are commonplace within the rental sector and form a significant obstacle to tenants’ agency.

In terms of the RTB’s role in dealing with the issue of retaliatory conduct, moreover, one Threshold adviser comments that ‘the adjudicators don’t even want to hear the word ‘penalization.’ Threshold advisers perceive that it is not possible to have penalization dealt with effectively within the RTB adjudication process. In other words, this aspect of the legislation does not appear to be employed in practice.
Table 9 - Issues and experiences

<table>
<thead>
<tr>
<th>Issue</th>
<th>Number of cases</th>
<th>Proportion (rounded to nearest whole)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experienced termination</td>
<td>14</td>
<td>58%</td>
</tr>
<tr>
<td>Experienced rent increase</td>
<td>5</td>
<td>21%</td>
</tr>
<tr>
<td>Experienced illegal eviction</td>
<td>2</td>
<td>8%</td>
</tr>
<tr>
<td>Experienced significant standards and maintenance issues</td>
<td>6</td>
<td>25%</td>
</tr>
<tr>
<td>Experienced direct retaliatory conduct</td>
<td>8</td>
<td>33%</td>
</tr>
<tr>
<td>Experienced termination as retaliatory conduct</td>
<td>7</td>
<td>29%</td>
</tr>
<tr>
<td>Experienced refusal to undertake maintenance work as retaliatory conduct</td>
<td>1</td>
<td>4%</td>
</tr>
<tr>
<td>Experience HAP discrimination</td>
<td>5</td>
<td>21%</td>
</tr>
<tr>
<td>Experienced invasive behaviour by landlord</td>
<td>12</td>
<td>50%</td>
</tr>
<tr>
<td>Experienced harassment or intimidation</td>
<td>3</td>
<td>12.5%</td>
</tr>
<tr>
<td>Registered dispute with RTB</td>
<td>8</td>
<td>33%</td>
</tr>
<tr>
<td>Was successful in RTB dispute</td>
<td>8</td>
<td>33%</td>
</tr>
<tr>
<td>Overholding</td>
<td>3</td>
<td>12.5%</td>
</tr>
<tr>
<td>Experienced significant mental or physical health impacts</td>
<td>13</td>
<td>54%</td>
</tr>
</tbody>
</table>

5.4 Tenants’ agency and support

5.4.1 The Residential Tenancies Board

Eight interviewees, or 33% of our sample, engaged with the RTB’s dispute resolution service. This is quite a high proportion. In all cases, registering a dispute with the RTB occurred after engaging with Threshold and with their support. Indeed, interviews with Threshold advisers suggest that a very large number of tenants are not aware of the RTB when they first approach Threshold 13.

In all cases, registration of a dispute with the RTB resulted in a positive outcome for the tenant with regard to the determination order issued by the RTB. For example, Igor and his family received a notice of termination with a short notice period and he registered a dispute with the RTB. Once the landlord became aware of this, before a hearing had occurred, he changed his handling of the situation and offered Igor a flexible date to leave the dwelling. Ludovica reported a similar experience. Having received a notice of termination, she registered a dispute with the RTB online. Once the RTB contacted the landlord, and again before the dispute hearing took place, the landlord withdrew the notice. Paul also received a positive outcome and described the process as ‘very, very, very fair’.

In other cases, tenants related a more mixed experience. Agustina and her partner Mateo contested a rent increase via an adjudication hearing. They were successful in this, but found the experience quite stressful:

13 Although Threshold advisers also noted that tenants are increasingly aware of the RTB in more recent years.
It was very bad because we didn't know. But the judge lady [the adjudicator] was nice, speaking very nice. Everything was perfect. But, you know, when you are first time there you're scared because you don't know what's happening (Mateo).

This stress was added to by the fact that the landlord subsequently appealed the outcome and, at the time of interview, the outcome was uncertain. Thus, while the immediate issue was addressed, the RTB process was accompanied by ongoing uncertainty.

The stressful nature of an RTB hearing was something commonly referred to by interviewees:

It was still terrifying actually going, like, because I didn't know what was going to happen (Dave) I rang [Threshold adviser] when I came out of the adjudication absolutely sobbing because the adjudicator made me feel so low and absolutely worthless, I swear, because it's very—it's hard going into them things, it really is. It's hard going in. I had my father there with me and my daughter (Aoife).

But even going to the RTB, the hearing or adjudication or something, that was even stressful for me, you know, because I thought they might have came in as well, the landlords. I was actually hoping and praying for them not to come in so wouldn't have to see their faces. So they never showed up, which was okay. But still talking about kind of all these problems and issues it's stressful, you know (Maria).

Threshold advisers also noted that for those tenants who attend an RTB alone, i.e. without support from Threshold, they often have an ‘absolutely awful experience’, are ‘traumatized’, and ‘don't feel they have been listened to’.

As noted, all interviewees who registered a dispute with the RTB were successful in their adjudication hearings. However, these victories were often a case of ‘winning the battle but losing the war’. For example, Agnes was successful in her dispute in relation to a notice of rent increase; however, immediately after the hearing the landlady told her that this ‘wasn't the end of it’ and shortly afterwards she was issued with a notice of termination. Lisa describes a similar experience:

That [hearing] was very stressful because nobody knew what will happen after that. In the New Year we were informed that we won the case, but I just had a feeling that it was just temporary. And I was so right, because two weeks after that we received a second notice of termination of tenancy.

For some tenants, their experience with the RTB was described in terms of injustice. In these instances, tenants felt they had been wronged and wished to see a clear recognition of this from the RTB:

I wasn't looking for money out of it. I wasn't looking for anything like that. I wanted…someone to give out to him and say, look, you can't be doing—you can't do this, that's not the way it works. But no, nothing happened to him. (Aoife)

In some case this experience of perceived injustice appeared to be among the most significant aspects of the interviewee's experience with regard to their tenancy. Pawel and his partner, for example, experienced what can only be described as horrific minimum standards violations over a prolonged period. As noted above, they had been afraid to register a dispute with the RTB for fear of losing their tenancy through a retaliatory termination. Pawel had been homeless in the past and was particularly concerned with this. Eventually, they did bring a dispute to the RTB and were awarded €3,000. However, they felt the adjudication process did not allow them to express the full extent of their experience and, in the end, the landlord never paid the monetary compensation.
Indeed, although they have been evicted they reported that the property continues to be let to new tenants in the same appalling conditions. Pawel described the experience of adjudication as follows:

You looking for support, you know, to someone who like try to listen you or give you advice or something, you know. And when you have this chance, you think you have now chance to say what's happened, you know, how you feel and all this. But over there [during the adjudication] was like two, three questions and if you try to say something she [the adjudicator] just tell you, 'sssh.'

This way of experiencing the dispute resolution process can also be understood in relation to the asymmetric nature of the landlord-tenant relation. In virtually all of the cases that arose during our interviews, the tenant’s experience of attending a dispute hearing was one of finding the courage to stand up to their landlord, who they viewed as being in a position of power in relation to them. However, the dispute resolution process does not conform to the expectation that tenants appear to hold, which is that they should feel heard and vindicated.

5.4.2 Experiences of tenant agency

Although this chapter has focused on obstacle to tenants’ agency, the above discussion of the RTB indicates that tenants can express a degree of agency by challenging their landlord and seeking support. Although expressions of agency occurred in a context in which tenants were always mindful of their landlord’s reaction and the precarious nature of their tenancies, in small and large ways tenants were able to advocate for themselves. For some, their agency developed over time and experience. Of course, registering a dispute with the RTB, preparing a case and attending the hearing are all examples of the agency tenants can express. Aoife (45, Dublin) described how in earlier years she was much less assertive, but this had changed through experiences of conflict with various landlords:

When I came [to Threshold] in 2015 … I was just devastated. And, I don't know, I'm just after finding my voice now. And you just can't let these people away with it. You just can't. You have to fight back, you really do.

Lisa also had many years’ experience renting and took action to seek support immediately upon receiving a notice of termination:

Oh, I didn't have to do much thinking … to be honest, because in my experience—most of them [landlords] are just bad. So I knew, I just knew automatically that next thing I have to do is just go and talk to people at Threshold. I can't explain you. I just automatically—I knew that that's what I have to do, because landlords are greedy, everybody is just lying to you, nobody—and nobody cares actually, you know.

In numerous instances, interviewees had sought and received support from numerous organisations or individuals, including service providers and elected representatives. These provided advice and support and in some instances accompanied the tenant to RTB hearings. One tenant received support from a local representative in finding alternative accommodation.

In three cases, interviewees were currently or had been overholding. In James’s case, overholding was consciously undertaken to avoid homelessness:
I went to the RTB [adjudication on overholding] as well and I wouldn't agree to anything. Because I said to the landlady direct I couldn't agree to leave. I said, ‘To me that's dishonest.’ I says, ‘I knew I had nowhere [to go].’

There are thus a range of actions and strategies that tenants adopt. However, as noted in the above discussion of the ‘landlord-tenant conflict journey’, these actions and strategies are typically employed when the tenancy is already in significant jeopardy. Moreover, the challenges tenants face in advocating for themselves, and the potential and often very real consequences of doing so, emerged strongly throughout the interviews.

5.4.3 Support from Threshold

For the majority of interviewees, support from Threshold was central to their ability to advocate for themselves and as such to express their agency. The majority of interviewees made clear that throughout their experience of issues with their tenancy they were in frequent contact with a Threshold adviser and consulted them with regard to all major decisions. The provision of information by Threshold plays a crucial role in what is an increasingly complex legislative context:

I always follow all the steps that I'm advised to follow through Threshold, you know. I never really do anything myself because these are just too important things. You can easily—you can easily fuck something up—excuse my language (Maria).

And then the great thing about Threshold—they were so helpful about informing you about your rights. So it's just knowing who to contact and knowing what to do to address these issues (Alan).

Gaining clear information reduces the uncertainty and stress that tenants experience:

I was very stressed before that I might not be right, and maybe the landlord is right. But knowing that [named Threshold adviser], this is her job … and she knows what she's doing … and she explained (Agnes).

Gaining knowledge and understanding of the rights and obligations associated with rental tenancies was also something that enabled tenants to more effectively advocate for themselves:

I keep in touch with [named Threshold adviser] a lot and [she is] brilliant … and she gives me a lot of information. And even through emails … Before that I'd be like oh, God, he's [referring to the Landlord] able to do that and he can put me out. And now I know he can't (Aoife).

The support tenants received at a more interpersonal level is also important:

I have a very good experience here in Threshold. They're very effective and, you know, they really care. And they're very human as well about the rights of the tenants, and that's very important, you know. They really care … It's very human and that's very helpful, you know (Lucia).

Being accompanied to an RTB hearing by a Threshold adviser was something tenants found helpful, in particular with regard to the stressful nature of the experience. As Aoife noted when speaking about her forthcoming RTB hearing, ‘[Named Threshold adviser] will be coming in with me that day. So I'm not worried about it’.

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Security and Agency in the Irish Private Rental Sector
Similarly:

I met with [named Threshold adviser] and he explained ... He explained everything. And he's the loveliest guy I ever met. Helpfullest guy, like. He says, 'Listen, I give you a hand,' … He filled out the form what we need to put through to the RTB (Igor).

For Dave, advice from a Threshold adviser was important in registering a dispute with the RTB:

I contacted Threshold at that stage and then that’s where they kind of came in. And she was just like, look, if you put up for an adjudication online I’ll come to the hearing with you that day. [B]ecause I didn’t know—like going in there I hadn't a clue, you know. We just tend to sign like a lease or something and you read it but like you don’t know what your rights really are until you’re put against it ... So it was real handy that I had someone there in Threshold.

The experiences of tenants and the context within which they must act are of course also relevant to the work done by Threshold advisers. During interviews, advisers expressed frustration at the limited security of tenure enjoyed by tenants, significant levels of non-compliance among some landlords and the power of landlords to terminate tenancies (for both valid and invalid reasons). They broadly concurred with the perception among tenants that landlords can end tenancies at will and that the regulatory regime is ineffective in preventing breaches of the legislation by landlords or adequately penalising landlords who do commit such breaches.

These considerations play a central role in limiting the work done by Threshold advisers. Echoing evidence from the UK (discussed in Chapter 2), interviewees stated that it was difficult to advise tenants to advocate for themselves or, for example, to register a dispute with the RTB, given the reality that they may be subject to retaliatory eviction or another form of penalisation by their landlord. As such, Threshold advisers must navigate a fine line between supporting tenants to advocate for themselves while also sustaining their tenancy.

5.5 Analysing the landlord-tenant relationship

This chapter has presented data emerging from qualitative interviews conducted with tenants. Our key finding is that in order to understand the capacity of tenants to express agency and therefore to advocate for themselves, we must situate tenants’ experiences in the context of the tenant-landlord relationship. This relationship consistently emerged, in a variety of ways, as the key factor shaping the decision of tenants in terms of whether, and how, to take action in response to a perceived breach of their rights or the threat of their tenancy ending. The concept of a ‘tenant-landlord conflict journey’ underlines how tenancy relationships evolve over time and how conflict is experienced and managed within that context.

Most importantly, our findings suggest that the landlord-tenant relationship must be conceptualised as both a social relationship and as a power relationship. With regard to the former, the largely unprofessional nature of the Irish rental sector is such that tenants and landlords typically form an interpersonal relationship which can be both friendly and highly informal. However, this has implications for the way in which conflict manifests and for the impact of conflict on tenants. The interpersonal nature of the landlord-tenant relationship can ensure that conflicts take on a messy, emotional and often volatile nature. Both parties may feel hurt and betrayed. This can make it more difficult for tenants to advocate for themselves, as generating conflict with their landlord may mean entering into an upsetting interpersonal conflict which, for the tenant, becomes entwined with how they feel about their home.
The power dynamics within the landlord-tenant relation emerged very strongly throughout our findings. From the outset of a tenancy, tenants are acutely aware of the power landlords hold in allocating tenancies, in setting the rules for tenancies and, most importantly, in ending tenancies. Tenants experience this power relation on a subjective level. For example, their experience of powerlessness is shaped by the difficult task of finding a property, often 'literally begging,' by instances of landlords entering their home without permission and by stories heard from friends and through the media. Our findings also suggest, however, that the power of landlords to terminate tenancies is very real and that tenants do, in fact, experience retaliatory conduct up to and including the termination of their tenancy or illegal eviction. Ultimately, tenants depend on their landlords for access to their home and this has important impacts on the extent to which tenants can express agency and advocate for themselves.

The power of landlords in their relationship with tenants is neither natural nor inevitable. Instead, it is a function of three interacting sets of factors:

1. Cultural power: this arises from the norms and expectations associated with the perception that the dwelling is the landlord's home and property, and that the tenant simply has access to it under terms set by the landlord for a duration also set by the landlord. This can serve to disempower tenants by creating norms around landlord behaviour and tenant expectations.

2. Legislative power: this arises from the scope that landlords enjoy for ending tenancies. In the Irish context, landlords may terminate tenancies on a number of grounds, and several of these relate to the intentions of the landlord (such as intention to sell or refurbish). In practice, basing tenancy terminations on future intentions opens significant scope for landlords to terminate tenancies at will, and this is certainly how the dynamic is perceived by tenants. The broad scope for the termination of tenancies similarly facilitates retaliatory action by landlords, which was both feared and experienced by many of our interviewees. The apparent absence of mechanisms to check penalization by landlords is a further issue.

3. Market power: is constituted via landlords’ control over the allocation of tenancies and the setting of rents. Moreover, our data, reflecting the Irish context, suggests tight supply and rent price inflation confer significant power upon landlords. This is of particular concern for those tenants who deviate from the perceived ideal of the 'professional couple.' The absence of affordable alternative properties intensifies tenants’ dependency on their landlord, thus curtailing both security and agency. Ultimately, market provision of rental housing means landlords own and control a scarce resource which tenants need to access to. Market power is thus constitutive of the asymmetrical relationship between landlord and tenant.

The following chapter continues our discussion of the landlord-tenant relationship and deals with implications for policy and practice.
CHAPTER 6

Conclusion

Ireland has experienced a series of significant policy reforms in the PRS in recent years, as well as much debate and discussion as to the effectiveness of these reforms. Some of the most significant issues, such as unaffordable rents, weak supply and poor security of tenure, not to mention homelessness, continue to be major challenges for housing policy.

There are of course many factors which shape the ongoing difficulties in the housing system and the challenges faced in terms of policymaking and implementation. This report focuses on the capacity of tenants to advocate for themselves and to remedy breaches of their rights and of the legislation. It does so by presenting evidence on the capacity of tenants to exercise agency and by analysing the factors which shape that capacity. Tenants have an important role to play in contributing to effective policy implementation in the PRS and challenging the culture of non-compliance which currently bedevils attempts to reform renting in Ireland. Understanding tenants’ agency is central to how policymakers, regulators, service providers and others can support and empower tenants to do so.

6.1 Key findings

Based on in-depth, qualitative interviews with tenants, as well as additional interviews with frontline service providers and other experts, the core findings of the report are:

- **Landlord-tenant conflict journey**: the findings suggest a pattern to conflicts between landlords and tenants, encompassing the following steps: initial relationship; conflict trigger; landlord reaction; and crisis management. Such conflicts typically manifest due to emergence of an issue which jeopardizes the sustainability of the tenancy. For the tenant, the ‘crisis management’ phase is crucial and involves the attempt to navigate three distinct factors: (1) advocating for themselves; (2) managing the conflict with the landlord with a view to sustaining the tenancy; (3) seeking alternative accommodation. Managing these complex issues, all while confronting the imminent likelihood of losing their home, causes substantial stress and instability for tenants.

- **Landlord-tenant social relation**: the largely unprofessional nature of the Irish rental sector is such that tenants and landlords typically form an interpersonal relationship which can be both friendly and highly informal. However, this has implications for the way in which conflict manifests and for the impact of conflict on tenants. The interpersonal nature of the landlord-tenant relationships can ensure that conflicts take on a complex, emotional and often volatile nature. Both parties may feel hurt and betrayed. This can make it more difficult for tenants to advocate for themselves, as generating conflict with their landlord may mean entering into an upsetting interpersonal conflict which, for the tenant, becomes entwined with how they feel about and experience their home.

- **Landlord-tenant power relation**: From the outset of a tenancy, tenants are acutely aware of the power landlords hold in allocating tenancies, in setting the rules for tenancies and, most importantly, in ending tenancies. Tenants depend on their landlords for access to their home and this has important impacts on the extent to which tenants can express agency and advocate for themselves. The power asymmetry between landlords and tenants is produced and sustained by cultural, legislative and market factors.
Fear and uncertainty play a significant role in shaping tenants’ agency. Our findings suggest tenants fear conflict with their landlord per se, and also fear the risks associated with conflict with their landlord. These risks included the loss of their tenancy. Fear of landlord retaliation is an important component of how tenants experience and manage conflicts and attempt to express agency.

Our findings suggest that the power of landlords to terminate tenancies is considerable and that many tenants do in fact experience retaliatory conduct, including the termination of their tenancy or illegal eviction.

The market context, specifically the absence of affordable alternative housing, intensifies the above mentioned fears and further constrains tenants’ agency. Landlord selectivity and discrimination are significant components of the rental market, which make alternative housing particularly difficult to access for some.

These findings, in conjunction with the overview and analysis presented in Chapters 3 and 4, have a number of implications at the level of policy and practice. These relate primarily to how we think about the relationship between landlord and tenant with regard to the legislative and regulatory framework for the rental sector. It is worth considering here that currently the relationship between landlord and tenant is understood and framed primarily either in legalistic or in market terms.

With regard to the former, the regulatory context, in particular as laid out in the RTA, frames the relationship between landlord and tenant as a contract in which both parties have rights and obligations. This, in turn, shapes the RTB's framing of the landlord-tenant relationship, especially with regard to the dispute resolution service. Regulation thus seeks to ensure that both parties comply with their obligations and respect each other’s rights. This perspective underpins the dispute resolution process, which seeks to determine to what extent the respective parties have breached their obligations.

With regard to the latter, the framing of the landlord-tenant relationship in market terms treats landlords and tenants in terms of the interaction of supply and demand in the marketplace. This perspective is underpinned by the assumption of a straightforward market exchange between individuals. Both of these perspectives fail to grasp what we might consider the more sociological aspects of the relationship between landlords and tenants. Most importantly, they ignore the fact that tenant and landlord are not merely equal parties to a contract, nor are they atomised market actors. They are tied together in a relationship which is both a social relationship and a power relationship. The power asymmetry is particularly important and permeates all aspects of tenants' experience of renting.

The most striking finding of our research is the extent to which the capacity for landlords to exercise power over tenants is the chief obstacle to tenants' ability to express agency, to advocate for themselves and thus to contribute to the creation of a culture of compliance in which legislative interventions can be most effective. As noted in the previous chapter, landlords are ultimately in control of tenants' continued access to their home and this constrains the choices and actions of tenants.

The power asymmetry between landlords and tenants derives from three sets of factors pertaining to culture, legislative context and market context. The legislative context is the most immediate and concrete. The tenancy
arrangements set out in the RTA provide for a number of situations in which landlords can terminate a tenancy. In addition, the fact that a number of these relate to the intentions of landlords (such as intention to sell, refurbish or use the property) make it difficult for tenants to contest either before, or indeed after, the tenancy is terminated.

The current market context further entrenches the extent to which tenants are dependent on their landlord. For the majority of our interviewees, alternative accommodation was both difficult to obtain and expensive. As such, the cost of losing a tenancy, in terms of stress, frustration, time and money, is high. Both these sets of factors, as well as Ireland’s historical preference for homeownership, feed into a culture of renting that also fosters an asymmetrical power relationship between landlords and tenants. As noted by both tenant interviewees and Threshold advisers, landlords often perceive the dwelling as ‘their home’ or ‘their property’. What is absent is a culture in which rental property represents the home of the tenant, with all those characteristics we associate with home, including privacy, stability, security, control, autonomy, etc.

The power asymmetry which arises out of these sets of factors restricts the capacity of tenants to exercise agency and to advocate for themselves. It also imposes a significant burden on those tenants who do express agency, advocate for themselves and challenge breaches of their rights. For tenants, managing the complex, interpersonal relationship with their landlord while attempting to sustain their tenancy and find alternative accommodation is very stressful indeed, and in some cases leads to physical and mental ill health.

6.2 Policy implications

These findings have implications for policy, practice and regulation. At the most immediate level, they suggest that the ‘tenant-led’ components of the regulatory regime are not fully effective. The tenant-led components, including the registration of disputes by tenants with the RTB, rely on the ability of tenants to exercise agency. Consequently, if the agency of tenants is compromised the tenant-led component of the regulatory regime and policy implementation will not be fully effective. The present report cannot by its nature reach a definitive conclusion on the extent to which the compromised nature of tenants’ agency explains the limitations of recent policy reforms. However, our findings support those analyses which have argued that the vulnerability of tenants plays an important role. Policy reforms to the sector which are not cognisant of the vulnerabilities of tenants and do not include measures to protect tenants from the risks associated with advocating for themselves risk failing to meet their objectives.

An additional implication for policy that arises from our findings is the importance of retaliatory conduct. Further research is certainly required to identify the extent to which retaliatory conduct is experienced by tenants. The findings presented here, particularly in conjunction with research from the UK, suggest that it may be a widespread issue and plays a role both in constraining tenants and in tenancy loss, and therefore potential homelessness. The effectiveness of current provisions and policy is not clear.

Strengthening of security of tenure is one way to further protect tenants and enhance their ability to express agency. The current security of tenure provisions introduce a significant degree of uncertainty for tenants linked to the various ways in which tenancies can be terminated. The fact that some of the grounds of tenancy termination are based on landlords’ intentions introduces further uncertainty for tenants. Removing such uncertainties would eliminate much of the risk of tenancy loss, which acts as one of the main constraining factors on tenants’ agency.

These arrangements are discussed in greater detail in Chapter 3.
Some recent policy reforms have sought to address this issue, for example, by requiring landlords to submit a statutory declaration of their intention to sell a property. Our findings suggest that the further strengthening of this aspect of the tenancy termination process will enhance tenants’ agency. However, the elimination of grounds for within-tenancy terminations may be the most effective way to eliminate the uncertainty, risk and fear which currently constrain tenants’ capacity to advocate for themselves.

At a wider level, the report’s findings raise questions about the nature and rationale of the present regulatory regime. As noted above, the principal way in which the relationship between landlords and tenants is framed within current legislation is in terms of two equal parties, each with rights and obligations. Our findings highlight that the relationship between landlord and tenant is highly asymmetrical. This suggests that a regulatory framework which is more explicitly cognizant of the asymmetrical nature of the landlord-tenant relationship may be more appropriate. The power to terminate a household’s access to their home is deeply significant. In fact, there are few other situations in which one private individual exercises power of such an important nature over another individual or household. In this respect, the landlord-tenant relation might be seen as akin to the employer-employee relationship. Employees require specific protections in the context of their employment relationship, as employers exercise control over their continued employment and hence livelihood. Similarly, tenants depend on landlords for continuing access to their home. Incorporating a recognition of this vulnerability into how the regulatory framework and policy is designed will strengthen their effectiveness.

These considerations have a direct bearing on the question of non-compliance among landlords. Although further research is required, there is certainly grounds for concerns about widespread non-compliance with the RTA and other provisions. The power asymmetry between landlords and tenants plays a part in sustaining this culture of non-compliance. By restricting tenants’ agency, the current regulatory regime undermines the important role that tenants might play in transforming the culture in the rental sector.

As discussed in Chapter 3, new measures introduced in the summer of 2019 grant the RTB the powers to initiate investigations and actions against landlords in relation to certain matters, including with regard to rent increases. It is still too early to determine the impact of these new measures. However, the report findings support the rationale for these measures and underline the importance of the RTB playing a more active role in protecting tenants and tackling non-compliance.

6.3 Recommendations

6.3.1 Recognise the asymmetric nature of the landlord-tenant relationship

Recognition of the power asymmetry inherent to the tenancy relationship should be incorporated into the regulatory framework for the rental sector. This asymmetry is inherent to the landlord-tenant relationship because landlords own and, to a greater or lesser extent, control the tenant’s home.

It is therefore inappropriate to frame the relationship between landlord and tenant as either a legal contract between equal parties or as a simple market exchange. The regulatory framework should aim to protect tenants and to mitigate the asymmetrical nature of the tenancy relationship. The findings presented here suggest that a reconsideration of how the tenancy relationship is understood within the regulatory framework and policy more generally is needed to strengthen tenants’ agency. Moreover, greater recognition that tenancy relationships are often interpersonal and social relationships may strengthen regulation and policy.
6.3.2 Enhance security of tenure to strengthen tenants’ agency

The most immediate way in which the above can be progressed is by strengthening secure occupancy, and specifically the security of tenure arrangements set out in Part IV of the RTA. Many commentators, including Threshold, have already argued that greater security is required both to ensure secure homes for tenants but also to underpin other aspects of rental sector policy, such as rent regulation. The findings presented here support this view and demonstrate that tenancy sustainment is an overwhelming priority for tenants. The report finds clear evidence that the absence of de jure security, as well as cultural and market factors that undermine security, are central to limiting tenants’ agency. The view among tenants that landlords can terminate tenancies ‘at will’ is widespread and shapes tenants’ decision-making throughout what we have called the ‘tenant-landlord’ conflict journey.

6.3.3 Tackle retaliatory conduct and penalization

The report findings suggest that retaliatory conduct and penalization are not uncommon in the Irish private rental sector. This is consistent with evidence from similarly structured rental sectors, such as the UK. If retaliatory conduct is not tackled, tenants’ agency will remain severely compromised. Further evidence is required on the nature and extent of retaliatory conduct in the Irish context.

6.4 Conclusion

The Irish rental sector has undergone substantial reform in recent years and yet major problems remain. The policy objective of creating a rental sector which represents a long-term, secure and affordable housing option for individuals and families continues to be a challenge. The analysis and findings presented here demonstrate that secure occupancy, the landlord-tenant relationship and tenants’ agency are key to that challenge. Tenants currently play an important role in the regulatory dynamics of the private rental sector. That role is, however, undermined by the ways in which tenants’ agency is constrained. As one Threshold adviser noted, ‘tenants are left to regulate the sector, and they’re the victims in all this’.

This report sheds light on those factors which limit tenants’ agency and thus on how tenants can be supported and empowered to advocate for themselves. A rental sector which protects tenants to create a context in which they can challenge and remedy breaches of their rights and of the legislation will ultimately be more conducive to effective policy implementation and regulation and the creation of a culture of compliance.

The factors which constrain tenants’ agency, moreover, also raise wider issues for how we understand the rental sector in Ireland. The absence of security, widespread fear of losing a tenancy, emotional strain caused by uncertainty and fear of conflict with landlords or retaliatory conduct all speak to a rental sector which does not provide what we can consider to be the key characteristics of ‘home’: security, stability, privacy and safety. However, the goals of strengthening tenants’ agency and creating a rental sector which provides secure and stable housing are not only mutually compatible, they strongly complement each other. Recognising the constraints which tenants face and strengthening tenants’ capacity to express agency should therefore be a priority for all those concerned with the future of renting in Ireland.
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National Free phone Helpline:
1800 454 454
Monday - Friday
9am to 9pm
advice@threshold.ie

Dublin Advice Centre (Head Office)
21 Stoneybatter, Dublin 7
D07 KV61

Cork Advice Centre
22 South Mall, Cork
T12 C2YN

Galway Advice Centre
Prospect Hill, Galway
H91 HC1H

www.threshold.ie