



An analysis of the  
**Residential Tenancies Bill  
(Amendment) (No2) Bill 2018**

*January 2019*

## **Analysis of Residential Tenancies (Amendment) (No. 2) Bill 2018**

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Threshold welcomes the publication of the Bill, which promises to strengthen Rent Pressure Zone enforcement, enhance notice periods for tenants, and empower the Residential Tenancies Board to investigate some breaches of the act. The bill falls short in some regards, most significantly in the absence of provision for dwelling specific rent transparency, and there is a missed opportunity to make small but significant legislative changes which would bring certainty to both landlords and tenants. In Threshold's opinion an open and transparent rent register would enable proper enforcement of the RPZ legislation and is consistent with other registers such as the residential property register and the commercial leases register.

In addition to the forgoing, we would like to make a general point about the growing complexity of the Residential Tenancies Act. The new bill adds an additional layer to an already confusing legislative regime. Ms Justice Marie Baker recently commented that the current Act is "more than just confusing, it is occasionally impenetrable<sup>1</sup>". The legislation is intended to be used by both landlords and tenants to regulate their relationships without recourse to expert legal advice. However, the act has long since outgrown interpretation by anyone other than specialists in the area. We reiterate our call for the act to be completely revised and restated to ensure that it is fit for purpose.

### **Annual Registration**

The amendment of section 134 requires landlords to register a tenancy at its commencement and annually thereafter during the tenancy. The registration fee will reduce from €70 to €40 (as per amendment to S137).

Annual registration will provide more up to date and transparent information to the RTB to improve and regulate the private rented sector. This annual registration will capture any changes in rent during a tenancy. It is important that these be monitored and appropriate action taken if there has been an illegal rent increase. Annual registration will also be necessary to update any future rent register.

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<sup>1</sup> Judge Baker made her comments in the forward to Laura Farrell, *Residential Tenancies*, Bloomsbury, 2018 at page v.

The Residential Tenancies Act already provides that changes to rent are to be notified to the RTB, however this is not a legal requirement. It is critical therefore that annual registration includes the proposed section 144A to ensure that the updated rent is included with the registration details. Threshold suggests that provision should be made to allow the RTB to make use of the data gathered during registrations as part of their dispute resolution function. Currently data gathered by the landlord registration section of the RTB is not available to adjudicators or tribunals.

We believe annual registration and the accompanying fee should not place an undue burden on landlords. The registration process should be simple, done at a click of a button via the RTB website or through a simple paper form. We recommend that the fee be further reduced or removed entirely. A reduced annual fee for 340,000+ tenancies will still bring in substantial revenue, however the RTB is not a profit driven enterprise and increased administrative costs for landlords should be avoided if possible.

## **Extension of Notice Periods**

The amendment of section 66 (c) extends the notice periods a landlord must give for tenancies lasting over 6 months and less than 5 years. These tenancies will be subject to notice periods of either 90 days or 120 days. The increase in notice periods is welcomed and reflects the current reality of renting in Ireland where finding alternative accommodation can be exceptionally difficult. It is our view these longer notice periods will also reduce the risk of homelessness associated with tenancy terminations. Many tenants, particularly those who are in receipt of HAP, may experience extreme difficulty in sourcing alternative accommodation in a short timeframe.

Proposed increases:

Duration of Tenancy	Proposed Notice Period	Current Notice Period
Less than 6 months	28 days	28 days
6 months or more but less than 1 year	90 days	35 days
1 year or more but less than 2 years	120 days	42 days
2 years or more but less than 3 years	120 days	56 days
3 years or more but less than 4 years	120 days	84 days
4 years or more but less than 5 years	120 days	112 days
5 years or more but less than 6 years	140 days	140 days

6 years or more but less than 7 years	168 days	168 days
7 years or more but less than 8 years	196 days	196 days
8 years or more	224 days	224 days

In this context we would suggest that there is little rationale in retaining the notice period of 28 days for tenancies of less than six months, while increasing the notice period for tenants' resident for six months and one day to ninety days. We recommend the notice period for tenancies of less than 6 months needs to be extended in the same way.

## **Publication of Determination Orders**

The amendment of Section 123 will require the RTB to publish all determination orders. While it is currently the practice of the RTB to publish determination orders this addition raises the question as to whether the orders should be anonymised prior to publication. This will avoid the record being used as a database to blacklist tenants who have asserted their rights under the Residential Tenancies Act.

## **Definition of Substantial Change for the purposes of the Rent Pressure Zone exemption**

The Bill provides a definition of "substantial change in the nature of the accommodation" (section 3(1) (c) of the Bill amends Section 19 of the 2004 Act by the insertion of a new section (5A) to section 19.) This is an issue which has been of major concern to Threshold and others since the introduction of rent control measures and the inclusion of a definition is to be welcomed.

The rent pressure zone legislation allowed for some exemptions from the 4% limit. The most significant exemption was where a property had undergone "substantial change" since the rent was last set. This allowed a landlord to set a new rent above the 4% limit. In the absence of a definition of "substantial change" the measure was used to justify large rent increases where the property had not undergone significant alteration. Threshold's experience would suggest that abuse of this section is a significant issue.

The Bill states that where a landlord seeks to rely on ‘substantial change in the nature of the accommodation’ to increase the rent by more than 4%, certain conditions have to be met. At least 50% of the floor area must undergo renovation and they must be structural in nature to the extent that: The internal layout is permanently altered, or the dwelling is adapted for use by disabled people, or the number of rooms is increased, or a permanent extension is added, or the BER is improved. The Bill states that the works carried out will not be considered substantial change if they are to bring the accommodation up to meet minimum standards.

We have concerns that there is a level of imprecision in the definition. The requirement that 50% of the floor area undergoes renovation is opaque and appears to require either that 50% of the floor area is altered or that 50% of the floor area is required for the renovation to take place. We would welcome clarity on this issue. We would encourage a tighter definition of ‘increase in the number of rooms’ to ensure that this cannot be achieved by partitioning existing rooms.

## **BER Exemption to RPZ rules**

The addition of 5(A)(a)(V) allows for an exemption to the RPZ rules in an instance where the BER of a property has been improved. The issue of poor standards is an area of concern for many tenants in the PRS. It is estimated that 55% of all rental properties have a BER rating between D and G<sup>2</sup>. A home with a poor BER rating can result in high energy bills and health issues. Fuel poverty is a real challenge for many older people and those on limited incomes. Efforts to improve the BER in rental properties are welcome. However, we have reservations about the exemption in its current form. It is unlikely to benefit tenants, who may see limited financial savings and little improvement in living conditions. Rather it provides landlord with a means to increase rents with little cost or effort.

Under this measure a landlord could install one energy saving measure in the home, eg. installing/upgrading attic and cavity insulation. Using the grants currently available, the average cost of this measure would be €937 and would bring a D, E, F or G BER rated home to B, C, D or E rating respectively.<sup>3</sup> A €100 rent increase, for example, would equal a payback period of 9 months. The revenue from the rent increase, thereafter, is profit.

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<sup>2</sup> A Strategy to Combat Energy Poverty, 2016:17

<sup>3</sup> “Can tenants afford to care? Investigating the willingness-to-pay for improved energy efficiency of rental tenants and returns to investment for landlords”

An increase of BER from a G to an E, or F to a D will not greatly improve a tenant's living conditions or reduce their energy bills. Any reduction in bills will be offset by a rent increase. For BER improvements to have any great benefit to the tenant, and indeed make a meaningful contribution to reduce energy use, a home needs to be upgraded to at least a C1 rating, and improved by at least three letters on the BER scale, e.g. from an E to a B, from a F to a C or from a G to a C. For homes already C rated, the improvements must increase the BER from a C1 to a B1, a B3 to an A3 and so on. In this way, the improvement work will result in a real benefit for the tenant, a reduction in energy use and an improvement to the housing stock.

The grants available to landlords and the exemption to the RPZ will ensure the cost is not prohibitive. In its current format the amendment creates a double financial incentive with little qualifying criteria. Without stipulating the need to bring a property up to at least a C1 this amendment is providing free reign to landlords to make small changes, at very little cost, to increase rents in an already unaffordable housing market. There need to be some limits set to the rent increase so that they reflect the actual improvement to the home. The increase must be reflective of the investment and resulting benefit to the tenant.

In addition, research has shown that improvements in energy efficiency, when not accompanied by appropriate ventilation measures, can result in serious unintended consequences in particular the growth of mould in the home. Mould can cause serious health issues such as asthma development, asthma exacerbation, wheeze, cough, respiratory infections, bronchitis, eczema, and upper respiratory tract symptoms<sup>4</sup>. If Government intend to pursue this amendment, greater care and consideration will have to be given to its practical application and impact on tenants.

## **Substantial Change Exemption and Minimum Standards**

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<sup>4</sup> "Residential energy efficiency retrofits: potential unintended consequences", M. Collins & S. Dempsey, 2018, Journal of Environmental Planning and Management

The addition of 5(A)b to section 19 dealing with the exemptions allowed under substantial change to a property ensures that a landlord cannot avail of such an exemption if the substantial change is to upgrade the property to meet minimum standards. This stipulation is important. It ensures that landlords who are not providing accommodation of the minimum standard are not rewarded once they have carried out the work to bring the property up to this standard. Poor standards continue to be a concern for the tenants who seek our services and we continue to call for a NCT style certification system to ensure standards are being met in the PRS.

## **Verification and Approval Process for Substantial Change exemption**

The addition of 5(B) to section 19 outlines the requirement for a landlord to serve notice to the RTB of their intention to avail of the “substantial change” exemption. This notice must be served within one month from setting the rent under the tenancy of the new dwelling.

This section fails to detail the manner in which the RTB will verify and approve such an exemption. As the notice is only to be served with one month after setting the rent on the new dwelling there will be little the RTB can do to verify what work (if any) was carried out. In 2017, we saw an increase in Notices of Termination issued on the grounds of undertaking “substantial refurbishment”. We previously noticed a tendency among some landlords to conflate “substantial change in the nature” with “substantial refurbishment” to issue NOTs and increase the rent thereafter beyond the lawful limit. While the amendment may have been intended to prevent such evictions and undermining of the RPZ rules, without a verification and approval process it is unlikely to have such an effect. We recommend that landlords are required to submit a request for such an exemption in advance of work taking place and approval given or denied on inspection of the completed works.

## **Changes to Fees for Mediation**

The amendment to section 93 removes the restriction on charging fees for mediation. The only reasonable logic for this is there is an intention to charge a fee for the mediation in the future. The mediation process is a readily accessible, beneficial service to tenants and landlords alike whose grievance may not require the time and attention of an adjudication process. The application of any fee for such a process has the potential to encourage applicants to opt for adjudication as any failure in the mediation process will ultimately lead to an adjudication or tribunal.

With an annual registration fee on each tenancy there should be no financial requirement for the RTB to charge a fee for mediation or to make way for such a fee in the future.

### **Creation of Criminal Offences.**

A number of criminal offences are created by the bill. These include hindering the new administrative sanctions regime and failure to comply with the tenancy registration requirements. The bill creates several criminal offences related to the rent control legislation. These include non-compliance with the rent control measures and furnishing false information to the RTB. Threshold is supportive of the creation of these offences provided they are used as a method of last resort to deal with manifestly and deliberate non-cooperation by landlords. Threshold is aware that the creation of these offences may scare some landlords who fear criminal sanction for inadvertent breaches of the act. Both the government and the RTB should seek to reassure landlords that this will not be the case.

### **Part Four Tenancies**

The bill amends sections 41 and 42 of the Residential Tenancies Act to provide that a Further Part Four tenancy is to be considered a continuation of the previous tenancy and not a new tenancy. This change is welcome and closes a loophole in the act which allowed a landlord to issue a rent review at the beginning of a further part four tenancy. The change proposed by the bill remedies an unintended consequence of the 2004 act and brings sections 41 and 42 into harmony with the rest of the act.

## **Changes to Notice periods for invalid notices**

The bill provides that where a notice of termination has been served on a tenant and an adjudicator has found that the notice is invalid due to a defect in the notice or service, but the defect does not prejudice the notice, the adjudicator shall make a determination that the landlord can remedy the invalid notice by serving a remedial notice. The remedial notice will provide the tenant with only 28 days to vacate the property in circumstances where “the period of notice to be given” has expired. If “the period of notice to be given” has not expired, then the notice period will be 28 days plus that period.

Threshold has serious concerns about this section of the bill. In our view the section is imprecisely drafted and therefore ripe for abuse. It would appear that by “notice of period to be given” the bill means “lawful notice period,” but this is unclear. There is no definition of a ‘defect that does not prejudice the notice’ which appears to be vital to the operation of the section. The bill provides that the RTB shall not allow a landlord to use this procedure if they are of the view that an unlawful notice has been issued knowingly in contravention of the act. This appears to require the RTB to make a determination as to the state of knowledge of the landlord.

We have further serious concerns about the 28 day period. The Bill, if enacted, would provide that a tenant who challenged a notice of termination could have only 28 days to vacate their home and find another property despite the notice having been found to be invalid, and the tenant having been vindicated by the RTB adjudicator. Clearly in the current rental market 28 days is a very short length of time to source another property, and this is especially true for tenants in receipt of HAP. We anticipate that this provision will have the effect of discouraging tenants from challenging notices. The section may also lead to an increase in people presenting as homeless having failed to secure alternative accommodation in the period allowed.

## **Administrative Sanctions Regime**

The addition of section 7A seeks to add a new investigation and enforcement regime under the remit of the Residential Tenancies Board. The new administrative sanction regime is to be enforced by Authorised Officers (AOs) appointed by the RTB. The AOs are to be given significant

investigative powers and the imposition of sanction will be by the RTB, subject to appeal to the Circuit Court.

Part seven of the bill allows that the RTB may investigate certain matters upon receipt of a complaint about a landlord. The regime will allow AOs to examine and search any premises where they believe that activity related to the letting of a dwelling is carried on. They will be able to inspect and take relevant records. They are empowered to require the assistance of any person in charge of the premises. If they consider it appropriate they will be empowered to conduct an oral hearing as part of their investigation. A person who hinders the investigation of an AO will be guilty of an offence.

The AO will complete a report and this will be sent to a decision maker appointed by the RTB. The decision maker will consider the report and may require an oral hearing. When the decision maker has reached a conclusion they may impose a sanction on the landlord. There is comprehensive guidance on the factors that the decision maker must take in to account. The sanctions available to the decision makers range from a written caution to €15,000 in fines and €15,000 in RTB costs.

Any enforcement regime will only be as effective as the will to use it. It is important that the scheme is properly funded and that the RTB make full use of the powers granted to them, however the creation of this regime is welcome.

It appears that the sanctions and investigation regime will apply only to scheduled matters. These matters are - enforcement of the RPZs, including exemptions and the new requirement to notify the RTB, and the enforcement of the landlord registration requirements. It is our view that consideration should be given to expanding the sanctions and investigation regime into areas where tenants are unable to bring cases before the RTB. For example, in respect of discrimination under the Equality Acts, a person is unable to bring a complaint to the RTB because of the lack of a landlord/tenant relationship. Currently a person may apply to the Workplace Relations Commission for relief, however this is arguably unsatisfactory given the subject matter of the complaint – private rented accommodation - and the particular expertise of the RTB in these matters. Serious consideration should also be given to extending the matters that the AOs can investigate to landlord obligations in relation to minimum standards. In the absence of significant reform of the current practice of enforcement of minimum standards, such as the introduction of an NCT style certification system, the two tiered system which involves Local Authorities and the RTB leads to unconscionable delay. The involvement of two investigative parties reduces the

power of the RTB to properly enforce landlord's obligations to provide appropriate accommodation to tenants.

It must be made explicit that a tenant will not lose their right to apply to the dispute resolution service for compensation as a result of the landlord having already been sanctioned. Similarly explicit provision should be made of the inclusion of any decision of the decision maker as evidence in such a case. The relationship between the administrative sanctions regime and the dispute resolution function must be clarified so that the process is fair for both landlords and tenants.

## Opportunities for amendment of the Bill

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### **Rent Register**

We are disappointed to see no changes to facilitate the creation of a dwelling specific rent register. Such an amendment was considered in the initial stages of this Bill. The Taoiseach and the Minister both indicated that a rent register would be created.

Without a dwelling specific rent register we have *de facto* decontrolled rents between tenancies, meaning rent certainty measures in practice only protect sitting tenants. On the creation of a new tenancy, the incoming tenant has no way of confirming the previous rent on the property, or when it was set. Data from RTB Rent Index reports Q2 and Q3 show that the greatest rent increases, beyond the permitted 4%, are occurring on creation of new tenancies. Whereas, the national average rents for renewed tenancies only experienced a 5.4% year-on-year increase in Q3 2018. This 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.

Without accurate information new 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 and RPZ legislation is undermined.

Threshold continues to seek a dwelling specific rent register. Tenants need access to the actual rent as well as date it was set on a property, in real time.

### **Sale as a ground for Termination.**

Threshold has significant concerns around the use of sale as grounds for eviction. Approximately 40% of all Notices of Termination brought to us by tenants in 2017 and 2018 were issued on the grounds of intention to sell. Our position is that these homes can be sold as a going concern with tenant in situ. We propose that the Residential Tenancies Act be amended by deleting paragraph 3 of the Table and making consequential amendments to sections 35 and 56. This change would

remove sale as a ground for issuing a notice of termination, in respect of a Part Four tenancy, by deleting the provision entirely. A Part Four tenancy may only be terminated in a manner permitted by the Act. This amendment will remove it from the list of permitted grounds.

According to CSO figures 38% of all sales by a landlord were to another landlord<sup>5</sup>. Threshold is mindful of the impact this may have on sale values; however there is a balance to be struck between the risk of lower house prices in this sector and the need to address the lived experience of families being evicted; some of which are entering homelessness and emergency services on a weekly basis. House value concerns could be addressed through an appropriate hardship clause similar to the Tyrellstown amendment and the use of Capital Gains Tax relief to offset possible losses to sellers of Buy-to-Lets.

## **Indefinite Tenancies**

A key part of the Rebuilding Ireland Strategy for the Rental Sector is the creation of indefinite tenancies. The first steps of this were taken in 2016 when legislation was amended to extend the term of Part 4 tenancies from 4 years to 6 years. Failing to take the next step as laid out in the Strategy and create indefinite tenancies is a missed opportunity by government and a renegeing of their commitments.

As more people rent longer and for life, indefinite tenancies are already becoming a necessary part of the rental landscape in Ireland. Tenancy termination has been the main issue brought to Threshold by tenants since 2015. We do not anticipate this changing in 2019 without an overhaul of the grounds on which a tenancy can be terminated by a landlord.

There are a number of grounds on which a tenancy can be ended that are not conducive to a creating a vibrant, robust and sustainable PRS where people can find and establish a home.

Threshold has long called for the removal of 34(b) from the Residential tenancies Act 2004 as it permits a landlord to end a Part 4 tenancy without reason once the notice is issued in a certain time frame.

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<sup>5</sup> Central Statistics Office, [www.cso.ie](http://www.cso.ie) , HPA09: Residential Dwelling Property Transactions by Type of Dwelling, Sectoral Flow, Type of Sale, Stamp Duty Event, Dwelling Status, Year and Statistic

## **Issuing Notices of Termination**

The Department carried out a review Rebuilding Ireland in 2017. One of the proposed actions identified out of this review was that landlords will be required to notify the RTB when issuing a Notice of Termination. The RTB will then write to the tenant to provide them with advice as well as the details of the relevant local authority to contact if they have difficulty finding alternative housing. The purpose of this action is to identify early on the need for tenant sustainment and homeless prevention.<sup>6</sup>

This action is absent from the proposed bill. Such an action has great potential to reduce and prevent homelessness. It is well established that the majority of people becoming homeless are doing so due to losing their home in the PRS. In Threshold's experience early intervention and the right supports can sustain a tenancy and prevent homelessness. The proof of this is in our figures as in 2017, where we protected the tenancies of 4,376 households, through early intervention, support, advice and advocacy. The proposal of the Bill is the opportune time to make this proposed action a reality.

## **Extension and Expansion of RPZs**

The introduction of Rent Pressure Zones (RPZs) in December 2016, and the expansion of same since, was warmly welcomed by Threshold as a way to counteract spiralling rent inflation. Early indications were positive and encouraging.

However, two years on the RPZs are not having the desired effect. Threshold's national survey in April 2018 revealed that 45% of tenants pay more than a third of their income on rent and 14% pay more than 50% of their income on rent. The RTB Rent Index (Q3 2018) indicated a 7.5% annual increase in rents nationally pushing the average rent to an all-time high of €1,122. Rent reviews and increases remain the 2nd most common query treated by Threshold to date in 2018. Since being designated RPZs, rents in Co Dublin and Cork City have increased 12.8% and 13.9%

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<sup>6</sup> <http://rebuildingireland.ie/news/outcomes-from-review-of-rebuilding-ireland/> (accessed 10/01/19)

respectively; rents in Galway City Central and Galway City East have increased 20.3% and 22% respectively; rents in the Kildare RPZs have increased between 11% and 14%.

The new inspection and enforcement powers for the RTB, as set out in the proposed Bill, will be key in making the RPZ legislation work. More is required however as the RPZ designations are set to come to an end, given only a three year lifetime on designation<sup>7</sup>. It is vital that the designations be extended beyond the three years to allow the new inspection and enforcement regime to carry out its vital role and be effective in tackling rising, unaffordable rents.

We urge the government to take this opportunity to extend the RPZs either nationally or through a revision of the designation criteria. Those renting outside the RPZs have no protection from sharp rent increases. We are contacted by tenants facing rent increases of 20, 30, 40% and sometimes more. The data shows that rents increases are out of control in many parts of the country not covered by the RPZ rules. Since Q4 2016 rents in Limerick City East have increased 27%, 23.9% in Dundalk/Carlingford, 21.7% in Ardee (Louth), between 14% and 20% in Westmeath and 17.6% in Waterford City East.

The designation criteria could be revised to take as the basic unit of division something other than Local Election Areas. Local Election Areas are not suitable for this purpose as they have no intrinsic connection to the housing market.

The current designation requires rents in an area to have increased for at least 4 quarters in the last 6 and to have reached the national average. Rents in Limerick City East have increased every quarter since the introduction of RPZ legislation and average rents now stand 27.1% higher at €1103.57, just €18.53 short of the national average of €1122.10. Despite this the continuous rise in rents, the average rent in Limerick City East is repeatedly just shy of making the designation and so tenants in this area are not afforded the protection of the RPZ legislation. This means that tenants in Limerick City East are paying on average €2,825 more a year in rent than they were in December 2016. This is a similar story for tenants in other parts of the country; tenants in Dundalk/Carlingford are paying €1963 more a year in rent than they were in December 2016; tenants in Ardee (Louth) are paying €2,028 more a year; tenants in Mullingar/Coole are paying €1598 more a year; and tenants in Waterford City East are paying €2,142 more a year.

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<sup>7</sup> RPZ designations will cease in Co. Dublin and Cork City in December 2019, in Galway City, RPZs in Co. Kildare, Co Meath and Co Wicklow in January 2020, in Cobh and Maynooth in March 2020 and finally Drogheda and Greystones in September 2020.

These areas are unlikely to be designated RPZs under current rules as the average rents are unlikely to reach the national average or always stay a step behind. Meanwhile tenants in these areas see their rents rise year on year. These tenants deserve the protection and assurance of rent certainty measures.

As indicated earlier (Rent Register), the RPZs are having a positive impact on rents for renewed tenancies and sitting tenants. An extension and expansion of RPZs will bring stabilisation to the market and give predictable returns to investors. It will also ensure low and middle income households, those in receipt of rent supplement or HAP can stay in their homes, pay affordable rent, achieve an acceptable standard of living or save for a deposit.

## **Definition of a Deposit**

Government can use this opportunity to introduce an effective and simple measure to assist tenants struggling to access and afford a home in the PRS through a legal definition of what constitutes a deposit. The usual practice regarding deposits is that they are equivalent of one month's rent. However, in recent times, we have become aware of the practice of landlords seeking two or more months' deposit, along with the first month's rent from new tenants. This cost is out of reach for many, meaning they cannot compete for housing or they enter into debt to secure the finances or are placed under huge financial strain with other bills going unpaid or unable to afford basic necessities.

## **Student Accommodation**

For the avoidance of doubt, Threshold recommends amendments are made to ensure students in purpose built student accommodation have the same protections provided by rent certainty measures as other tenants. We recommend that Section 4(1)(g) be removed from the Act thus eliminating the exemption applied to dwellings owned by recognised educational institutions. We recommend an addition to Section 3(1) to make explicit that the Act applies to private purpose built student accommodation.