Pre-Budget Submission to the Department of Finance

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1. KEY RECOMMENDATIONS

1.1 Introduction

Threshold is a national housing charity that provides housing information, advice and advocacy services for people with housing problems and people at risk of homelessness. Last year our advisors dealt with 20,000 housing queries, principally from tenants living in the private rented sector (PRS) but also from social housing tenants and from households in owner occupation.

Threshold has helped people living in the private rented sector for almost 40 years and it has never been harder for tenants to secure and retain their accommodation than it is today. We know from the first-hand experience of our frontline services the difficulties being experienced by tenants due to accommodation shortages and rising market rents. As a result of these difficulties, individuals and families are either becoming homeless or face a considerable risk of becoming homeless.

Homelessness carries an enormous human cost for the individual or family affected, but it also carries a large budgetary cost for the State, with the cost of providing a person with emergency homeless accommodation approximately €22,000 per annum. The crisis in the private rented sector caused by the shortage of affordable rented accommodation is also beginning to impact negatively on Ireland's economic prospects, as employees are finding it increasingly difficult to source accommodation.

Much work has been undertaken to address Ireland's dysfunctional housing market, particularly in relation to the owner-occupied and social housing sectors. Construction 2020, the Social Housing Strategy 2020, personal insolvency legislation and the mortgage arrears resolution process are just some of the key measures that have been implemented to assist households in difficulty and to kick-start the construction sector.

Unlike the owner occupied and social housing sectors, no national strategy has been put in place for the private rented sector. This sector has doubled in size since the onset of the economic downturn, now accounting for one in five households in Ireland. It could be argued that the absence of a strategic response to the private rented sector has meant that policies put in place for other housing tenures have added to the stresses faced by tenants. For example, the recent mortgage restrictions implemented by the Central Bank mean that more and more families will be renting for longer in a sector where they have limited security, little or no protection from exorbitant rent increases and where much accommodation is substandard.

It is therefore critical that Budget 2016 puts in place resources to alleviate the current pressures on the private rented sector and to make it more sustainable in the longer-term.

1.2 Summary of Recommendations

The affordability crisis experienced in the owner occupied sector before the property crash of 2008 is now being visited upon the PRS. We ask the Minister for Finance to protect tenants in the private rented sector, people at risk of homelessness and those seeking to move out of homelessness into the PRS, by implementing the following policy improvements:

A. Adequacy of Income and Housing Supports

Budget Priority 1: Ensure adequate resources are allocated so that rent supplement (RS) limits reflect current market rents, so as to meet the accommodation needs of eligible persons.

Budget Priority 2: Ensure adequate resources are allocated so that the Housing Assistance Payment (HAP) limits reach sufficient levels to meet the accommodation needs of eligible persons, without the need for top-ups.

B. Promoting the Supply of Affordable Rental Housing

Budget Priority 3: Introduce a series of appropriate and conditional subsidies for either institutional and/or individual investors to increase the supply of affordable rental accommodation in appropriate locations.

Budget Priority 4: Implement measures to encourage the development of large scale permanent mixed-income rental accommodation by institutional investors.

Budget Priority 5: Develop a cost rental system of social and other forms of affordable rental accommodation and ensure that adequate subsidies are put in place to help cover the initial up-front costs associated with cost rental accommodation. The size of this new cost rental sector should be large enough to influence positively general market rents in terms of affordability.

C. Receiverships and Buy-to-Let Properties

Budget Priority 6: Amend the Residential Tenancies Act 2004 to clarify the respective rights and obligations of landlords, tenants, lenders, and receivers.

Budget Priority 7: Introduce a code of conduct for mortgage arrears in respect of buy-to-let properties.

2. ADEQUACY OF INCOME AND HOUSING SUPPORTS

2.1 Appropriate Resources in Appropriate Places Needed to Address Homelessness

The Government Strategy on Homelessness and the National Homelessness Policy Statement both aim to reduce investment in emergency homeless services in favour of preventative measures and more lasting solutions to homelessness. The most immediate way this can be realised is by implementing and investing in policies to ensure that people can afford to stay in their homes. Current government policies are however having the opposite effect.

The cost of providing emergency homeless accommodation is approximately €22,000 per annum. Based on Threshold's experience of advocating on behalf of people at risk of homelessness, a monthly increase of €100 – €200 in rent supplement (€1,200-€2,400 per annum) can protect a family in their home and prevent them from becoming homelessness. Investing in policies aimed at keeping a family in their home is a much more cost-effective approach than paying for inappropriate emergency accommodation in commercial hotels.

2.2 Rent Supplement

One of the most alarming aspects of the housing crisis that has unfolded since 2008 has been the significant rise in family homelessness. The affordability crisis in the PRS, coupled with the fact that rent supplement (RS) limits have not increased since June 2013, has been the direct cause of this unprecedented phenomenon.

Before the recession families had the twin protections of access to local authority housing and a higher rent supplement payment, which generally meant that they could secure accommodation suited to their needs. Both of these safety nets have disappeared during the economic downturn and many families now face the same risk of homelessness as vulnerable single people.

In July 2015 there were 3,285 people, including 657 families and 1,383 children, in emergency accommodation.[1] The situation is particularly acute in Dublin which has 556 families and 1,185 children in emergency accommodation,[2] but this trend is now spreading to commuter counties in line with rent increases there.

In 2014 over €49 million was provided to local authorities for the provision of homeless services.[3] The rising numbers of households becoming homeless will inevitably generate demand for additional resources in 2015. This is evidenced by the high occupancy levels in emergency accommodation (including commercial hotels) and the current projected shortfall in the Dublin homeless budget of €18.5 million.[4]

[1] Homeless Persons - July 2015
[2] Homeless Persons - July 2015
[3] CIC, Relate, April 2015. P.5
[4] "Dublin Homeless Services Left €18.5 Million Short", *The Irish Times*, 6 July, 2015.

Unfortunately it will take a number of years before the increased supply of housing to be provided under the Government's social housing strategy has a notable impact on the current housing crisis. More immediate policy interventions are needed.

In its pre-budget submission to the Department of Social Protection (DSP), Threshold has argued that rent supplement limits need to be raised so as to reach a sufficient level to meet the accommodation needs of all eligible persons. If the State wishes to utilise the market to meet the housing needs of low income households, then it must pay the market rate.

The inadequacy of RS limits has been noted at the highest international level with the United Nations Committee on Economic, Social and Cultural Rights expressing serious concern about:

> *"The growing number of families and children that are, or at the risk of being, homeless, as a result of the lack of social housing and the inadequate levels of rent supplement".*[5]

The United Nations Committee goes on to recommend raising RS levels so as to address the current homelessness crisis. The extent of the divergence between RS limits and market rents is outlined in the following table:

Table 1: Comparison between RS Limits and Average Rents

Area: Dublin City (22 postcode areas)	**Single (1 Bedroom)**	**Couple with no Children (1 Bedroom)**	**Couple with 1 child or one parent family 1 child (2 Bedroom)**	**Couple with 2 children or one parent family 2 children (3 Bedroom)**
RS Limit	€520	€750	€950	€975
% of Market Rent	50%	72%	80%	66%
Average Rent[6]	€1,035	€1,035	€1,187	€1,470
Gap	€515	€285	€237	€495

Area: Cork City	**Single (1 Bedroom)**	**Couple with no Children (1 Bedroom)**	**Couple with 1 child or one parent family 1 child (2 Bedroom)**	**Couple with 2 children or one parent family 2 children (3 Bedroom)**
RS Limit	€485	€575	€700	€725
% of Market Rent	75%	89%	97%	80%
Average Rent	€646	€646	€723	€904
Gap	€161	€71	€23	€179

[5] United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Ireland, (E/C.12/IRL/CO/3), June 2015, p. 8.
[6] All rental figures are from Daft.ie, *Rental Report-Q2 2105,* August 2015.

Area: Galway City	Single	Couple with no Children	Couple with 1 child or one parent family 1 child	Couple with 2 children or one parent family 2 children
RS Limit	€475	€540	€700	€725
% of Market Rent	82%	92%	100%	89%
Market Rent	€581	€581	€650	€812
Gap	€106	€141	€-----	€87

The DSP's most recent review of maximum RS limits indicates that "the total (additional) cost nationally, of obtaining 35th percentile of available supply would be in the region of €84m."[7] Ensuring that 35% of the relevant market is suitably priced for RS recipients is the baseline that the DSP has determined is necessary to ensure that "sufficient housing stock is available for those on Rent Supplement."[8]

The total budget allocated to RS has fallen sharply from a high of €516 million in 2010 to €298 million in 2015, a cumulative reduction in the budget allocated to RS of €647m over 5 years. Moreover, not only has the total budget allocated to RS fallen significantly, but the annual unit cost (cost per person) of RS has fallen from a high of €5,950 in 2008 to €4,744 in 2014, a reduction of 20% in unit cost. This has happened at a time when rents have risen significantly.[9]

A 'case by case' approach to the inadequacy of RS limits has been adopted by the DSP, through interventions like the Tenancy Protection Services (TPS) operated by Threshold in Cork and Dublin and the use of discretion by community welfare officers. This has helped a significant number of people but it does not go far enough. RS limits must be increased.

Any future budgetary savings made under the RS scheme should be ring-fenced to fund higher limits for households that face difficulties in retaining or securing accommodation. This is a much more humane and cost effective approach than paying for inappropriate emergency housing for families.[10]

Threshold has proposed that increasing RS limits, taken in conjunction with the rent certainty measures, will moderate future costs and ensure predictability in terms of making budgetary provision for the RS scheme.

Budget Priority 1: Ensure adequate resources are allocated to ensure RS limits to reflect current market rents, so as to meet the accommodation needs of eligible persons.

[7] DSP, Maximum Rent Limit Analysis and Findings Report, February 2015, p.24
[8] https://www.welfare.ie/en/pressoffice/Pages/pr050613a.aspx
[9] DSP, Maximum Rent Limit Analysis and Findings Report, February 2015, p.45
[10] In 2014 over €49 million was provided to local authorities for the provision of homeless services, this was increased by €10.5m in 2015.

2.2 Housing Assistance Payment

The Housing Assistance Payment (HAP) is a central element of increasing supply of social housing as part of the Social Housing Strategy. The HAP scheme will bring all social housing supports provided by the State under the aegis of local authorities. The scheme will remove a barrier to employment by allowing recipients to remain in the scheme if they gain full-time employment (unlike rent supplement). However, unless HAP rent limits are set at realistic levels that are related to market rents the scheme is likely to become unsustainable.

Under the relevant legislation, the Minister for the Environment, Community and Local Government sets limits for HAP based on the number of people in a household and the rental market in the locality. To begin with, as HAP is being introduced, these limits are based on the current RS limits[11] (with the exception of a Dublin-only pilot, which provides up to 20% above RS limits for people who are homeless).[12]

As shown above, RS limits are too low to enable people at the lower end of the market to source homes in the PRS. This means that the practice of making 'top up' payments to their landlord will be a reality for HAP recipients, as it is for many tenants receiving RS. The fact that (unlike RS) such top-up payments will not be prohibited under a major social housing scheme is a retrogressive step that will undermine the security of tenants. Top-up payments will typically be drawn from a tenant's social welfare payments, meaning that limited financial resources for food, clothing and utilities will be reduced to unsustainable levels, inevitably giving rise to rent arrears, debt, and poverty.

The inadequacy of HAP levels in South Dublin has already been recognised by Minister Paudie Coffey, T.D. who stated in the Dáil on July 20th, 2015:

"I have recognised that South Dublin County Council requires additional flexibility in the operation of HAP given the challenging rental market within its administrative area. Regulations will be signed very shortly to provide for an additional 20% flexibility above the previous maximum rent limits in South Dublin where such flexibility is necessary in order to secure a suitable dwelling for a relevant household."[13]

It is important that similar changes to HAP levels are implemented as HAP is rolled out across the country, especially in urban and commuter areas experiencing the highest rent inflation.

Budget Priority 2: Ensure adequate resources are allocated so that the Housing Assistance Payment (HAP) limits reach sufficient levels to meet the accommodation needs of eligible persons, without the need for top-ups.

[11] http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownLoad,40373,en.pdf
[12] http://www.independent.ie/opinion/comment/despite-rising-economic-tide-homeless-are-still-left-stranded-31339355.html
[13] https://www.kildarestreet.com/debates/?id=2015-07-16a.34

3. PROMOTING THE SUPPLY OF AFFORDABLE RENTAL HOUSING

3.1 Effects of Supply and Affordability Concerns on Competitiveness

A range of bodies including business and employers' groups, property professionals and investment agencies have stated that shortcomings in the private rented sector, especially related to supply, pose a threat to Ireland's future economic health.

The National Competitiveness Council has identified that the recent rapid growth in rents, particularly in Dublin, is a potentially destabilising development, as it can have significant adverse knock-on effects on wage expectations, cost competitiveness, and inflation.[14] Rising rental costs impact on both employees already in Ireland and those considering migrating or returning here.

The Society of Chartered Surveyors has also argued that rising rents, and the shortage of housing units, could deter investors from establishing or expanding in Dublin because of the difficulties employees encounter in acquiring accommodation.[15] The National Economic and Social Council has strongly argued that the *"*[t]he limited supply and high cost of rental housing is now a threat to Ireland's competitiveness and job creation."[16]

The issues facing the private rented sector also have the potential to undermine the Government's efforts to attract recent Irish emigrants back to help drive economic growth. According to Alan Barrett, an economist with the Economic and Social Research Institute:

> *"The cost of living, especially affordability of housing, is a major factor for immigrants or returning emigrants to consider before uprooting to Ireland and the housing shortage, which has made rents in the capital among the most expensive in Europe, could prove to be a deal-breaker, he added. The reality is when it comes to migration people tend to go to cities. But the housing and rental situation in Dublin is now a real worry."*[17]

The observations made by Peter Stafford of Property Industry Ireland may also be noted:

> *"Tenants with experience of quality apartment living, and whose work/life relationship is different to previous generations, are seeking the type of accommodation they may have experienced elsewhere. There is evidence from market actors that some large international employers have concerns that a lack of rental accommodation has a negative impact on their*

[14] National Competitiveness Council (2014b), *Ireland's Competitiveness Challenge 2014*, Dublin: National Competitiveness Council.
[15] Society of Chartered Surveyors of Ireland (2015), *Annual Residential Property Review and Outlook: The 2015 Report*, Dublin: SCSI, RICS and Future Analytics.
[16] NESC, Ireland's Rental Sector: Pathways to Secure Occupancy and Affordable Supply, 2015, p.5.
[17] "Emigrants will stay abroad until rents stop rising at home", Sunday Independent, 29 March 2015

ability to attract workers to locate in Ireland, and the cost of such accommodation undermines the financial viability of investing in Ireland."[18]

The impact of the state of the rental market on foreign direct investment (FDI) has been echoed by IDA Ireland:

"Many of the staff who work for these leading firms are young and they often prefer to rent rather than buy, providing a valuable income stream for those who rent out accommodation, particularly apartments in urban locations. […] At the tail end of the boom costs here were becoming prohibitive for some potential FDI clients, but now Ireland is marketing itself as a value location, not just in terms of property, but also in terms of people costs, energy costs and infrastructure costs."[19]

3.2 Improving Affordable Supply

The affordability of the private rented sector is being undermined by the corresponding challenges of falling supply coupled with rising demand. Over the course of 2014, just 34,000 properties were listed for rent in Dublin. This is 13% less than in 2013 and over 40% less than in 2011.[20] In the short to medium term demand for rented accommodation will continue to rise as "trends in Ireland's tenure mix, affordability, demography and economy suggest that one-quarter to one-third of the population will find it increasingly difficult to achieve homeownership."[21]

In earlier decades tax incentives were a strong motivation for investment in new residential accommodation, both rental and owner-occupied. This approach became problematic over time in that it encouraged excessive building activity in areas with limited underlying need for new housing and included no measures to ensure affordability. Any new subsidies or tax incentives to promote rental supply must be contingent on the provision of permanent and affordable rental accommodation. Such incentives should be focussed on large urban areas where demand exceeds supply, they should be time-bound and subject to regular review to ensure that they are addressing issues of affordability as well as supply.

The introduction of subsidies to increase supply should be undertaken in tandem with the introduction of rent certainty measures and increased security of tenure for tenants in a co-ordinated approach to addressing affordability issues. As the National Economic and Social Council has stated, reforming the rental sector –

"requires breaking free of the current dualist debate on the private rental sector, in which some argue for rent control and others counter with the need to create better incentives to keep existing landlords in the sector and encourage developers and investors to resume construction and supply. Neither approach, on its own, will be effective. We need policies

[18] Peter Stafford, 'Institutional investment in Irish rental accommodation' Lorcan Sirr (ed.). Renting in Ireland: The Social, Voluntary and Private Sectors, IPA, 2014, p.75.
[19] Barry O' Leary, former CEO of IDA in *Daft.ie,* *Rental Report-2012 Q.1*
[20] Daft, *Daft.ie Rental Report-2014 year in review*, February 2015, p. 2.
[21] DECLG, *Social Housing Strategy 2020*, 2014, p.17.

that both provide tenants with more secure occupancy and create supply-side supports to increase the availability of affordable rental housing.”[22]

Subsidies to increase supply could include access to State land on favourable terms, tax incentives and loan guarantees. Also commercial rates could be restructured to encourage the use of vacant space for rental accommodation. Reform of the tax treatment of rental income should also be explored including making all mortgage interest deductible in the computation of rental income (as is the case in relation to commercial rent) and allowing the payment of local property tax to be treated as an expense for tax purposes. Another possibility to consider is the use of Part V of the Planning and Development Act 2000 to require that a share of new accommodation be allocated to affordable rental housing in addition to the existing provision made for social and affordable housing.

As the system that has evolved is complex, detailed research and consultation will need to be undertaken to formulate the most appropriate measures. Reform should produce as simple, clear and uniform a tax regime as possible, with limited use of special tax allowances that are focused on the provision of permanent and affordable rental accommodation.

Budget Priority 3: Introduce a series of appropriate and conditional subsidies for either institutional and/or individual investors to increase the supply of affordable rental accommodation in appropriate locations.

3.2 Promoting Institutional Investment

Ireland does not have a tradition of developing mixed-income rental accommodation through institutional investment, so there is a need to devote attention to the specific requirements of this new type of supply. This approach is promoted in the new Social Housing Strategy 2020, which envisions “developments where social renting, private renting and affordable and cost renting options are provided side by side.”[23]

Such accommodation has the potential not only to address current supply issues but also to provide a stable and affordable stock of rented accommodation into the future. This type of accommodation could be provided by voluntary housing associations, the private sector or possibly new local authority-linked bodies. Financing and investment would be based on the presumption that accommodation would remain in the rented sector long-term, with the possible imposition of restrictions that prevent the loss of properties to the rented sector.

In 2004 Threshold commissioned a report[24] into the barriers for institutional investment in the PRS. The report recommended the introduction of a “tax transparent property investment vehicle [that] would allow financial institutions to invest in residential property without involving direct contact

[22] NESC, *Ireland’s Rental Sector: Pathways to Secure Occupancy and Affordable Supply*, 2015, p. v and vi
[23] DECLG, *Social Housing Strategy 2020*, 2014, p.27
[24] Threshold, *Opportunity Knocks?: Institutional Investment in the Private Rented Sector in Ireland*, 2004

between institutions and tenants."[25] Real Estate Investment Trusts (REIT) were introduced as part of the Finance Act 2013 and now offer an opportunity to increase institutional investment. A small number of companies have started to enter the market, but they have tended to concentrate in the commercial, rather than the residential rental markets.

Another key recommendation in the Threshold report was that sufficient and reliable data must be made available on the rent and yields available through investment in the sector. Proposed regulatory reforms in relation to security of tenure and rent certainty could provide more stable and predictable rental returns that would be attractive for long-term institutional investors. Targeted and contingent subsidies will also help encourage investment in this type of rental accommodation. Moreover, guarantees for maintaining occupancy rates and rental income in the portion of developments allocated to social and affordable housing would also be welcomed by providers and investors.

<u>Budget Priority 4:</u> Implement measures to encourage the development of large scale permanent mixed-income rental accommodation by institutional investors.

3.3 Cost Rental System

The National Economic and Social Council report on social housing, *Social Housing at the Crossroads: Possibilities for Investment, Provision and Cost Rental (2014)*, proposed the use of a cost rental model in Ireland to be adopted to finance social provision into the future. In this model rents are calculated to reflect the historic costs of providing the accommodation, rather than based on the prevailing market.

Moving to a cost rental model of providing social and other forms of rental accommodation has many benefits. The main benefits accrue where a provider has a growing portfolio of rented accommodation. Rents can be kept at an affordable level as the higher cost of providing new rental accommodation can be offset against the reducing costs of providing older accommodation.[26] Moreover as the cost rental sector grows, the ability to charge affordable rents puts downward pressure on market rents.

Cost rental has the potential to provide greater certainty for Government in terms of social housing provision. It will help to address the difficulties that arise in the supply of local authority housing from borrowing constraints and on-going costs not being covered by differential rent. A cost rental sector of sufficient size means the cost of providing housing supports such as HAP would be more predictable and less subject to rapid cost increases.

However there is a limited ability to provide affordable rents through a cost rental approach at the early stages without the provision of subsidies to moderate high initial sunk costs. Subsidies can be either given to providers and/or be given to social housing tenants and low income households. This

[25] Threshold, *Opportunity Knocks?: Institutional Investment in the Private Rented Sector in Ireland*, 2004

[26] This is especially true if any loans or mortgages related to the older accommodation have been paid off.

is important as rents will increase for some social housing tenants, who in many cases pay about 15% of their disposable income on differential rents at the moment.[27]

Subsidies for providers could be similar to those mentioned previously. If providers don't receive initial subsidies they will need to be provided to tenants, as initial cost rental rates without subsidies would be similar to the currently unaffordable market rents.

<u>Budget Priority 5:</u> Develop a cost rental system of social and other forms of affordable rental accommodation and ensure that adequate subsidies are put in place to help cover the initial up-front costs associated with cost rental accommodation. The size of this new cost rental sector should be large enough to influence positively general market rents in terms of affordability.

[27] Simon Brooke, 'Social renting: Outcomes and Outlook' in *Renting in Ireland*, Lorcan Sirr (ed.), Institute of Public Administration, 2014, p. 125

4. RECEIVERSHIP AND BUY-TO-LET PROPERTIES

4.1 Protecting Tenants' Rights during Receiverships and Repossession Proceedings

A change to the law to ensure that both receivers appointed to mortgaged properties and lenders who have initiated repossession proceedings, are regarded as the landlord in relation to existing tenancies, is needed. Such a change will provide sitting tenants with clear legal protection and clarity in terms of provision of adequate notice, upkeep of the property, deposit return and adherence to the existing terms the tenancy. A tenant shouldn't lose these basic rights just because their landlord is in financial difficulty.

The impact of the mortgage arrears crisis is not limited to homeowners. Often it is a sitting tenant in the property who loses their home and potentially faces homelessness by the enforcement of a repossession order, rather than the person who actually owns property. Frequently homeowners who are unable to meet their mortgage payments will put tenants into their property and try to cover their mortgage commitments through rental payments. These tenants may be particularly vulnerable to unsustainable increases in rent due to changes in repayment arrangements between the homeowner and the bank. Most mortgage agreements restrict the power of the borrower to rent out the mortgaged property. Only in very limited circumstances will a bank be bound by a tenancy in relation to a mortgaged property entered into without its prior written consent. If the borrower does not obtain such consent it means that the tenancy is not binding as against the lender, and accordingly the lender can terminate the tenancy without regard to the Residential Tenancies Act 2004.

The appointment of receivers in respect of mortgaged properties, as well as the increasing rate of repossession by lenders, undermines tenants' security of tenure. In such cases many tenants are being given limited notice to find a new home, sometimes just a few days. In some extreme cases tenants have come home to find their locks changed effectively making them homeless.

Where a landlord falls into mortgage arrears, and a lender commences proceedings for repossession and sale, tenants are deprived of any effective protection from eviction. Their statutory rights under the Residential Tenancies Act 2004 to security of tenure and written notice of termination are set at nought. Many tenants continue to pay rent in good faith to their landlord for some time after an order for possession has been made, and only become aware that their home is at risk when they are served with an execution order by the sheriff.

While tenants will usually be served with a civil bill for possession by a lender who has commenced proceedings against their landlord, they will not be a party to those proceedings and as such will not have a right to be heard by the court, or to make representations as to the impact which repossession will have on them as the occupiers of the property.

Tenants who are served with an order for possession and sale by a lender cannot refer a dispute to the Private Residential Tenancies Board for resolution, as a lender will not generally be regarded as a party to the tenancy (Residential Tenancies Act 2004, s.76). Their landlord will not be held liable for terminating the tenancy without the requisite written notice, as it will be the lender rather than the landlord that is effecting the termination. Thus, tenants in mortgaged properties may be summarily evicted from their home without any redress as against their landlord or the lender concerned.

Case Study: Landlord disputing appointment of receiver and lack of clarity around rent

Mark and his family were renting a house for 2 years when a receiver was appointed. They had built up a good working relationship with their landlord and were put in a very difficult position when their landlord insisted the appointment was not valid and that that rent payments should continue to be paid directly to him.

Mark and his family were caught up in a dispute of which they had no part. Both parties continued to insist on rent simultaneously and while the receiver sent formal letters their original landlord put Mark under a lot of pressure by calling to the property and threatening eviction if rent did not continue to be paid to him as before. Mark felt he had no choice but to continue with rent payments to his original landlord.

The receiver subsequently referred a dispute to the Private Residential Tenancies Board ('PRTB') and the PRTB found that the tenant should have been paying the receiver from the time of his appointment. Mark is now legally obliged to pay what the PRTB have deemed 'arrears' and feels aggrieved at having to pay rent twice for the same period of time.

The Residential Tenancies Act 2004, which sets out the rights and obligations of landlords and tenants, is silent as to a receiver's obligations to sitting tenants in a mortgaged property. The lack of clarity around receiver appointments means that tenants can face competing and sometimes aggressive demands from both the receiver and the former landlord to pay them rent. Receivers are often more familiar with the rules surrounding commercial property and seek to apply the same approach to residential properties. Since 2013, Threshold has been dealing with a growing number of cases (1,189 to the end of August 2015) where the rights of tenants have been either undermined or ignored. Tenants are treated as illegal occupiers, are deprived of their right to proper notice of termination of the tenancy, or are required to pay rent to the receiver in circumstances where the receiver does not accept responsibility to carry out repairs or return the rental deposit.

Amendment to Residential Tenancies Act 2004

Threshold believes that a simple amendment to the definition of 'landlord' in the Residential Tenancies Act 2004, so as to explicitly include both receivers and lenders, would introduce a welcome degree of certainty for landlords, tenants, financial institutions and receivers. The effect of such an amendment would be to impose a requirement on a lender that has commenced repossession proceedings to terminate a tenancy in the manner provided for by the Residential Tenancies Act 2004. This obligation would not amount to an undue restriction on the right of financial institutions to realise their security, in that they would normally be entitled to rely on the 'intention to sell' ground for termination as provided for by s.34 of the Residential Tenancies Act

2004. Such an amendment would therefore achieve a reasonable balance between the rights of tenants and financial institutions.

Code of Conduct on Buy-to-Let Mortgage Arrears

In terms of buy-to-let mortgages, the borrower will always be permitted to let the property. This should mean that the tenancy is binding on the lender, and the lender should have regard to the Residential Tenancies Act 2004. However this isn't always the case in practice. Moreover, as a significant number of buy-to-let properties are in arrears and and a growing number are actually subject to repossession orders, there is a danger that not only will individual tenants be negatively affected, but also the stock of rented accommodation will shrink putting further putting upward pressure on market rent levels. At the end of Q1 2015 there were 33,475 residential mortgage accounts for buy-to-let properties in arrears,[28] with receivers in place in respect of 4,512 buy-to-let properties by the end of December 2014.[29]

While the Central Bank introduced a revised Code of Conduct on Residential Mortgage Arrears in July 2013, no such code exists for the buy-to-let sector to deal with the uncertainties that arise for both tenants and landlords. Threshold is seeking the introduction of a similar code of conduct on buy-to-let mortgage arrears.

A code of conduct on buy-to-let mortgage arrears would:

- Introduce a transparent process for financial institutions, landlords and tenants;
- Set out the required steps for engagement with the landlord and tenant and the forms of communication required; and
- Ensure that financial institutions respect and uphold tenants' rights.

Threshold has raised this issue with the Minister for Finance and we have recommended a drafting process should be set-up in a way that includes all of the relevant State stakeholders including the Department of the Environment, Community and Local Government and the Department of Social Protection, as well as those representing the experiences of landlords and tenants.

A code of conduct on buy-to-let mortgage arrears would ensure that the requirements of landlord and tenant law become an explicit consideration in the receivership and repossession processes and safeguard the private rented sector from volatility arising from a higher scale of repossessions and receiverships.

Threshold believes that the above measures would bring greater certainty and stability, as all of the parties would have legal certainty as to their position. A tenant will be empowered to switch rent payment to the receiver at an earlier stage because they are certain as to the identity of the landlord and because there is no adverse impact on their tenancy. A receiver will be aware of the correct legal procedure to obtain possession of a mortgaged property in accordance with landlord and tenant law.

[28] Central Bank of Ireland, Residential Mortgage Arrears and Repossessions Statistics: Q1 2015, June 2015, page 8.
[29] Department of Finance, Mortgage Restructures Data-April 2015 data set, June 2015, page 11.

Budget Priority 6: Amend the Residential Tenancies Act 2004 to clarify the respective rights and obligations of landlords, tenants, lenders, and receivers.

Budget Priority 7: Introduce a code of conduct for mortgage arrears in respect of buy-to-let properties.

Conclusion

Threshold welcomes the opportunity to make this submission to the Department of Finance in advance of Budget 2016.

Significant strides were made in Budget 2015 to promote the supply of social housing with a large multi-annual capital investment package and the subsequent publication of a national strategy for the delivery of social housing.

Given the difficulties being experienced in the private rented sector and its role in housing a higher proportion of the population, Threshold would like to see Budget 2016 focus attention on the supply, regulation and protection of tenancies in the private rented sector.

The State has increasingly relied upon the private rented sector to meet the accommodation needs of low income households. This sector is now facing a supply and affordability crisis, which means that households must be provided with more security and greater financial support to help them remain in the only housing option available to them.

New housing supply will ultimately help to resolve the current crisis. It is critical that incentives are put in place to promote a steady supply of well-managed, affordable rented housing in areas of high demand to put the sector on a sounder footing and to protect the private rented market from “boom and bust” cycles.