



Submission to the Review of Rent Predictability Measure

30 June 2017

Introduction

Threshold is national housing charity with regional advice centres in Dublin, Cork and Galway. We provide frontline services across Ireland to people with housing problems in the private rented sector. Our primary objective is to prevent homelessness by advocating for tenants via our advice line and national Tenancy Protection Service. It is our experience that best way to deal with the problem of homelessness is to prevent people from becoming homeless in the first place. Threshold's goal is to provide a strategic, targeted service to give people the support and advocacy required to keep their home. We provide crisis intervention for our clients where they are threatened with eviction. We advocate a fair, sustainable rental market with a clear emphasis on supporting, informing and advocating for vulnerable tenants.

Our vision is an Ireland where everyone has access to affordable, secure, suitable and good quality housing.

Advocating for Rent Certainty

Threshold has been a strong advocate for the introduction of rent certainty measures and recognises that rapidly increasing rental inflation is the most significant challenge to security of tenure in the rental sector at present. One in five homes in Ireland is privately rented, yet this sector is also the most expensive and least secure form of housing in Ireland. The introduction of the rent certainty measures in the *Strategy for the Private Rented Sector (December 2016)* are a welcome step towards realising the long term vision of a sector that is affordable, secure and sustainable.

As the leading authority on the private rented sector in Ireland our submission is based on analysis and evidence of the impact of the rent certainty measures and suggested areas where measures could be enhanced.

Early Indications

The Rent Pressure Zones (RPZs) were introduced in late 2016 in Dublin and Cork. In the following months other areas were added, the latest being Cobh and Maynooth in March 2017. The RPZs have been in operation for a very short time; less than three months in some places. It is very difficult to assess the effect of the policy over such a short period, however early indications suggest that it is having a positive effect on the market. The Residential Tenancies Board (RTB) rent index for the first quarter of this year suggests that the rate of increase in private rents nationally is moderating and that rents in Dublin declined by 1.5%.

While the early indications are positive and encouraging there is too little data to give a complete picture of the effect that the measure is having on the market. For many tenants the rent freeze introduced by the 2015 Residential Tenancies (Amendment) Act is still in place and they will not have experienced a rent review under the RPZ measures as yet. A proper analysis of the RPZ measures cannot be undertaken until a substantial majority of the renters in RPZ areas have undergone a rent review.

Nationally our service saw a surge of enquires in relation to rent increases before Christmas 2016 and we are still receiving a higher than normal number of enquiries relating to rent reviews and the operation of the RPZs. So far in 2017, queries relating to tenancy terminations and rent reviews represent the highest volume of calls to our advice line. Last year, our housing advisors took 38,844 actions in advising tenants experiencing housing problems. A significant proportion of the 20% of the population who rent have engaged with our services, so while there is a dearth of statistical information on the effects of the RPZ there are number of things which have become apparent from the front line services.

We have observed that in some cases, due to the shortage in supply, tenants are being forced to accept rent increases beyond the permissible level. This is particularly problematic in areas of high demand. 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. The legislation should be amended to clarify, and remove any ambiguity, surrounding this scenario. A clear legislative statement should be made that any agreement to pay rent above the formula amount is void *ab initio* and any monies paid over on foot of such an agreement is held in trust by the landlord for the tenant. This would allow tenants to recover any overpaid rent and would be an effective counter avoidance measure.

Enforcement

It is clear that the enforcement of the rent predictability rules is problematic. Currently a tenant is entitled to know the previous rent on a property only after the tenancy has begun and there is no way for her or him to verify that this rent is correct. This loophole allows the minority of dishonest landlords to escape the RPZs completely. In so far as it does not prevent avoidance this rule must be changed.

We suggest that a prospective tenant should be allowed to enter into a tenancy with reassurance that the rent charged is lawful. The RTB rent index should be made publically accessible and searchable. Its operation could be modelled on the Residential Property Price Register. This would allow a prospective tenant to verify the previous rent on a property before taking up the tenancy. An additional benefit of allowing public access to the rent index would be that evidence drawn from it could be used in disputes before the RTB, which is not currently possible. Landlords are currently required to register the tenancy and are encouraged, but not required, to update the register when the rent changes. A simple legislative change should be made to require that rent reviews are recorded.

Rent Certainty for the Long Term

It is vital that rent certainty measures become a permanent fixture in Ireland in order to promote a functioning housing market. We urge the government to ensure that the RPZs are rolled out nationally and beyond the three years envisaged by the current legislation. Low and middle income households are finding it increasingly difficult to access affordable private rented housing. Households who depend on social housing supports such Rent Supplement (RS) and the Housing Assistance Payment (HAP) limits are struggling to meet current market rents in RPZs. The problem is exacerbated for those renting outside the main urban areas who are not protected by the rent certainty measures. In our experience clients in these areas are facing substantial rent increases of 20, 30 and in some cases 40 per cent.

Rent predictability is good for the rental sector as a whole. Rent stability is vital in a context where we have seen rapid and unpredictable increases in recent years. A predictable return on investment suits investors and large institutional landlords and discourages short term property speculation. Predictability is important for the public finances since the state invests considerable sums in the rental sector via Housing Assistance Payment (HAP) and rent supplement. Rent certainty measures allow for more certain fiscal planning because rents cannot exceed a determined level. Renting is increasingly the tenure of choice or necessity for families; especially young families, and so rent predictability means that families are protected from the erratic

variations of the market and uncertainty around where they are going to live and go to school. Rent predictability is therefore good for communities and wider society.

Security of Tenure

Nevertheless, rent predictability without proper security of tenure is likely to significantly blunt the effect of rent predictability measures. Threshold calls upon the department to examine the grounds for eviction contained in s. 34 of the Residential Tenancies Act and to commission research into the efficacy of the anti-avoidance measures contained therein. Security of tenure must be robust if the RPZs are to be successful; the two principles cannot be separated.

Data from our services indicates that Section 34(b) of the Residential Tenancies Act is being abused. This section allows for 'no reason' evictions at the beginning of every further Part Four tenancy. We have noted a large increase in the numbers of evictions taking place pursuant to this section since the repeal of Section 42 which abolished termination in the first six months for no stated ground. It is our contention that the volume of terminations under this section is undermining the Rebuilding Ireland commitment to move towards indefinite tenancies and is creating an imbalance in the operation of the RPZs.

'No reason' evictions have no place in the vision for the rental sector set out in Rebuilding Ireland. The removal of section 42 was very welcome, but a possibility has arisen that the problem its repeal sought to alleviate has revived in terms of the increased use of section 34(b).

Due to legal uncertainty in the Residential Tenancies Act 2004, lenders or receivers may seek vacant possession without giving a tenant the notice required under law. In some extreme cases tenants have come home to find their locks changed, effectively making them homeless. Receivers may also refuse to carry out repairs and ask the tenant to pursue their former landlord for the return of their rental deposit. A tenant should not lose these basic rights just because their landlord is in financial difficulty.

In the case of repossession, tenants cannot refer a dispute to the 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. This means that tenants in mortgaged properties can be evicted without any means of redress.

Having regard to the criteria used to determine whether an area can be designated a Rent Pressure Zone, do you agree with these qualifying criteria? Would you like to see any changes or amendments to these criteria, and if so, what criteria should be used and why?

Threshold has concerns about the qualifying criteria for the RPZs. The current criteria requires that the annual increase in the average rent for an area be more than seven per cent in each of at least four of the six quarters. This means rents have to hit peak market level before an area is considered an RPZ instead of moderating or 'cooling' rents before they become unsustainable.

This 'waiting game' is compounded by the fact that data is retrospective and the Housing Agency can only make a proposal on RPZ designation to the Minister after the publication of the RTB Rent Index quarterly report, which reflects the previous three months and not the present market reality. This does little to relieve the plight of tenants desperately searching for accommodation or hoping to maintain their tenancies during these four out of six quarters where rents spike.

The operation of the RPZs has produced anomalies. Of particular note is Greystones, County Wicklow which has not been designated as a rent pressure zone, but where rents are 44 per cent higher than the national average. Greystones has not been designated because it fails to meet the annual increase in average rent criteria. The summary results table prepared by the RTB for the January designations indicates that Greystones has experienced extreme volatility in annual average rent increase ranging, for example, from 13.9 per cent increase in Q2 2015 to minus 3.9 in Q2 2016.

Threshold proposes that the average rent increase criteria should be re-examined to take more account of areas where rents are extremely high but which do not qualify under the existing criteria.

The rent predictability measures will expire three years after they are designated in a particular area. This means that they will end in different places at different times. Prior to the introduction of the RPZs, the income of many renters – especially among those we assist - was unable to sustain the level of rent being demanded by the market. Many people were priced out of the rental market or priced out of certain towns and cities. It is very unlikely that earnings will have increased sufficiently in three years to prevent a recurrence of the situation which existed prior to the RPZs. Failing a substantial and unlikely sharp increase in average earnings, the sunset of the RPZs will mean a return to rapid rent increases and unsustainable rents. It is clear that the RPZs must be

made indefinite and that responsibility for designating an area must be left to the discretion of the Minister to assess on a case by case basis.

Do you consider that the use of LEA-defined areas as appropriate or would you recommend another approach to delineating Rent Pressure Zones and, if so, what should that approach be?

There is no intrinsic connection between the housing market and local election areas. Threshold has strong reservations about the use of these boundaries to delineate RPZs. We are aware of parts of the country where LEA boundaries cut through towns and there are examples of different streets in housing estates being designated as inside/outside RPZs. LEA boundaries, particularly in large rural areas, are often artificial and historic rather than reflective of reality on the ground. For example, Mallow, where there is high demand and rising rent, is in the same electoral area as Kanturk, which has low housing demand and stagnant rent levels. This has skewed the determination of rent levels and unduly affected tenants in Mallow.

Case Study

A Client contacted us in May concerning a rent increase. She lives in the Classes Lake Estate in Ballincollig County Cork. The Rent Pressure Zones were extended to include Ballincollig on 27 January 2017. The Client had received a rent increase of €500. Her rent had increased from €850 to €1,350. When our advisors looked into the matter they discovered that the Rent Pressure Zone cuts through the Classes Lake Estate. The client was on the wrong side of the line. The client was subject to a 59% increase in rent whereas houses on the opposite side of the street were limited to 4%.

While we accept that there may be practical reasons for the use of LEAs to delineate RPZs, the Housing Agency should be instructed to conduct an examination of the use of LEAs to determine if a more coherent method should be used, using Electoral Divisions for example. Electoral Divisions (EDs) are the smallest legally defined administrative areas and there are 3,440 in the country. In addition changes should be made to ensure that estates and streets are not cut in half by RPZs, but rather reflect local housing market areas.

Is there merit in considering an amendment that would allow for increases larger than allowed by the formula, where the rent for the property is considerably below market rent? What would you like to see as the qualifying criteria in such a situation?

Landlords are engaged in commercial activity. An intrinsic part of any business is awareness of the market and legal entitlements. Prior to the introduction of the RPZs, Landlords were entitled to raise rents to match the market rate. The motivation of landlords who did not raise rents to market rate is unknown, but for many it will have been a deliberate decision taken for sound commercial reasons. Price setting below market rate is a sound commercial decision in many contexts. It cannot be assumed, without evidence, that landlords who failed to raise rents to market rate did so because they were unaware of their legal entitlements or for altruistic reasons.

There is no evidence that the problem identified by the question is widespread or significant. There is no data on the number of landlords who failed to raise the rent to market levels during the period when it was lawful for them to do so or their motivations for keeping their rents competitive. It would be unwise to introduce legislation on the basis of limited and anecdotal evidence.

The introduction of the RPZs was motivated by the widespread view that market rents were unsustainable. The purpose of the RPZs is to keep the rent below market rent; not to bring up lower rents to that level. The introduction of an amendment to allow landlords to 'correct' to market rent would be necessarily complex and would add to an already confusing rent setting regime.

Moreover the possibility exists that some landlords will seek to claim that their rent was a couple of percent below market rent and therefore correct it. In such a scenario the volume of cases referred to the RTB would increase substantially.

If such a measure was introduced we would suggest that, similar to section 35(A), the rent differential would have to have been substantial before it could be corrected. In our view a figure of 20% is a reasonable rent differential. Any such correction would have to be set to the pre-RPZ market rent for the property. The burden of proof that rent was below market rent when the RPZs were introduced should be on the landlord rather than the tenant. The landlord should be obliged to prove to the satisfaction of the RTB that the differential in pre-RPZ rent and pre-RPZ market rent was 20% or more.

**Is the 4% limit on rent increases an appropriate level of permissible rent rises?
Do you see any merits in linking rent increases instead with CPI?**

Threshold has long advocated that rent certainty measures should be linked to CPI, however as mentioned above we believe that the current formula is having a positive effect on the market. We suggest that any attempt to alter the figure should not be done until the measures have bedded down sufficiently to properly assess their effectiveness.

The Rent Predictability Measure allows for exemptions to the rent increase limits for properties which are new to the rental market or which have been substantially refurbished. These exemptions, together with the short time-limited life-span of the measure (3 years), are intended to avoid negative impacts on the availability and supply of rental accommodation. Have these exemptions been effectively implemented? Do you consider that the measure has had a negative impact on the supply of rental accommodation?

Threshold has serious concerns that the exemptions have not been effectively implemented. We have encountered a number of landlords who are manipulating the “substantial renovations” exemption in the legislation and we would suggest that this section is reviewed. As mentioned above we have further concerns regarding the avoidance of RPZ legislation which goes beyond the legislative exceptions, such as landlords demanding rent increases beyond the permitted level.

Case Study

A client in Cork was quoted a close to 30 per cent increase on the previous tenant’s rent (from €850 to €1,100) on the basis that carpet had been replaced and the property had been painted in the last year. In Dublin a landlord was unsuccessful in introducing an illegal rent review and subsequently declared the property would undergo substantial renovations. Similar to the situation in Cork the repairs were minor (internal insulation, new boiler, rooms painted, other cosmetic improvements) but the landlord demanded a rent increase of almost 30 per cent (from €2500 to €3200).

Is the Rent Predictability Measure easily understood and transparently implemented? Like most legislation, the provisions and language set down in the Planning and Development (Housing) and Residential Tenancies Act 2016 are quite complex. Are there improvements to the implementation of the Rent Predictability Measure that could be made increase clarity and improve understanding of the measure?

The Rent Predictability Measures are extremely complex and sit within an equally complex piece of legislation. The circumstances of the introduction of the measure, and its immediate commencement in Dublin and Cork, mean that it came as a surprise to many. It is our experience that many landlords and tenants remain unsure of their rights and obligations.

The stakeholder engagement meetings undertaken by the RTB have been of benefit as has the addition of the rent calculator to the RTB website. However, these measures will be of little impact in the context of low public awareness. As a result we call upon the department to commission a public awareness campaign in the current Rent Pressure Zones to inform the public about the measure.

Threshold operates an advice line which provides guidance to tenants on the operation of the legislation which operates from 9am - 9pm Monday to Friday. Last year, our housing advisors took 38,844 actions in advising tenants experiencing housing problems. In addition, a total of 149,313 users sought information on Threshold's website in 2016, an annual increase of 30%. In the period from 21st May to 17th June 2017 our helpline received 5,375 calls. This is in addition to the members of the public who contacted the RTB seeking advice. It is clear that a deficit in understanding surrounding the legislation exists.

The Residential Tenancies Act is an increasingly complex piece of legislation which is not fit for purpose in its current form. It is unacceptable that legislation which is intended to be understood by lay people should be so ambiguous and complicated. If a member of the public wishes to determine if a rent review is valid she must navigate the Residential Tenancies Act, 2004 and two subsequent amendment acts; at the end of which she will be required to apply a complex algebraic formula.

The Act has grown in scope and scale since Laffoy J. stated that it was an "extremely complex piece of legislation¹" and Kearns J. observed in the Supreme Court that parts of the act were "unsatisfactorily drafted."² Renting is the tenure of choice or necessity for over 20% of the Irish

¹ *Canty v PRTB* [2007] IENC 243

² *Canty v PRTB* [2007] IESC 24

population. There is an obligation that the legislation governing their security of tenure be clear and comprehensible.

Threshold submits that the commitment made in Rebuilding Ireland to consolidate the Residential Tenancies Acts be redoubled and that a process of restatement be commenced.

Are the limits on rent increases being applied in practice across the boards in Rent Pressure Zones or are they being avoided or ignored? Enforcement of the measure is through tenants referring rent notices to the Residential Tenancies Board. Is this an effective approach to ensuring compliance with the legislation or is another approach required and, if so, what might this be?

There are a number of issues, raised above, which effect how the limits are being applied. It would appear from our services that some Landlords are demanding rent increases beyond the permitted level. This practice is due, in no small part, to the weakness of the enforcement mechanism. Currently, a tenant must bring a dispute to the RTB if they believe that their rent has been set unlawfully. The well-rehearsed deficiencies in proper enforcement of the grounds for eviction in s.34 of the Residential Tenancies Act mean that a tenant can often fear retaliatory eviction. If they are close to the beginning of a further Part Four tenancy they can be evicted, pursuant to s.34 (b), for no stated reason.

As mentioned above the loophole which provides that a tenant is unable to confirm the previous rent on a property is an avenue for avoidance of the provision. The tenant has no method to ensure that the rent is lawful. As proposed above, the law should be changed to allow tenants to access the rent index and to require that the register is kept current. This would provide a simple and effective remedy to an obvious gap in enforcement.

Please provide any other comments and suggestions you would like to make in respect of Rent Pressure Zones and the wider rental sector.

There are a number of measures which, if introduced, would positively impact the lives of renters and decrease the prevalence of homelessness.

We call for the introduction of a Deposit Protection Scheme to protect both tenants and landlords at the end of a tenancy. The retention of deposits and deposit disputes are a leading category of

disputes referred to the RTB. The retention of a deposit, and the consequent inability to place a deposit on a new home, can be the first step towards homelessness. A deposit protection scheme has already been legislated for and we call for its immediate commencement.

A more robust minimum standards regime which addresses the issue of fuel poverty must be legislated for. It is estimated that more than 55 per cent of private rented dwellings have poor energy efficiency, with a Building Energy Rating (BER) between D and G. It is our experience that the most vulnerable tenants, who are on low incomes, live in the least energy-efficient accommodation, leading to health and safety concerns and energy poverty. Therefore, the poorest are paying most to keep warm. Improving the energy efficiency of the private rented sector must be carried out as part of wider improvements in physical standards. The benefits of highly energy efficient homes far exceed physical health, including income, mental health, environmental, skills and labour market, community and population health gains.

There must be increased protection for licensees, such as those in the rent a room scheme, who currently have very little legal protection and negligible security of tenure.

The introduction of legislation 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 vital to ensure that tenants are not caught in the middle.

Lessons from Germany

German law provides a hardship defence for tenants. Under Irish law a landlord can only end a tenancy in accordance with the Residential Tenancies Act 2004 and if a tenant wishes to dispute the validity of the notice or the person issuing it they have 28 days within which to refer a dispute to the Residential Tenancies Board (RTB).

Threshold proposes the insertion of a defence for tenants where they are given notice similar to the provision provided under German law, whereby if a landlord wants to terminate an open-ended tenancy for ordinary reasons, the tenant may object to the notice and seek continuation if it would constitute a hardship for him or his family.

Hardship could arise, for example, on grounds of age, a serious disease or that substitute residential space cannot be procured on reasonable terms.

In Germany if an agreement between the landlord and tenant cannot be reached the duration and the terms under which the tenancy is continued are determined by a judge. The decided duration usually amounts to between six months and a maximum of three years.

Repossession and Receiverships

A change in the law is required to protect tenants in cases where their landlord's property is being repossessed or where a receiver is appointed to a mortgaged property. The legal definition of 'landlord' needs to be changed to explicitly include both lending institutions and receivers so that the rights established under landlord and tenant law cannot be undermined or ignored as is currently the case.

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. It would 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. It would also impose a responsibility for repairs and the return of the tenant's deposit upon the expiry of the tenancy.

In addition to this legislative change, Threshold is seeking the introduction of a code of conduct on buy-to-let mortgage arrears. A Central Bank of Ireland code of conduct on residential mortgage arrears (CCMA) has been in place for all mortgage lenders since 2009. A code for buy-to-let 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.

Conclusion

Rent predictability is good for the rental sector as a whole and for families, tenants, the state, investors and landlords alike. The certainty it provides means that the various stakeholders know where they stand and how much their rent will be in two years. The government is to be commended for the introduction of rent predictability, which has brought much needed security and stability to the sector. The introduction of the measure has had effects which are not easily measurable – the number of people saved from a massive rent increase and thereafter homelessness; the number of tenants who sleep easier knowing that they won't be subject to economic eviction. Early signs from a Threshold point of view suggest that the measures are working and that the market is calming, although there is a need for increased security of tenure and for avoidance loopholes to be closed. These things are vital but require minimal legislative intervention which can be achieved in the context of the consolidation of the legislation.



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