

The Private Rented Sector in Ireland: Time for a National Strategy

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Introduction

In December 2014, in a ‘Chairperson’s Statement’ introducing the 2013 Annual Report of Threshold,¹ Senator Aideen Hayden, stated: ‘Threshold is calling on the Government to introduce a national strategy on private rented housing as a matter of urgency. This strategy must provide real security for individuals and families who are making their home in the rented sector – a security which is lacking today’.²

Threshold believes that the key principle governing such a strategy is that everyone has a right to adequate housing regardless of the tenure in which they make their home.³ Such a strategy should complement and reinforce the Government’s *Construction 2020 Strategy* and the *Social Housing Strategy 2020*, both announced in 2014.⁴

Almost one household in five now lives in private rented accommodation. Since 2004, the year in which comprehensive legislation regulating the sector (the Residential Tenancies Act 2004) was introduced, the private rented sector has doubled in size, from 9.5 per cent of households in 2006 to 18.5 per cent in 2011.⁵ An even larger percentage of households in the country’s urban areas are living in rented accommodation – in Galway City, 38 per cent; Cork City, 27 per cent, and Dublin, 25 per cent.⁶

Unfortunately, Government policy concerning private rented accommodation has not kept pace with the rapid increase in the size of the sector or the basic needs of tenants. This policy is in urgent need of updating. In fact, it was only with the Government’s *Housing Policy Statement* issued in June 2011 that the private rented sector was given equal priority with other housing tenures, especially owner-occupation.

In this statement the need for a ‘vibrant and well-regulated private rented sector’ was officially recognised.⁷ This Policy Statement provides a commitment to making the rented sector a stable and attractive housing option for all who wish to rent in the short and long term.

Rising Rents, Homelessness and Rent Certainty

It is clear that, as it currently operates, the private rented sector is failing to provide affordable homes for many families. From 2011 to 2014, rent increases in Dublin averaged 34.5 per cent; in Galway, 14.4 per cent, and in Cork, 13.9 per cent. Average rent increases for the four commuter counties surrounding Dublin was 14.4 per cent in 2014,⁸ while some Threshold clients have reported rent increases of up to 50 per cent.⁹

Due to the fact that tenants’ incomes (whether in the form of net wages or Rent Supplement) have not kept pace with these rapid rent increases, a wholly predictable and preventable homelessness crisis has been allowed to develop. The number of families becoming homeless has risen rapidly – in Dublin, the number of families with children who are homeless has shown an increase of 56 per cent since June 2014.¹⁰ An indication of the scale of the crisis is the fact that Threshold’s new Tenancy Protection Service has dealt with 1,699 cases of tenants at risk of homelessness in the greater Dublin area since it commenced in June 2014.¹¹

Before the recession, families had the twin protections of access to local authority housing and a higher Rent Supplement payment that generally meant they could secure accommodation suited to their needs. Both of these safety nets have disappeared during the economic downturn and for many families the risk of homelessness has become all too real, just as it has for single people (who still make up the vast majority of people who are homeless).

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 housing crisis. More immediate policy interventions are needed.

Threshold believes that the introduction of rent certainty measures by way of amendment to the Residential Tenancies Act 2004 represents the only adequate and effective response to the current affordability crisis that places tenants at risk of

homelessness. Such measures would link future rent increases in areas of high rental inflation to an objective measure such as the cost of living, as is the case in many other European countries. Rent certainty measures are an essential component of a well-regulated housing market, and benefit both landlords and tenants by ensuring that rent increases (and indeed decreases) are foreseeable, predictable, and reasonable.



Steep increases in rents are leading to evictions

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Rent certainty is a justifiable response to the volatility in the rented sector caused by boom and bust in the housing market more generally. Concerns that the introduction of rent certainty measures might inadvertently result in a decline both in the supply and standards of rented properties can be addressed by measures to promote investment – for example, by providing for increased levels of rent where a landlord has significantly upgraded a dwelling.

Rent certainty may also lead to increased supply as institutional investors, such as pension funds, who favour steady predictable returns, will regard the sector as a better investment opportunity. Recent public statements by the Minister for the Environment, Alan Kelly TD, indicate that he intends to bring proposals for rent certainty measures to Cabinet.¹² It is important that such measures are brought in immediately, not only to address the affordability crisis, but also to prevent a situation developing where landlords attempt to increase rents before new rent certainty measures come into operation.

Reform of Rent Supplement

An attendant policy change that needs to be addressed is reform of the Rent Supplement scheme. The purpose of Rent Supplement is officially stated as being to provide short-term

income support to assist with the reasonable accommodation costs of eligible people living in private rented accommodation who are unable to provide for their accommodation costs from their own resources and who do not have accommodation available to them from another source. Generally, payments are made to tenants and these payments are then passed on to landlords. At the end of December 2014, there were 71,500 households in receipt of Rent Supplement.¹³ The scheme as it now operates is in need of significant reform.

Rent Supplement limits imposed by the Department of Social Protection are designed to ensure that recipients of the payment occupy the lower-priced end of the private rented market. These limits are completely disconnected from market rents in many areas, giving rise to serious hardship and to the risk of homelessness.

Tenants faced with the prospect of losing their home due to the inadequacy of Rent Supplement limits are often forced to make ‘top-up’ payments to landlords. Top-up payments will typically be drawn from a tenant’s social welfare payment but already out of that payment the tenant is making a means-related contribution towards the cost of their rent.¹⁴ The additional expenditure on rent in the form of a top-up means that resources for food, clothing and utilities will be reduced to unsustainable levels, and so the tenant faces a high risk of increased poverty, indebtedness, *and* rent arrears.

The administration of the Rent Supplement scheme (by central rent units in some areas) is often characterised by delays, inflexibility, and a lack of transparency as to how decisions are reached. The frequency with which errors are made in processing applications is reflected in the high rate of success by Rent Supplement applicants in subsequent appeals against the rejection of their initial application. In practice, this means that many applicants would be unable to access their entitlements without support from voluntary organisations such as Threshold.

Many landlords refuse to accept Rent Supplement tenants. This arises in part from the administration of the scheme, whereby rent payments are made in arrears rather than in advance (as is the norm in the private rented sector), and where administrative delays mean that a landlord may not receive payment for some time. A series of reductions in Rent Supplement payments in recent years, and the

manner in which these were implemented, has also alienated many landlords from the scheme.

A number of positive improvements have been included in new housing support schemes that could be replicated in a reformed Rent Supplement scheme. Under the Housing Assistance Payment (HAP), recipients will be able to take up full-time employment without losing the entitlement (unlike Rent Supplement) and payment will be made directly by the local authority to the landlord (again unlike Rent Supplement). By the end of 2014, the HAP Scheme had been implemented on a pilot basis in ten local authorities.¹⁵

Under the Rental Accommodation Scheme (RAS), in operation since 2004, local authorities have contracted with private landlords to provide housing for people with a long-term housing need, with local authorities again paying the rent directly to the landlord.

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The most obvious change required to be made to the Rent Supplement scheme is that rent limits should be increased to reflect current market rates, and greater flexibility should be shown to those who continue to face difficulties. Instead of the current system, which relies on identifying a willing landlord in advance of a tenant receiving approval for the payment, tenants should be 'pre-approved' (deemed eligible even before they have found accommodation). Rent Supplement payments should be made in advance rather than in arrears and paid directly to the landlord; exceptional needs payments for security deposits, which were previously available under the Supplementary Welfare Allowance scheme, should be restored.

Deposit Protection Scheme

At the ending of a tenancy, landlords are required to return promptly any deposit paid by the tenant, unless there are arrears in rent (or other taxes or charges payable under the lease), or damage to the property over and above normal wear and tear. However, the reality is that landlords are often unwilling or unable to return the deposit that has

been paid by the tenant. The retention of rental deposits by landlords has been the most common concern raised by those who have contacted Threshold in the past decade, accounting for approximately 27,000 queries.¹⁶ It is also one of the key issues of dispute in referrals to the Private Residential Tenancies Board (PRTB). In 2013, the Board received 903 applications for resolution of disputes concerning the retention of deposits (representing 31.5 per cent of all the applications for dispute resolution which it received).¹⁷

The failure to return a deposit can place a tenant at risk of homelessness. A typical deposit of €1,000 will often represent the full extent of an individual's or family's savings, and the failure to return the deposit creates a significant obstacle to obtaining alternative accommodation. With average PRTB dispute processing times for cases relating to non-return of deposits standing at some nine to twelve months,¹⁸ and with determination orders made by the PRTB often going unenforced, the current system for resolving deposit disputes is clearly not fit for purpose.

For many years, Threshold has been advocating for the introduction of a deposit protection scheme; it welcomed the commitment made in this regard in the *Programme for Government* of the current Government in March 2011.¹⁹ The Government has promised to deliver on this commitment in legislation to be enacted in 2015.

Deposit protection schemes already operate successfully in England, Wales, Scotland and Northern Ireland. The introduction of such a scheme in Ireland, whereby deposits would be held by a third party, would ensure that deposit monies were safeguarded and returned promptly to the tenant (or to the landlord) at the end of the tenancy. A scheme of this kind would also have the effect of freeing up the resources of both Threshold and the PRTB to deal with more complex housing difficulties such as illegal evictions. In circumstances where a landlord is facing financial difficulties, a deposit protection scheme would ensure that the deposit is not entangled with other debts owed by the landlord.

Receiverships and Buy-to-Let Properties

The appointment of receivers in respect of buy-to-let properties continues to undermine tenants' security of tenure. By the end of December 2014, there were 35,583 residential mortgage accounts for buy-to-let properties in arrears, of which 29,224

were in arrears for longer than 90 days.²⁰ At the end of January 2015, receivers were in place in respect of 4,270 buy-to-let properties.²¹

Tenants who are caught in disputes between landlords and receivers find themselves in a legislative and regulatory vacuum. 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 buy-to-let property. While the Central Bank introduced a revised *Code of Conduct on Residential Mortgage Arrears* in June 2013,²² no such code exists for the buy-to-let sector to deal with the uncertainties that arise for both tenants and landlords.

The lack of clarity surrounding receiver appointments means that tenants can face competing and sometimes aggressive demands for rent coming from both the receiver and their former landlord. Receivers are often more familiar with the rules surrounding commercial property and seek to apply the same approach to buy-to-let properties. Since 2013, Threshold has been dealing with a growing number of cases (823 by the end of 2014) 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.

Threshold believes that a simple amendment to the definition of 'landlord' in the Residential Tenancies Act 2004, so as to explicitly include a receiver appointed over a buy-to-let property, would introduce a welcome degree of certainty for landlords, tenants and receivers. A measure of this kind should be complemented by the introduction of a code of conduct specifically addressing buy-to-let mortgage arrears. Such a code should set out in a clear and transparent way how financial institutions may enforce their security without interfering with tenants' rights to security of tenure and to peaceful and exclusive occupation of the rented property.

Tackling Substandard Accommodation

New legal standards for the private rented sector came into full force on 1 February 2013. The most significant feature of these is the requirement that private rented properties must be self-contained, with their own toilet and shower/bath facilities. This means that the provision of shared facilities in a house subdivided into small flats (i.e., the

traditional 'bedsit') is now outlawed. However, significant gaps in enforcement mean that many renters continue to live in accommodation which is not habitable. People who approach Threshold frequently report having to live in substandard properties which lack the basic necessities, such as proper heating facilities, hot and cold running water and freedom from dampness and condensation. In 2013, Threshold received 2,098 queries relating to accommodation standards.²³ Often people living in substandard accommodation are in receipt of Rent Supplement, which means that the State is subsidising accommodation which fails to meet minimum requirements.

Currently, it is the responsibility of local authorities to detect substandard private rented accommodation by means of inspections conducted principally by environmental health officers. Some 17,849 private rented dwellings were inspected by local authorities in 2013, with 9,952 (56 per cent) of these dwellings failing to meet minimum standards.²⁴ In 2012, Threshold surveyed 34 local authorities concerning their approach to monitoring minimum private rental standards. From this research it is obvious that enforcement of standards is 'hit and miss', depending on the local authority.²⁵ The current system is therefore not fit for purpose.

Threshold believes that the introduction of a certification scheme is the best approach to addressing the shortcomings of the current system. Under a certification scheme, the burden of establishing compliance with the minimum standards regulations would rest with the landlord. This would remove many of the obstacles currently faced by tenants and local authorities in ensuring the effective enforcement of the regulations. Such a scheme would enable local authorities to maximise the use of available resources by carrying out targeted inspections, particularly in high-density urban areas.

To ensure that State funds are not expended on subsidising substandard accommodation, the production of a minimum standards compliance certificate could be made a precondition for the receipt of Rent Supplement and other social housing supports being delivered in the private rented sector. In the view of Threshold, the establishment of such a scheme and its integration with certification requirements in respect of fire safety, building energy regulations, tax obligations, and registration with the PRTB would promote greater compliance across the board.

Conclusion

Historically, the Irish housing system has promoted home-ownership. This aspiration was supported by generous State grants and subsidies for home-buyers and through the tenant purchase schemes that enabled local authority tenants to buy their homes. This meant that, for most of the last century, the private rented sector was not regarded as a real housing option and was simply seen as a stepping stone for those who would eventually buy a home, or as an option of last resort for those who could not afford to buy. As a result, insufficient attention has been paid to the evolving needs of people living in this sector. This is no longer tenable. We now have an opportunity to learn from the past and design a modern, affordable and sustainable rented sector. To do so, we need a national strategy for the private rented sector.

Notes

1. Threshold, which was established in 1978, is a national housing charity providing frontline housing advice, advocacy and support services for over 20,000 people with housing problems annually. (<http://www.threshold.ie>)
2. Threshold, *Annual Report 2013*, Dublin: Threshold, December 2014, p. 2. (http://www.threshold.ie/download/pdf/threshold_annual_report_2013.pdf)
3. The right to adequate housing was recognised as part of the right to an adequate standard of living in the 1948 Universal Declaration of Human Rights and in Article 11 of the International Covenant on Economic, Social and Cultural Rights, which Ireland ratified in 1989.
4. *Construction 2020: A Strategy for a Renewed Construction Sector*, Dublin: Stationery Office, May 2014; *Social Housing Strategy 2020: Support, Supply and Reform*, Dublin: Department of the Environment, Community and Local Government, November 2014.
5. DKM Consultants, *Future of the Private Rented Sector*, prepared for The Housing Agency on behalf of the Private Residential Tenancies Board, Dublin: October 2014, p. 7. (<http://www.prtb.ie/docs/default-source/pdf-manuals/future-of-the-private-rented-sector.pdf?sfvrsn=0>)
6. *Ibid.*, pp 6–7.
7. Department of the Environment, Community and Local Government, *Housing Policy Statement*, June 2011. (<http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,26867,en.pdf>)
8. Daft.ie, *The Daft.ie Rental Report: An Analysis of Recent Trends in the Irish Rental Market, 2014, Year in Review*, Dublin: 2015. (<http://c0.dmstatic.com/639/report/q4-2014-daft-rental-report.pdf>)
9. Threshold, *Threshold Pre-budget Submission 2015 to Department of Finance*, Dublin, June 2014. (http://www.threshold.ie/download/pdf/threshold_prebudget_submission_2015_to_dept_of_finance_june_2014.pdf)
10. In June 2014, there were 264 families with 567 children who were homeless in Dublin. By March 2015, the numbers had risen to 411 families with 911 children. Department of the Environment, Community and Local Government, 'DECLG Data Homeless Persons March 2015' (FileDownload,41347,en) and Kitty Holland, 'Number of homeless families in Dublin up 40% since June: More than 370 families in emergency accommodation in the capital last month', *The Irish Times*, 12 March 2015.
11. Threshold's Tenancy Protection Service is designed to help those living in private rented accommodation in Dublin or Cork City who are experiencing housing problems and at risk of homelessness.
12. Fiach Kelly, 'Rents may be fixed for period of three years under plans by Alan Kelly', *The Irish Times*, 2 March 2015.
13. Department of Social Protection, *Maximum Rent Limit Analysis and Findings*, Report, February 2015, Appendix 3, p. 45.
14. The *minimum* contribution out of a social welfare payment which must be made towards the cost of rent by those in receipt of Rent Supplement is €30 in the case of a single person (with or without children) and €40 in the case of a couple (with or without children).
15. Following the enactment of the Housing (Miscellaneous Provisions) Act 2014 on 28 July 2014, the first phase of the HAP statutory pilot scheme came into operation on 15 September 2014 in Limerick City and County Council, Waterford City and County Council, and Cork County Council. The scheme commenced in South Dublin County Council and in Kilkenny, Louth, and Monaghan County Councils on 1 October 2014. On 18 December 2014, Dublin City Council became part of the HAP pilot scheme, with a specific focus on accommodating homeless households. The City Council is implementing the HAP scheme for homeless households in the Dublin region on behalf of all four Dublin local authorities (i.e., Dún Laoghaire Rathdown County Council, Fingal County Council, South Dublin County Council and Dublin City Council itself). Across the local authority areas participating in the pilot scheme, more than 1,000 households are being supported by HAP. (*Dáil Éireann Debate*, Written Answer 203, 'Housing Assistance Payments Implementation', Wednesday, 4 March 2015.
16. Threshold, *Threshold Annual Report 2013*, *op. cit.*, p. 7.
17. Private Residential Tenancies Board, *Annual Report and Accounts 2013*, Dublin: PRTB, 2014, p. 23.
18. Private Residential Tenancies Board, 'Frequently Asked Questions'. (<http://www.prtb.ie/faq>)
19. Fine Gael and the Labour Party, *Government for National Recovery, 2011–2016*, Dublin, March 2011, p. 16.
20. Central Bank of Ireland, *Residential Mortgage Arrears and Repossessions Statistics: Q4 2014*, Statistical Release, Dublin, 6 March 2015, p. 8. (http://www.centralbank.ie/polstats/stats/mortgagearrears/Documents/2014q4_ie_mortgage_arrears_statistics.pdf)
21. Department of Finance, *Mortgage Restructures Data: Dataset for six main lenders covered by the Central Bank of Ireland Mortgage Arrears Resolution Target, January 2015 data set*, Dublin, March 2015, p. 11. (<http://www.finance.gov.ie/sites/default/files/Department%20of%20Finance%20-%20Mortgage%20Restructures%20Data%20-%20end%20Jan%202015%20FINAL.pdf>)
22. Central Bank of Ireland, *Code of Conduct on Residential Mortgage Arrears*, Dublin: Central Bank of Ireland, 2013. (<https://www.centralbank.ie/publicinformation/Documents/2013%20CCMA.pdf>)
23. Threshold, *Annual Report 2013*, *op. cit.*, p. 18.
24. Department of Environment, Community and Local Government, *Enforcement of Requirements for Standards (2005–2013)*.
25. Threshold, *Threshold Annual Report 2012*, Dublin, 2013, p. 2. (<http://www.threshold.ie/download/pdf/thresholdannualreport2012.pdf>)

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