



Matheson

Residential Tenancies and
Valuation Act 2020:
Additional protections for
residential tenants

Background

At the beginning of the COVID-19 pandemic in Ireland, the Government enacted the Emergency Measures in the Public Interest (COVID19) Act 2020 (the “**Emergency Measures Act**”) which provided a number of temporary measures to protect residential tenants in light of the pandemic. The initial emergency period provided under the Emergency Measures Act expired on 1 August 2020. Additional emergency protections to support certain residential tenants affected by COVID-19 were introduced under the Residential Tenancies and Valuation Act 2020 (the “**Act**”). These additional emergency protections apply from 1 August 2020 until 10 January 2021 (the “**Emergency Period**”).

Applicability

The Act addresses residential tenancies. The protections included in Part 2 of the Act (which are detailed below) also apply to student accommodation licences. The Act does not apply to commercial tenancies.

Part 2 of the Act - Protections applicable to certain residential tenants affected by Covid-19 during the Emergency Period only

Part 2 of the Act applies only to a “relevant person” which is defined as a person who is not able to pay their rent because;-

- they were diagnosed with COVID-19 or they were identified as a probable source of COVID-19 at any time between 9 March 2020 and 10 January 2021; or
- they received or were entitled to receive the temporary wage subsidy, the pandemic unemployment payment, supplementary welfare allowance or any other state welfare for the purpose of alleviating financial hardship resulting from the loss of employment occasioned by Covid-19 measures at any time between 9 March 2020 and 10 January 2021.

Relevant Person Declaration

To avail of the protections afforded under Part 2 of the Act, a tenant who meets the requirements of a “relevant person” must serve a declaration in writing (in such form as may be specified by the Residential Tenancies Board (the “**RTB**”)) (the “**Declaration**”) on the RTB. The tenant must also serve a true copy of this Declaration on their landlord. In this Declaration the tenant confirms that: (1) they are a relevant person; and (2) as a consequence thereof, there is a significant risk that the tenancy of the dwelling will be terminated by the landlord.

The Act provides that any person who makes a Declaration which is false or misleading in any material respect shall be guilty of an offence.

Protections Applicable to Relevant Persons

The following protective provisions apply for the duration of the Emergency Period to relevant persons who have served the Declaration referred to above.

- A notice of termination for non-payment of rent cannot specify a termination date which falls before 11 January 2021. The Act provides that a tenant who is not otherwise entitled to a Part 4 tenancy will not acquire any Part 4 rights by virtue of this provision.
- Tenants will have 28 days to pay outstanding rent arrears before a notice of termination for non-payment of rent can be served by the landlord.
- Tenants will be entitled to 90 days' notice where termination is due to non-payment of rent (and the termination date cannot fall before 11 January 2021).
- If a tenant becomes a relevant person after a notice of termination is served, the termination date will be delayed until the later of: (1) 90 days from the date of service; or (2) 11 January 2021.

These protections only apply in the context of terminations for the non-payment of rent for the duration of the Emergency Period. The Residential Tenancies Acts 2004 – 2020 apply in the usual manner to all other grounds for termination.

Residential Tenancies - Rent Increases

The Act prohibits, for the duration of the Emergency Period, rent increases in respect of residential tenancies of relevant persons who have served the Declaration referred to above.

Part 3 of the Act - Protections applicable to all residential tenancies

The Act does not just deal with emergency Covid-19 protections for certain residential tenants but it also prescribes further protections for all residential tenants facing termination for the non-payment of rent, during and beyond the Emergency Period.

Residential Tenancies - Revised Procedures regarding Termination for Non-Payment of Rent

- In instances where tenants are in rent arrears, landlords are now obliged to notify both their tenant and the RTB in writing in respect of the amount of rent due. If the amount is not paid within 28 days following receipt of the landlord's final notice by the tenant or the RTB (whichever occurs later), only at this point can the landlord validly serve a notice of termination for the non-payment of rent.
- When serving a notice of termination for the non-payment of rent, the landlord must also serve a copy of the notice on the RTB on the same day. Failure to do so will invalidate service of said notice of termination.
- On receipt of the copy notices of rent arrears and termination from the landlord, the RTB will notify the tenant in writing of their entitlements regarding dispute resolution and MABS (Money Advice and Budgeting Service) advice. The RTB will request the tenant's consent to their assisting the tenant in obtaining MABS advice and if such consent is obtained, the RTB will assist the tenant accordingly.

- Where a tenant refers the matter in connection with the notice of termination to the RTB for resolution, the adjudicator will have regard to any advice provided by MABS when making a decision or determination.

Residential Tenancies – Termination Notices served before 27 March 2020

The Emergency Measures Act prohibited the termination of residential tenancies during the initial emergency period which ran from 27 March 2020 until 1 August 2020. This pause on terminations is now lifted in circumstances where the termination notice was served before 27 March 2020 and those notice periods have now recommenced. Such tenancies end on the later of: (1) 10 August 2020; or (2) the date immediately following the sum of (i) the period of unexpired notice on 27 March 2020 and (ii) the initial emergency period from 27 March 2020 until 1 August 2020.

Please get in touch with your usual contact in the Matheson Commercial Real Estate department should you have any queries or wish to discuss further.

Matheson

This document is confidential and commercially sensitive and is submitted to you on a confidential basis, solely to facilitate the decision whether or not to appoint Matheson to provide legal services to you. It is not to be copied, referred to or disclosed, in whole or part (save for your own internal purposes in connection with the consideration of this submission), without our prior written consent. Matheson retains ownership of the document and all rights in it, including ownership of copyright.

DUBLIN

70 Sir John Rogerson's Quay,
Dublin 2
Ireland

T: +353 1 232 2000
E: dublin@matheson.com

CORK

City Gate
Mahon Point, Cork
Ireland

T: +353 2 1240 9100
E: cork@matheson.com

LONDON

1 Love Lane
London EC2N 7JN
England

T: +44 20 7614 5670
E: london@matheson.com

NEW YORK

200 Park Avenue
New York, NY 10166
United States

T: +1 646 354 6582
E: newyork@matheson.com

PALO ALTO

530 Lytton Avenue
Palo Alto, CA 94301
United States

T: +1 650 617 3351
E: paloalto@matheson.com

SAN FRANCISCO

156 2nd Street
San Francisco CA 94105
United States

T: +1 650 617 3351
E: sf@matheson.com