



## Emergency Rental Legislation where a 5 km Restriction on movement of people applies due to Covid-19

### FAQs for Landlords and Tenants

What are the key changes for the Rental Sector under the recent Residential Tenancies Act 2020?

#### **1. NEW EMERGENCY RENTAL LAWS HAVE BEEN INTRODUCED WHERE A 5 KM RESTRICTION ON MOVEMENT OF PEOPLE APPLIES DUE TO COVID-19**

- The Residential Tenancies Act 2020 (RTA 2020) modifies the usual operation of the Residential Tenancies Act 2004 (RTA 2004) during an Emergency Period (described in more detail below) to provide that tenants are not required to vacate their rental properties except in limited circumstances, relating to specific breach(es) of tenants' obligations, as set out below.
- An Emergency Period comes into operation whenever the Minister of Health introduces restrictions on travel outside of a 5-kilometre radius of a person's place of residence.
- The current Emergency Period applies across the country from 22 October 2020 to 1 December 2020. An Emergency Period applies in locations covered by a 5 km travel restriction and for the relevant durations specified by the Minister of Health in Regulations made by him under section 31A of the Health Act 1947. Effectively, Covid-19 public health restrictions will determine when and where the usual operation of the Residential Tenancies Act 2004 (the legislation that normally guides the rental sector) will be modified by the RTA 2020.

#### **2. NO TENANCY TERMINATIONS DURING THE EMERGENCY PERIOD EXCEPT IN LIMITED CIRCUMSTANCES**

- A tenant cannot be made to leave their rented accommodation during an Emergency Period except in limited circumstances. These are where they commit a breach which relates to:
  - Anti-Social Behaviour; or
  - Behaviour that invalidates the landlord's insurance; or
  - Use of the dwelling other than as a residential accommodation unit, without the landlord's written consent; or
  - Behaviour that threatens the dwelling.

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- Carrying out an illegal tenancy termination, which includes prohibiting access to the property or making the property uninhabitable by disconnecting services, can result in damages of up to €20,000 being awarded to the tenant. The RTB can seek an injunction from the Courts to reinstate the tenant and will continue to prioritise these cases during an Emergency Period.

### **3. NOTICES OF TERMINATION CAN BE SERVED BUT CANNOT TAKE EFFECT & REVISED NOTICE PERIODS APPLY.**

- A Notice of Termination (NoT) can be served, as usual, during an Emergency Period.
- Subject to certain exceptions mentioned above, a NoT cannot take effect during an Emergency Period.
- The duration of any Emergency Period will not count as part of any termination notice period given. Effectively, all NoTs served before or during an Emergency Period are paused.
- A revised termination date will apply and shall factor in the Emergency Period and an extra 10-day grace period. Effectively, a revised termination date will be calculated by counting:
  - all, or the remainder, as may be appropriate, of the original termination notice given;
  - all, or the remainder, as may be appropriate, of the Emergency Period; and
  - the 10-day grace period.
- A tenant will not acquire any security of tenure rights under Part 4 of the RTA 2004 on foot of the pausing of NoTs under the RTA 2020 to allow a tenant to remain in occupation of a dwelling during an Emergency Period.
- A notice period given in an NoT is paused in respect of any Emergency Period that might occur. Revised termination dates would need to account for any relevant Emergency Period arising.

### **4. ENTITLEMENT TO REMAIN WITHIN THE DWELLING**

- A tenant served with an NoT giving a termination date that occurred before an Emergency Period who did not vacate and remains in the dwelling when the Emergency Period commences, can stay in the accommodation until 10 days after the expiry of an Emergency Period. During this time, they must continue to pay rent and observe the normal terms and conditions of their lease.

## **FREQUENTLY ASKED QUESTIONS**

### **EMERGENCY PERIOD**

**What is an Emergency Period? How long does it last and when will it end?**

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For the purposes of the Residential Tenancies Act 2020 (RTA 2020), an Emergency Period corresponds with the length of time that the 5km travel restrictions are in place in an area specified in Regulations made by the Minister for Health under section 31A of the Health Act 1947. This means that whenever the movement of a person is restricted outside of a 5-kilometre radius of their home, tenants are not required to vacate their rental properties except in limited circumstances.

The current Emergency Period commenced on 22 October 2020 and is due to expire on 1 December 2020 and applies across the country.

Effectively, Covid-19 public health restrictions will determine when and where the usual operation of the Residential Tenancies Act 2004 (the legislation that normally guides the rental sector) will be modified by the RTA 2020.

## **ENDING A TENANCY & NOTICES OF TERMINATION**

### **Can a tenant be made to leave their accommodation during an Emergency Period?**

The RTA 2020 provides for a temporary prohibition on tenancy terminations during an Emergency Period, with limited exceptions. This means that for the most part, tenants cannot be made to leave their accommodation during the Emergency Period. The exceptions can be found below.

### **What are the exceptions to the temporary ban on tenancy terminations during an Emergency Period?**

The temporary prohibition on tenancy terminations is subject to a few exceptions. A landlord is entitled to serve a NoT to end the tenancy following usual rules where a tenant has failed to comply with certain obligations, including:

- Where a tenant behaves, or other occupiers/visitors are allowed to behave, in an anti-social manner;
- A tenant acts, or other occupiers/visitors are allowed to act, in a way that would invalidate a landlord's insurance;
- Where a rental property is being used for a purpose other than as a dwelling without the landlord's consent; and
- Behaviour that threatens the fabric of the dwelling.

In these instances, a landlord is entitled to serve a Not to end the tenancy following usual rules. For more information, please click [here](#).

### **Can I serve my tenant with a Notice of Termination (NoT) during an Emergency Period?**

Yes, a landlord can serve a NoT during an Emergency Period, but it cannot take effect until after the expiry of the Emergency Period except for the limited exceptions listed above.

The notice period given in an NoT cannot start counting down until after the expiry of the Emergency Period.

The duration of an Emergency Period does not count as part of any termination notice period given.

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The termination date given in any NoT served before or during an Emergency Period will change to a revised termination date (discussed below).

An Emergency Period essentially pauses notice periods for the duration of the Emergency Period.

For example, if a tenant had 30 days left on their notice period on 22 October 2020, they will still have 30 days left on their notice period after the Emergency Period. The revised termination date (discussed below) which provides a 10-day grace period will also apply to give the tenant a total of 40 days' notice to count down from the day after the expiry date of the Emergency Period.

### Can I serve my landlord with a Notice of Termination (NoT) during an Emergency Period?

Yes, a tenant can serve a NoT during an Emergency Period, but a landlord cannot make the tenancy termination take effect until after the expiry of the Emergency Period. A tenant may proceed to terminate a tenancy during an Emergency Period. Where a tenant decides to postpone the tenancy termination, the notice period given in a NoT does not start counting down until 10 days after the expiry of the Emergency Period. The duration of an Emergency Period does not count as part of any termination notice period given. An Emergency Period essentially pauses notice periods for the duration of the Emergency Period.

The termination date given in any NoT served before or during an Emergency Period will change to a revised termination date (discussed below).

For example, if a tenant has served a 28-day notice on 22 October 2020, there will still be 28 days remaining on the notice period after the Emergency Period. The revised termination date (discussed below) which provides a 10-day grace period will also apply to give a total of 38 days' notice to count down from the day after the expiry date of the Emergency Period.

### What is a revised termination date?

As notice periods are paused during an Emergency Period, termination dates will need to be recalculated upon the expiry of an Emergency Period. Revised termination dates factor in the Emergency Period and a 10-day grace period. Therefore, the earliest someone can be made to leave their accommodation is 10 days after the expiry date of an Emergency Period.

**The revised termination date is the date that falls 10 days after the expiry date of the Emergency Period plus the remaining notice period.**

For example, a tenant with **10 days** remaining on their notice period on the first day of an Emergency Period under the RTA 2020, will have **20 days** remaining at the end of the Emergency Period (the 10 days remaining on their notice period and the additional 10 days provided for in the RTA 2020).

### What happens when a Notice of Termination (NoT) is served by a landlord during an Emergency Period?

Where an NoT is served during an Emergency Period, the landlord gives the usual notice period required (more information on notice periods can be found [here](#)) and the termination date is stated on the NoT, as usual. That termination date is deemed to become a revised termination date – i.e. the date that falls 10 days after the expiry of the Emergency Period plus the entire duration of the notice period given in the NoT.

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For example, a tenant who has been in a tenancy for 8 months would be given the usual 90-day notice period. If this notice is served during an Emergency Period, then the tenant will have 100 days of the notice left when the Emergency Period ends (the entire 90-day notice period and the additional 10 days provided for in the RTA 2020). More information on notice periods can be found [here](#).

**I served my tenant with a Notice of Termination (NoT) before an Emergency Period and the notice expired before the Emergency Period started. The tenant still has not left the property. Does my tenant have to leave the rental property?**

No, the RTA 2020 provides that a tenant is entitled to reside in the dwelling until 10 days after the expiry date of the Emergency Period.

If a tenant is still living in the rental property and has failed to leave on the termination date that was written on the NoT, and the landlord still wants the property back, the landlord can lodge a dispute resolution case with the RTB. The RTB will then determine the validity of the NoT.

If the NoT is found to be valid by the RTB, then the tenant would have to leave the rental accommodation **but not earlier than 10 days after the end of the Emergency Period**.

A tenant will not acquire any security of tenure rights under Part 4 of the Residential Tenancies Act 2004, where a landlord could not give effect to tenancy termination on foot of a tenant being allowed under the new Residential Tenancies Act 2020 (RTA 2020) to remain in occupation of a dwelling during an Emergency Period.

**I served my tenant with a Notice of Termination (NoT) before an Emergency Period with a tenancy termination date falling during the Emergency Period. Is the tenant still required to leave the rental property?**

No, the tenant does not have to leave. All NoTs issued prior to the start of an Emergency Period, where the tenancy termination date occurs during the Emergency Period, are currently paused and a revised termination date applies. Please see above for an explanation of a revised termination date. Please note that the earliest anyone can be made to leave their accommodation is 10 days after the expiry of an Emergency Period.

For example, where the original notice period given was 28 days, and 20 days have elapsed before the start of an Emergency Period, this means that the tenant had 8 days left on the notice period at the start of the Emergency Period. If the Emergency Period expires on 1 December 2020, then the tenant does not have to vacate the dwelling for a further 18 days from 1 December 2020, made up of the remaining 8 days of the original notice period plus the 10-day grace period provided by the RTA 2020.

**My tenant has only been living in my rental property for 5 months and I wanted to end the tenancy before it became a Part 4 tenancy. When an Emergency Period ends, will my tenant now have Part 4 rights?**

A landlord can serve a Notice of Termination (NoT) during an Emergency Period. However, the tenant cannot be made to leave until after the expiry of the Emergency Period. Limited exceptions apply, as outlined above. Termination notice periods are paused during an Emergency Period.

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Where a landlord wishes to prevent a tenant obtaining Part 4 rights, they can serve a valid NoT on a tenant following the usual rules which can be found [here](#). If a valid NoT is not served during the first 6 months of a tenancy, Part 4 rights will apply.

A tenant will not acquire any security of tenure rights under Part 4 of the RTA 2004 where a landlord could not give effect to tenancy termination on foot of a tenant being allowed under the RTA 2020 to remain in occupation of a dwelling during an Emergency Period.

### **My tenant is about to move into a Further Part 4 tenancy and I was hoping to end the tenancy before the Further Part 4 tenancy began. When an Emergency Period ends, will my tenant now have moved into a Further Part 4 tenancy?**

A landlord can serve a Notice of Termination (NoT) during an Emergency Period. However, the tenant cannot be made to leave until after the expiry of the Emergency Period. Limited exceptions apply, as outlined above. Termination notice periods are paused during an Emergency Period.

Where a landlord wishes to prevent a tenant obtaining a Further Part 4 tenancy, they can serve a valid NoT on a tenant following the usual rules which can be found [here](#). If a valid NoT is not served before a Further Part 4 tenancy is established, the tenant gains a Further Part 4 Tenancy protection for 6 years.

A tenant will not acquire any security of tenure rights under Part 4 of the RTA 2004 where a landlord could not give effect to tenancy termination on foot of a tenant being allowed under the RTA 2020 to remain in occupation of a dwelling under tenancy during an Emergency Period.

### **If my tenant falls into rent arrears during an Emergency Period (has not paid or is late in paying their rent), what can I do?**

The Residential Tenancies Act 2020 (RTA 2020) does not impact upon the tenancy protections available to a tenant in rent arrears due to Covid-19 and at risk of losing their tenancy under the Residential Tenancies and Valuation Act 2020.

In cases concerning rent arrears, new procedures must be followed by landlords who seek to terminate a tenancy. These procedures are not impacted by the RTA 2020.

For further information regarding the procedure involved in rent arrears cases, please click [here](#).

### **If I fall into rent arrears during an Emergency Period (have not paid or is late in paying my rent), what can I do?**

In cases concerning rent arrears, the tenancy protections under Residential Tenancies and Valuation Act 2020 may apply. This Act introduced protections for those tenants who are facing rent arrears due to Covid-19 and, as a result, are at risk of losing their tenancy. If a tenant's ability to pay rent has been impacted by Covid-19 and the tenant meets specific criteria, new procedures and protections apply. Tenants who follow these procedures cannot be made to leave their rental accommodation before 11 January 2021 and must be given a minimum of 90 days' notice in the NoT. It is also prohibited for them to pay any increases in rent in respect of the period to 10 January 2021.

For further information regarding the protections afforded to tenants in rent arrears, please click [here](#).

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