

Investigations and Sanctions Guide

Guidance for Landlords on the RTB
Investigations and Sanctions Process



Bord um Thionóntachtaí Cónaithe
Residential Tenancies Board



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This document serves as a guidance to landlords on the key provisions of the Investigations and Sanctions process and should be read in conjunction with the Residential Tenancies Act 2004 - 2019 which is available at www.rtb.ie. Even though care has been taken in the preparation and publication of this document, the Residential Tenancies Board, its servants or agents assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided in this document and do not accept any liability whatsoever arising from any errors or omissions contained therein.

About the RTB

What is the Residential Tenancies Board?

The Residential Tenancies Board (RTB) is a public body set up to support and develop a well-functioning rental housing sector. Our remit extends to private rental, Approved Housing Bodies and student specific accommodation sectors. Our role is to regulate the rental sector, provide information to inform policy, conduct research, maintain a register of tenancies, resolve disputes between landlords and tenants, initiate an investigation into conduct by a landlord and provide information to the public to ensure tenancies run smoothly and no issues arise.

What do we do?



Information, research and education

We provide high-quality information and assistance to the public, tenants, and landlords on their rights and responsibilities, in terms of both living in and providing accommodation in the rental sector. We also provide accurate and authoritative data on the rental sector, such as the Quarterly Rent Index, which allows us to monitor trends in the rental sector, but also allows individuals to check and compare rents in particular locations.



Registrations

All private residential landlords, Approved Housing Bodies (who are not-for-profit housing providers, often referred to as Housing Associations), and landlords of student specific accommodation, must register their tenancies. You can search to see if a tenancy is registered on the RTB website. The registration of tenancies enables us to collect important data on the sector. It is also a key part of regulating and supporting the sector and ensuring that landlords and tenants are aware of their rights and responsibilities.

Annual registration came into effect on the 4th April 2022. This means that landlords must register their tenancy every year, within one month of the anniversary of when that tenancy began.

Further information on the registration process can be found on www.rtb.ie.



Dispute Resolution

Since 2004, we have replaced the courts in dealing with the majority of disputes between landlords and tenants through our Dispute Resolution Service. This service offers a choice of resolution types to parties – mediation or adjudication, with the option to appeal the outcome to a tenancy tribunal. Taking a dispute resolution case to the RTB is a separate process to the Investigations and Sanctions process. This means that a dispute application can be accepted and processed where a formal complaint is being investigated. Therefore, if the RTB receives a dispute resolution application it does not prevent the RTB from investigating allegations of Improper Conduct relating to the same landlord and/or tenancy.



Investigations and Sanctions

In 2019, the RTB was given new powers which broadened its mandate. One of the most important changes was the expansion of the role of the RTB to investigate and sanction landlords who engage in certain breaches of the law, defined as Improper Conduct. This means that the RTB will be able to proactively investigate potential breaches, with the power to apply sanctions if breaches are found. Sanctions include a formal written caution and/or a fine of up to €15,000 and/or costs up to €15,000.

An Investigations and Sanctions Unit has been established within the RTB to enable the organisation to undertake this critical new function. The RTB have wide-ranging and significant investigative powers including requiring records, explanation of actions, inspection of premises and requiring attendance to answer questions.

Further information on the new RTB investigative function can be found on our website www.rtb.ie.

1. Key Words

Authorised Officer

A person appointed by the RTB for the purposes of carrying out an investigation. The Authorised Officer has the power to enter and inspect a dwelling, take copies of records, require any person at the dwelling to provide information and records, require a landlord to provide records and conduct an Oral Hearing under oath.

Circuit Court

The Circuit Court is an intermediate level court of local and limited jurisdiction, hearing both civil and criminal matters. Circuit Courts must confirm any sanctions imposed by RTB Decision Makers as result of an investigation.

Complainant

A person who makes a complaint.

Complaint

A formal written complaint lodged by a member of the public, which alleges Improper Conduct by a landlord and is submitted to the RTB for investigation.

Decision Maker

A person appointed by the RTB to determine what sanction, if any, should be imposed on a landlord. Decision makers are legal professionals with extensive experience in decision making roles and are independent from the RTB.

District Court

The District Court is a court of local and summary jurisdiction that deals with criminal, civil, family law and licensing. The RTB or the Authorised Officer can apply to the District Court, if necessary, for an Order to require a person to attend an Oral Hearing or to co-operate with an investigation.

Evidence

Any information and records relating to any activity in connection with the letting or tenancy of a dwelling which is gathered during an investigation.

High Court

The High Court acts as an appeal court from the Circuit Court in civil matters. The RTB, or a landlord who is the subject of a decision by the Circuit Court on an appeal may, by leave of the Circuit Court, appeal that decision to the High Court on a point of law.

Improper Conduct

The RTB can investigate landlords for certain breaches of the Residential Tenancies Act defined as Improper Conduct, which include: failing to comply with Rent Pressure Zone (RPZ) requirements; failing to register a tenancy; failing to notify the RTB of changes to the particulars of a tenancy; failing to notify the RTB when claiming an exemption to RPZ requirements or seeking to rely on an exemption to the RPZ requirements that do not comply with those requirements; failing to offer a tenancy back where specific grounds of termination are no longer relevant; or providing false or misleading reasons for ending a tenancy; or seeking a deposit of more than one month's rent or an advance payment of more than one month's rent.

Landlord

A landlord is a person who leases or rents a property to a tenant and is entitled to receive rent.

Oral Hearing

An Authorised Officer and Decision Maker can hold an Oral Hearing for the purpose of assisting them to make a decision during an investigation where there is a conflict of fact that cannot be resolved by another means. Oral Hearings are conducted in private.

Rent Pressure Zone (RPZ)

A Rent Pressure Zone is a designated area where rents cannot be increased by more than the amount allowed under the calculation set out in the Residential Tenancies Act.

Residential Tenancies Act (2004, as amended)

Referred to as the 'Act', this is the name of the legislation that established the RTB and is the law that underpins the rental sector in Ireland, providing the legal basis for tenants' and landlords' rights and responsibilities.

RTB Investigations and Sanctions Unit

A new Investigations and Sanctions unit dedicated to investigating potential breaches of rental law by a landlord and imposing, where appropriate, sanctions.

Sanctions

The RTB can impose sanctions of a written caution and/or up to a €15,000 fine and/or up to €15,000 in RTB investigation costs on a landlord found to have breached the law (Improper Conduct).

2.

About this Guide

The purpose of this Guide is to help landlords understand what happens during an investigation and what is required as part of the investigation process. It outlines the powers the RTB has in relation to carrying out an investigation and gives a full explanation of all the steps involved as part the investigation process. It sets out what a landlord can expect if a Notice of Investigation is received, the types of Improper Conduct that exist under the legislation and if appropriate, the steps a landlord can take to acknowledge Improper Conduct. This Guide also highlights key terms and elements of the process that apply to a landlord who is the subject of an investigation into Improper Conduct.

If you are the subject of an investigation, reading this Guide will support you in navigating the process.

This guide should be read in conjunction with the Residential Tenancies Act 2019 (as amended) which is available at www.rtb.ie.



3.

Investigation Process

Since 1 July 2019, the RTB's Investigations and Sanctions unit can investigate potential breaches of rental law by a landlord. These are known as **Improper Conduct(s)** and include:

1. Failure to comply with the Rent Pressure Zone (RPZ) requirements. This occurs by increasing the rent by more than is allowed under the calculation set out in the Residential Tenancies Act.

Prior to 16 July 2021 rent in a RPZ could only increase by up to 4% per year or 24 months in an area newly designated as an RPZ.

After 16 July 2021, rent in a RPZ can only increase by up to the percentage difference between the Harmonised Index of Consumer Pricing (HICP) on the date that the rent was previously set and the date the new rent is set.

After 11th December 2021, when setting the rent at the start of a tenancy in an RPZ or when carrying out a rent review in an RPZ, rent increases are capped at 2% per year on a pro rata basis, where HICP inflation is higher.

2. Seeking to rely on an exemption to the RPZ requirements, which does not comply with those requirements i.e. falsely claiming that a substantial change in the nature of the accommodation occurred or that no tenancy existed in the dwelling in the 2 years prior to the date the tenancy commenced.
3. Failure to notify the RTB about the reliance on an exemption to the RPZ requirements within 1 month from the setting of the rent.
4. Failure to register a tenancy with the RTB within 1 month of the tenancy commencing. Prior to 24 December 2016, landlords were required to renew tenancy registrations for ongoing tenancies every 4 years, post 24 December 2016 every 6 years and since 4 April 2022 every year i.e. within one month of the anniversary of the tenancy commencement date.
5. Citing in a Notice of Termination a reason for terminating the tenancy that is, and that the landlord, knows to be, false or misleading in a material respect.
6. Failure to offer a tenant their tenancy back when terminated for certain specific reasons, where the property becomes available again under the conditions below:

Reason for Termination	Timeframe
The Landlord intends to sell the dwelling	The landlord must offer the tenancy back to the tenants if they do not enter into an agreement to sell the property within 9 months from the expiry of the notice period.
The landlord or a member of the landlord's family intends to occupy the dwelling	the landlord must offer the property back to the previous tenant(s) if the property is vacated by the landlord or the family member and becomes available for re-let within 12 months from the expiry of the notice period.
The Landlord intends to substantially refurbish/ renovate the dwelling	The landlord must offer the tenancy back to the previous tenant(s) once the refurbishment works are complete.
The Landlord intends to change the use of the dwelling	The landlord must offer the property back to the tenants if the property becomes available for re-let within 12 months from expiry of the notice period.

- ▶ If a dispute in relation to the validity of the Notice of Termination has been referred to the RTB the time periods above will run from the final determination of the dispute.
- ▶ If the Notice of Termination was served on the tenant before 06/07/2022 the tenant must have provided their contact details to the landlord, in writing, within 28 days from the date of service of the Notice or on final determination of a dispute, if relevant.

- ▶ If the Notice of Termination was served on the tenant after 06/07/2022;
 - the landlord is obliged to make all reasonable efforts to contact the tenant to offer the tenancy back,
 - if the landlord has made reasonable efforts to obtain the tenant's contact details but has been unsuccessful they must contact the RTB who will provide the tenant's contact details to the landlord where they are available or can be ascertained by reasonable enquiry of the Board (assuming the tenant has previously consented to this).
 - If the landlord requests the tenants' details to offer a tenancy back, and if the tenant has not previously consented to the RTB sharing their contact details with the landlord for this purpose, the RTB will attempt to contact the tenant and request their contact details and request consent for disclosure. If the tenant provides their contact details and consent within 7 days of the RTB's request the RTB will share those details with the landlord who must then offer the tenancy back to the tenant.
 - ▶ The tenancy was not otherwise validly terminated.
7. Failure to notify the RTB of changes to the particulars of a tenancy within 1 month of the setting of the rent for the dwelling.
 8. Seeking a deposit in excess of one month's rent for the dwelling.
 9. Seeking an advance payment of rent in excess of one month's rent for the dwelling.

3.1 What can the RTB investigate?

The RTB may start an investigation in two ways:

- ▶ On foot of a formal written complaint about a landlord they believe has breached the law in the form of Improper Conduct. If the complaint is withdrawn, the RTB can still proceed with the investigation,

OR

- ▶ Where the RTB has reason to believe that Improper Conduct by a landlord may have occurred or is occurring.

3.2 Notice of Investigation

When the RTB has decided to begin an investigation, an appointed RTB Authorised Officer will give notice in writing, in the form of a Notice of Investigation, to the landlord with details of the alleged breach of the law (Improper Conduct). The Notice will include a copy of the written complaint form, if any, and other relevant documents related to the suspected breach.

The Notice will also inform the landlord that they have an opportunity to admit or acknowledge that the alleged Improper Conduct occurred or is occurring. If he/she decides to acknowledge the Improper Conduct, the landlord has 21 days from the date of receipt of the Notice to do so in writing, to the Authorised Officer. Acknowledgement of Improper Conduct is a factor taken into consideration when determining sanctions.

The Notice will also offer the landlord an opportunity to respond to the allegations made against them by submitting a response together with any supporting documentation. In the Notice, the Authorised Officer will usually require the landlord to respond to a Schedule of Questions and Evidence and submit required documentation to the Authorised Officer, as part of the investigation process.

If the landlord acknowledges the Improper Conduct in full, he/she is not required to respond to the Schedule of Questions and Evidence.

The Notice of Investigation and investigation process is the same whether the investigation starts with a formal written complaint or whether it is initiated by the RTB.

3.3 Acknowledgement of Improper Conduct

A landlord who has committed or is committing Improper Conduct has the opportunity to acknowledge this Improper Conduct at the start of the investigation. This can be done by completing an Acknowledgement Form which will be issued with the Notice of Investigation. If a landlord decides to admit to his/her Improper Conduct, he or she must acknowledge this in writing and send it to the Authorised Officer on the case within 21 days of receiving the Notice of Investigation.

The case will not proceed to an investigation by an Authorised Officer if an acknowledgement is made of all Improper Conducts as detailed in the Notice of Investigation. An appointed Decision Maker will decide whether or not to impose a sanction on the landlord, based on the acknowledgement made and the documentation submitted by the landlord.

Where a landlord acknowledges **some, but not all**, instances of Improper Conduct, the acknowledgement will be submitted by the Authorised Officer to the Decision Maker as part of the **Draft Investigation Report**. The remaining breaches of Improper Conduct, not acknowledged by the landlord, will be fully investigated by the Authorised Officer.

4.

During the Investigation

4.1 Authorised Officers

All RTB investigations are conducted by **Authorised Officers** who have been appointed by the RTB. Their role is to gather all evidence related to the allegation of Improper Conduct. The Authorised Officer investigating your case will be named in the Notice of Investigation letter.

RTB Authorised Officers have wide ranging powers of investigation including the power to **require a person to:**

- ▶ provide information or records;
- ▶ attend before the Authorised Officer for the purposes of providing such information or records;
- ▶ answer questions put to them;
- ▶ provide an explanation in relation to any matter relevant to the investigation; and
- ▶ attend an Oral Hearing into any matter relating to the investigation.

In addition, an Authorised Officer has the power to inspect and examine a private dwelling during an investigation. If consent to inspect and examine the private dwelling is not given by the occupier, the Authorised Officer can apply for a warrant to enter.

4.2 Co-operation

The Authorised Officer will provide every reasonable opportunity to the landlord to co-operate with the investigation. Landlords will be engaged with in writing throughout the investigation process and will be assisted by the Authorised Officer wherever possible. However, it is important to note that where a person does not comply with an Authorised Officer's request, the Authorised Officer may apply to the District Court for an order compelling that person to comply.

It is a criminal offence under the legislation to withhold, destroy, conceal or refuse to provide information or records for the purposes of an investigation under the legislation. It is also an offence to fail or refuse to comply with any requirement of an Authorised Officer or to obstruct or hinder an Authorised Officer in conducting their investigation. The Court can impose a fine of up to a maximum value of €50,000, a term of imprisonment up to a maximum of five years, or both for failing to co-operate.

4.3 Evidence

During the investigation, the Authorised Officer can use a number of ways to gather evidence as part of the investigation. All requests for evidence will be made in writing by the Authorised Officer. The first request for evidence will be made in the Notice of Investigation and further requests for evidence can be made during the course of the investigation.

All evidence gathered by an Authorised Officer during the investigation will be assessed. Where further information is required, they will request it in writing.

Documentary Evidence

The Authorised Officer may write to the landlord or any other person they believe may be able to provide evidence or information to assist in the investigation. This may include the complainant (if any), estate agent, letting agent, neighbours, professional experts, etc. Evidence may include, but is not limited to, bank statements, letters, photos, advertisements and witness statements.

Interviews

The Authorised Officer may also require any person they believe has information that is relevant to the investigation to attend before him or her to provide that information. Such persons may be required to answer questions under Oath or affirmation.

Oral Hearing by an Authorised Officer

The Authorised Officer can conduct an Oral Hearing during the investigation if he/she thinks it is necessary in order to resolve a conflict of fact. The Authorised Officer may request any person to attend an Oral Hearing and call on them to give evidence or to produce relevant documents. The Oral Hearing will be conducted in private and only those persons that have been invited may attend, together with their representatives. Oral Hearings are not open to the public. A landlord may request an Oral Hearing in writing to the Authorised Officer. The request will only be granted if the Authorised Officer is of the opinion that an Oral Hearing is necessary to progress or conclude the investigation.

Inspecting, Examining and Searching Premises

An Authorised Officer can enter a private dwelling (with the occupier's consent or with a warrant) for the purposes of inspecting, examining and searching it in connection with an investigation. The Authorised Officer does not require the consent of the landlord, where the landlord is not the occupier.

4.4 Draft Investigation Report

After all the evidence has been gathered and assessed in the case, the Authorised Officer prepares a **Draft Investigation Report** which will be provided to the landlord and, where applicable, the complainant. This Draft Investigation Report will detail the Authorised Officer's findings, the evidence relied on and, whether they are satisfied or not satisfied that Improper Conduct has occurred or is not occurring. The landlord and the complainant can make any written submissions to the Authorised Officer in relation to the Report, within 21 days of receipt of the Draft Investigation Report. This provides an opportunity for the landlord and the complainant to make any final submissions in relation to the findings of the Draft Investigation Report, including any perceived inaccuracies in the Report.

4.5 Investigation Report

The Authorised Officer will review any submissions received on the Draft Investigation Report. Following this, the **Investigation Report** will confirm if Improper Conduct occurred and will be submitted to the Decision Maker, who determines the sanction (if any) that is to be imposed on the landlord. The Authorised Officer cannot make any recommendations in relation to what, if any, sanction ought to be imposed.

The RTB will ensure the Investigations and Sanctions process is conducted in an efficient manner, however, some complaints are complex, and it may take some time to gather all the information needed to reach a decision.

5.

Making a Sanction Decision

5.1 Decision Maker

The RTB will appoint an independent Decision Maker to each investigation case. The Decision Maker will review and examine the Authorised Officer's Investigation Report, or the acknowledgement made by the landlord, together with submissions made by the landlord and complainant.

The Final Investigation Report will be considered by the Decision Maker who makes the decision regarding whether or not a landlord is sanctioned and the nature of the sanction.

5.2 Oral Hearing by a Decision Maker

Where considered appropriate, the Decision Maker can conduct an Oral Hearing. The Decision Maker can call any person to attend the Oral Hearing and may take evidence under oath. The Oral Hearing carried out by the Decision Maker will be conducted in private. The landlord can have representation present at the Oral Hearing.

5.3 Sanction Decision

The Decision Maker will always take a proportionate approach when determining whether to impose a sanction and the nature of the sanction.

The Decision Maker will consider the following factors when deciding whether or not to impose a sanction and the nature and level of the sanction:

- ▶ If the landlord has acknowledged the Improper Conduct;
- ▶ The seriousness of the Improper Conduct;
- ▶ Any failure by the landlord to co-operate with the investigation;
- ▶ Any explanation by the landlord of the Improper Conduct;
- ▶ Any financial gain made by the landlord as a consequence of the Improper Conduct;
- ▶ The amount of any loss suffered, or costs incurred as a result of the Improper Conduct and any steps taken by the landlord to remedy them;
- ▶ The duration of the Improper Conduct;
- ▶ Any re-occurrence of the Improper Conduct by the landlord;
- ▶ The continuation of the Improper Conduct after the landlord was notified of the investigation;
- ▶ Steps taken to end the Improper Conduct and remedy the consequences of the Improper Conduct; and
- ▶ Whether a sanction has previously been imposed on the landlord on foot of a similar occurrence of Improper Conduct.

The Decision Maker can caution a landlord and/or impose a sanction of up to a maximum value of €15,000. The Decision Maker may also award the RTB the costs incurred for investigating the matter up to a maximum value of €15,000.

Once the decision has been made by the Decision Maker, a **Decision Notice** is issued to the landlord and complainant (if any).

6. After a Sanction Decision

6.1 Appealing a Decision

A landlord who does not agree with the outcome of the investigation can lodge an appeal of the decision of the Decision Maker to the Circuit Court. The landlord must lodge the appeal **within 21 days of the RTB issuing the Decision Notice to the landlord.**

6.2 Circuit Court Confirmation of Sanctions

All sanctions imposed by the RTB Decision Makers must be confirmed by the Circuit Court. If a landlord does not appeal the decision within the 21-day timeframe mentioned above, the RTB must apply to the Circuit Court for confirmation of the decision after notifying the landlord. A decision to impose a sanction on a landlord will not take effect until it is confirmed by the Circuit Court.

All payments made by landlords to the RTB, on foot of a sanctioning decision, will be payable to the Exchequer. This also applies to sanctioning decisions confirmed or given by the Circuit Court.

The RTB or a landlord may appeal a decision of the Circuit Court to the High Court on a point of law regarding the imposition of a sanction.

6.3 Publication of Sanctions

The RTB will publish particulars of the court confirmed sanctions on the RTB website.

Confidentiality of Information

The RTB is committed to protecting all personal and special categories of data (also referred to as sensitive personal data) held about you. All data processed by the RTB is processed in accordance with applicable Irish data protection and privacy laws and the General Data Protection Regulation (GDPR) to ensure we properly protect your personal data. For further information please refer to RTB privacy statement on our website www.rtb.ie.

Contacting the RTB

A landlord can contact the Authorised Officer assigned to his or her case to clarify any part of the investigation process that is unclear. However, the Authorised Officer cannot offer legal advice or comment on the potential outcome of the complaint.

For more information on landlords' and tenants' rights and responsibilities, visit our website at www.rtb.ie or call us at 0818 303037 or 01 70 8100 between 8.30am and 6.30pm.

Contact details for other departments in the RTB are available on our website www.rtb.ie and you can also contact us through twitter [@RTBinfo](https://twitter.com/RTBinfo).





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