

# Legal workshop on fighting slum landlords in the European Union

Substandard living conditions in Ireland and the provisions against slum landlords. Challenges in the implementation of the Housing Act 2009.

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# Two pieces of legislation and two distinct approaches to enforcement



**Residential Tenancies Act 2004**



Tenant-led enforcement via the Residential Tenancies Board

**Housing (Miscellaneous Provisions) Act 2009**



State-led enforcement via Local Authority

## Key Enforcement Provisions under the 2009 Act

2009 Act introduces a strengthened sanctions regime on landlords, by inserting ss 18A and 18B into the Housing (Miscellaneous Provisions) Act 1992

- **Improvement Notice**
- **Prohibition Notice**

**S 18A Improvement Notice** – where a landlord contravenes a requirement of the housing standards regulations, it is open to a housing authority to issue an Improvement Notice to the landlord informing them of the contravention, the remedial works necessary, the time limit within which the works must be carried out, and information on the appeal process.

- Landlord must inform the tenant and the local authority when the remedial works have been carried out
- Landlord may object to an Improvement notice being served on them – if this objection is not upheld by the local authority, they may appeal authority’s decision to the District Court
- Local authority may withdraw an Improvement notice, but in so doing, they are not precluded from issuing a further Improvement Notice in respect of the property

**S 18B Prohibition Notice** – where a landlord fails to comply with an Improvement Notice, it is open to a housing authority to issue a Prohibition Notice to inform the landlord that they have failed to comply with the Improvement Notice

- Effect of service of Prohibition Notice once the existing tenancy comes to an end, the landlord shall not re-let the property until breach of the regulations is remedied
- Prohibition Notice takes effect when the property is vacated
- Landlord may appeal a Prohibition Notice to the District Court
- Where the landlord has remedied the contravention, they are required to confirm this to the housing authority and the tenant
- Local authority must issue written notice of compliance with the prohibition notice to the landlord, with a copy issued to the tenant
- Local authority may withdraw a Prohibition Notice, but in so doing, they are not precluded from issuing a further Prohibition Notice in respect of the property
- Local authority may, in the interests of public health and safety, make whatever arrangements it considers necessary and appropriate to bring the contents of the prohibition notice to the attention of the public

## Housing (Miscellaneous Provisions) Act 1992

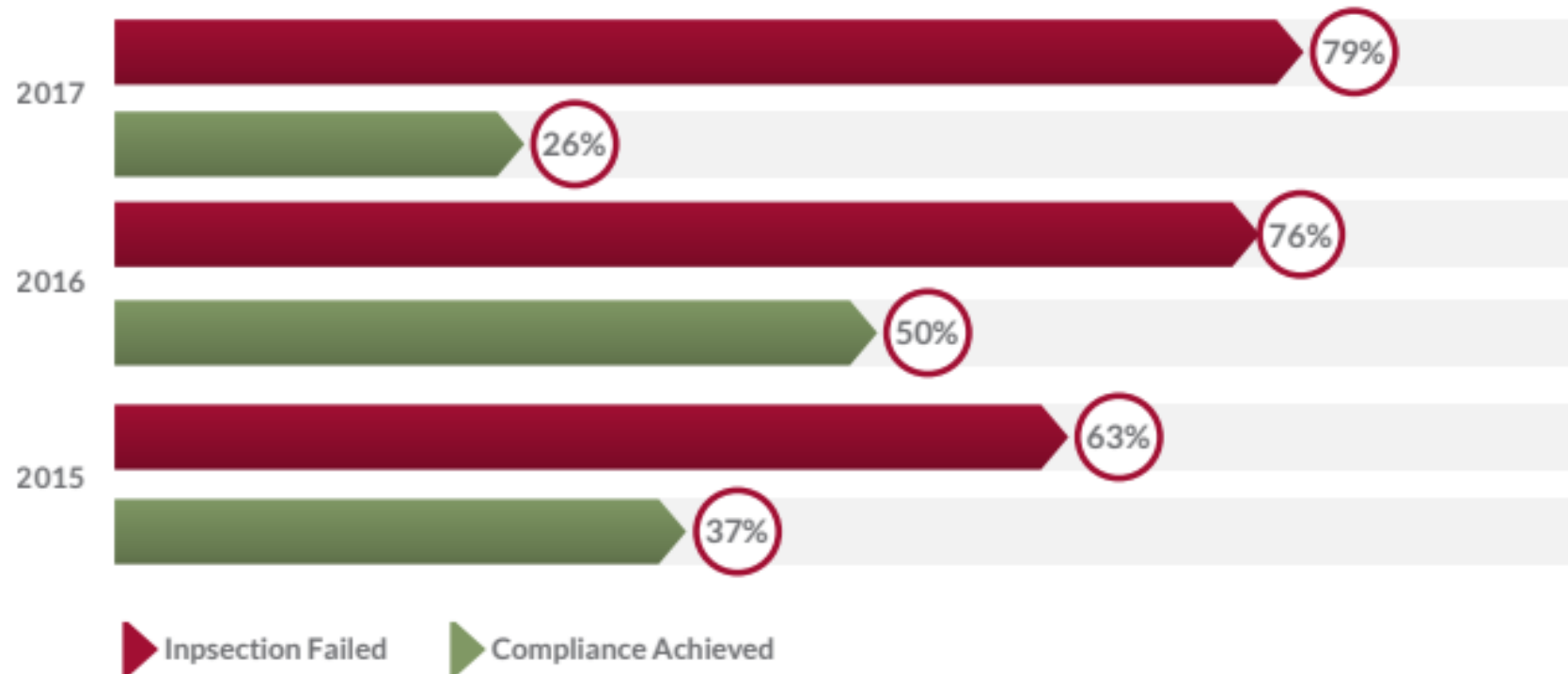


### **Standards for Rented Houses**

- **S 18(1)** – provides that the Minister may make regulations prescribing standards for houses lent for rent, and it shall be the duty of the landlord of such a house to ensure that the house complies with the requirements of such regulations
- **S 18(2)** – a person authorised by a housing authority for the purposes of this section may at all reasonable times enter and inspect a house to which regulations under this section apply
- **S 18(7)** – regulations under s 18 may, in particular, but without prejudice to the generality of s 18(1), make provision in relation to all or any one or more of the following:
  - a. The class or classes of houses or tenancies in respect of which the prescribed standards shall apply
  - b. The maintenance of the house in a proper state of structural repair (new definition in 2009 Act) and in good general repair
  - c. The quality and condition of the accommodation, any common areas, furnishings, and appliances
  - d. Ventilation and lighting
  - e. Water supplies, sanitary facilities, and drainage
  - f. Facilities for heating and cooking
  - g. Facilities for the storage and preparation of food
  - h. Fire safety (added by 2009 Act)

Most recent regulations - S.I. No. 137/2019 - Housing (Standards For Rented Houses) Regulations 2019

**Table 4: Percentage of inspected properties failing to meet standards and percentage of which achieved compliance on follow up inspection in the same year**



## Overcrowding

### Housing Act 1966

**S 53(1)** – duty of housing authority at least once every five years to inspect the houses in their functional area and to ascertain:

- a. To what extent there exist in the area houses which are, in any respect, unfit or unsuitable for human habitation
- b. Any overcrowding existing in the area
- c. Such other matters as the Minister may specify from time to time

**S 63** – a house shall, for the purposes of this Act, be **deemed to be overcrowded** at any time when the number of persons ordinarily sleeping in the house and the number of rooms therein either:

- a. Are such that any two of those persons, being persons of 10 years of age or more of opposite sexes and not being persons living together as husband and wife, must sleep in the same room
- b. Are such that the free air space in any room used as a sleeping apartment, for any person, is less than 400 cubic feet

And ‘overcrowding’ shall be construed accordingly.



## Issues with the Housing Acts

local authorities can be reluctant to enforce minimum standards.

Clearing a substandard, overcrowded property is not necessarily in the best interests of the tenants who live there:

- Such tenants may become homeless on foot of the property being cleared
- If they had somewhere else to go, they clearly would not be living in these sorts of properties in the first place – **power asymmetry as between landlord and tenant**, in which the tenant is dependent on their rogue landlord
- Current legal framework not satisfactory – local authority’s effectiveness is curtailed in terms of tackling slum landlords
- Although the strengthened sanctions regime (Improvement and Prohibition Notices) could be effective in stopping slum landlords from re-letting properties that contravene minimum standards, such action could have a ripple effect
- It is beyond question that no tenant should have to live in such substandard accommodation and appalling conditions – but removing properties from the rental market further tightens an already-squeezed housing market
- Contraction in supply of rental properties with increasing demand = rent inflation
- This rent inflation sits uncomfortably against the backdrop of the impending expiry of the Rent Pressure Zone legislation, stipulating that the maximum annual rent increase for rental properties in an RPZ cannot exceed 4%

## **Residential Tenancies Act 2004**



Although local authorities are responsible for enforcing minimum standards regulations, issues pertaining to standards and maintenance of private rented dwellings may be the subject of an RTB dispute lodged by the tenant against their landlord

Compliance with the Minimum Standards Regulations is named as a landlord obligation in the Residential Tenancies Act

Enforcement requires a tenant to lodge a dispute with the Residential Tenancies Board.

## Security and Agency in the Irish Private Rental Sector

Dr. Michael Byrne and Dr. Rachel McArdle



Much of the implementation and enforcement of the legislation is tenant-led, in that it requires action on the part of tenants to address and remedy breaches of legislation

But because tenants fear that they are 'easily replaceable', and due to the inherent power asymmetry in the landlord-tenant relationship, tenants are apprehensive of the consequences of taking action to advocate for themselves, or contest breaches of their rights

Unwillingness to lodge disputes with the RTB is compounded by the stressful nature of conflict with their landlord

Because of tenants' reluctance to 'rock the boat', the effectiveness of policy and robustness of regulation are hampered

Even if a tenant does assert their rights, the landlord may engage in retaliatory conduct. A slum landlord may refuse to carry out (very necessary) maintenance, harassment, intimidation, (potentially illegal) eviction  
All of this contributes to a culture of landlord non-compliance

Dispute Type (All cases)	Q1	Q2	Q3	Q4	Total Q1-Q4
	Count (% cases**)	Count (% cases**)	Count (% cases**)	Count (% cases**)	Count (% cases**)
Rent arrears/Rent arrears and overholding	450 (31%)	270 (28%)	472 (33%)	407 (31%)	1,599 (31%)
Deposit retention	316 (21%)	326 (34%)	395 (28%)	373 (29%)	1,410 (27%)
Breach of landlord obligations	284 (19%)	216 (22%)	269 (19%)	242 (19%)	1,011 (20%)
Validity of notice of termination (disputing the validity of a termination)	263 (18%)	68 (7%)	193 (13%)	204 (16%)	728 (14%)
Other***	209 (14%)	127 (13%)	174 (12%)	162 (12%)	672 (13%)
Standard and maintenance of dwelling	167 (11%)	92 (10%)	131 (9%)	146 (11%)	536 (10%)
Breach of tenant obligations	159 (11%)	92 (10%)	132 (9%)	120 (9%)	503 (10%)
Anti-social behaviour	91 (6%)	95 (10%)	155 (11%)	106 (8%)	447 (9%)
Unlawful termination of tenancy (illegal)	84 (6%)	93 (10%)	117 (8%)	79 (6%)	373 (7%)
Overholding	142 (10%)	28 (3%)	118 (8%)	158 (12%)	446 (9%)
Damage in excess of normal wear and tear	79 (5%)	45 (5%)	90 (6%)	72 (6%)	286 (6%)
Breach of fixed term lease	48 (3%)	45 (5%)	61 (4%)	47 (4%)	201 (4%)
Rent review not in line with Rent Pressure	70 (5%)	33 (3%)	41 (3%)	36 (3%)	180 (3%)
Validity of notice of rent review	73 (5%)	21 (2%)	49 (3%)	33 (3%)	176 (3%)
Rent more than market rate (not applicable to Approved Housing Body)	42 (3%)	20 (2%)	29 (2%)	32 (2%)	123 (2%)
<b>Total</b>	<b>2,477 (1,471)</b>	<b>1,571 (964)</b>	<b>2,426 (1,436)</b>	<b>2,217 (1,307)</b>	<b>8,691 (5,178)</b>

## Case Study



The clients were a couple with a small child. Moved into apartment on 12month fixed term lease paying 1000 euros per month.

They were without heat for the first four months. They raised the issue of mould and standards with the landlord over a number of months but no remedy was forthcoming. There was a hole in the wall instead of vents.

When they found mold on the baby basket they contacted Threshold to ask about breaking their lease.

The landlord was unwilling to allow them to break the lease and the tenants were forced to submit a dispute to the RTB for breach of landlord obligation.

The RTB sided with the tenants, but the deposit was withheld despite an order that it should be returned. The tenants were able to leave but abandoned their deposit due to the complexity of enforcement.

Threshold has called for the introduction a legal definition for overcrowding in private rented accommodation into minimum standards legislation as a supporting piece of legislation to increase and maintain standards of private rented accommodation

Threshold has also called for an NCT for Housing where the burden of establishing compliance with the minimum standards regulations would rest with the landlord; whereby landlords would have an inspection of their property carried out by a registered professional and a certificate issued accordingly. The inspection and sanctioning powers of the RTB lend themselves to such a scheme.

