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On line submission

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The Department of the Environment, Heritage and Local Government,
Private Housing Section,
Custom House,
Dublin 1

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A Chara

On behalf of DUBLIN 15 COMMUNITY COUNCIL I wish to make the following observation as part of the public consultation in Review of the Residential Tenancies Act 2004.

1.0 Introduction

The Dublin 15 Community Council was formed 15 years ago (merging the Castleknock & Blanchardstown community councils which date from the early 1970's) to provide an umbrella organisation for the many residents and voluntary community groups in the Dublin 15 area.

Residents Associations and Community groups focus on their own specific areas but often feel powerless to influence the big issues like transport, educational, recreational & sporting infrastructure or crime prevention. The Community Council provides a forum to discuss these issues and potential solutions.

Our main objective is to develop the consensus views of the Dublin 15 community in matters relating to Planning & Development, Public Transport, Environment, Education, Health Care, Policing, Job Creation, Recreational Facilities, General Infrastructure and Tourist facilities. Having developed the consensus, make representation to State and other Statutory Bodies through a wide variety of communication channels, with the aim of improving the quality of life for the residents of Dublin 15.

Blanchardstown was earmarked from the early seventies as one of County Dublin's three new towns. It has been anticipated for the past twenty years that this area would eventually accommodate a population of circa 100,000 persons. Development over the last 10 years has the following characteristics:

- The 2006 census showed the population of the Dublin 15 area at 93,000 an increase of 71% in 10 years, (from 53,221 in 1996 and 69,566 in 2002). It is likely that over time the population will greatly exceed this figure.
- Government policy shift away from the provision of social and affordable housing by local authorities in favour of a mixture of owner occupier and rental properties within estates of houses, apartments and mixed apartment / housing schemes.
- The growth of Dublin 15 over the past 10 years have primarily been private residential housing, with a mix of owner occupier and investor properties.
- The estates build prior to 1999 have also changed with investors purchasing much of the second hand properties, resulting in typically 10 – 30% private rented accommodation. This has resulted in increased social diversity within almost all estates in Dublin 15. Typically less than half of these rented properties are registered.
- Many of these investors have long term relationships with agencies such as the EHB or through the Rental Allowance Scheme.
- Much of the private rented accommodation in older estates (without management companies) is poorly maintained.

The PRTB was established as an independent statutory body in September 2004 and its principal functions are:

- The operation of a national registration system for private rental tenancies,
- The resolution of disputes between tenants and landlords,
- The provision of information, assistance and advice to the Minister and to the general private rental sector.

The purpose of the Review is to consider whether the Residential Tenancies Act 2004 optimally supports the PRTB's key functions and whether legislative amendments would support either the achievement of additional operational efficiencies or the broader good working of the private rented sector. However, the fundamental balance between landlords' and tenants' rights, established by the Residential Tenancies Act 2004, will not be disturbed. The Review will examine the specific issues set out below as well as other issues identified in the course of the Review.

Terms of Reference

- The scope for enhancing procedural simplicity and efficiency.
- To consider the existing Board and Committee structure and the functional relationship between the Board and Executive.
- To consider the relationship between the Minister/Department and the PRTB.
- Legislative issues, including proposals already made by the Board, and to examine the need for additional legislative provisions arising from the review.

We will structure our submission under the headings of the Terms of Reference

2.0 The scope for enhancing procedural simplicity and efficiency.

- 2.1 **The main problems** we hear from the Resident Association's affiliated to the Dublin 15 Community Council are:
- Refusal of tenants to maintain gardens (grass is left uncut over the spring and summer, nettles and noxious weed grow wild in front gardens and the grass verge)
 - Properties allowed to deteriorate with little or no external maintenance for example – external woodwork and window frames with peeling paint, showing obvious signs of neglect and giving the estate a run down appearance. Refusal of landlords to maintain external fabric of building.
 - Anti-social activity ranging from aggressive behaviour to neighbours to loud late night parties to serious issues of intravenous drug abuse and dealing. Incidents where Gardai called to investigate.
 - Incidents where tenants were hoarding rubbish in rear gardens to avoid waste charges and under cover of darkness dumped several months of accumulated rubbish on the estate public open space.
 - Very difficult for neighbours to complain due to landlords being unregistered and un-contactable.
 - Many residents are afraid to report anti-social behaviour in their areas or become involved in Resident Association Committees or Neighbourhood Watches because they are afraid that they themselves will be targeted and intimidated and/or because they are uncertain as to how confidential the process is.
 - Many residents are afraid to report anti-social behaviour for fear of becoming a target of retribution when the tenants move on as their address and habits will be known.

2.2 A typical example from one of our affiliated Residents Association Hazelbury.

When a survey was completed of our Hazelbury RA in 2007, only 3 of the 132 members heard of the PRTB. By 2008, this number increase to 31 of 150, largely because of our members requesting the RA to intervene in third party disputes.

These disputes ranged from; noisy parties, car parking issues, garages car repairs being operated from the rented accommodation, houses used as car lots as cars where being sold on the internet using the house as a base, abandoned cars, grass verges between footpath and road not being maintained, gross overcrowding of house, tenants kids urinating on the street, stockpile of rubbish to avoid waste collection charges, intimidation, harassment and threats. In all the above incidents, not one landlord or tenant was registered with the PRTB.

The onus was on the third party victim to pay 35 euro to make a complaint, this was seen as resistance by the PRTB to engage in the problem. People did not know what to put on the form and they feared a backlash from the tenants or landlords. In all cases they could not readily get landlord details. In one particular case it eventually took the Gardai 2 years to get a name by chasing down old neighbours to find out who they sold the house to, in order to do a land search.

The reality is not as simple to log a complaint against a landlord, firstly the onus is on the third party victim (I use the word victim ,as it defines the effect of quality of life that some neighbours endure due to these anti social behaviours of tenants) to pay the 35 euro to fill in a complaint form to wait 6-12 weeks for the case to be heard. This is point less when the landlord is not there and tenants (names unknown) can change in that period.

Typical scenario of Anti-Social Behaviour (ASB) is:

- Usually 2 am in the morning, with noise from party or coming back from a night club, loud music is played in the residence sometime a lot of alcohol and/or drugs taken.
- Third party will not confront tenants fear of confrontation which has happened .Third party rings Gardai
- Gardai are dispatched, if it's at the weekend ASB calls are at the bottom of the list when it come to priority.
- Typical response is if the ASB is within the house confines the resident complaining is directed to ring the Dept of Environment.
- When Gardai leave noise increase as a show of defiance..
- Next morning or by Monday the anger factor has abated and by Monday no complaint to the PRTB will occur.

It is the reality that landlords are not contactable or very hard to find, and in fact that tenants most times do not know their landlord, they would however know what their bank account details are for paying the rent.

It has been our experience that even though letters were sent to non-compliant landlords, they were not in the country to receive them, and their agents did not pass these on.

To start a complaint, the knowledgeable neighbour pays to do a land search registry, find the purchaser of the house, continue searching for present day owner, once received perform business/google searches to find landlord's name, stopping short of hiring a Private Investigator in order to find the whereabouts of the landlord /agent to send an open letter or phone the landlord to initiate the first step of Mediation.

2.3 What is Anti-Social Behaviour

Anti-social behaviour is defined in the Residential Tenancies Act 2004 (Government of Ireland, 2004) as behaviour that constitutes the commission of an offence, causes danger, injury, damage or loss, or includes violence, intimidation, coercion, harassment, obstruction or threats. It also includes persistent behaviour that prevents or interferes with the peaceful occupation of neighbouring dwellings by others in the building or its vicinity.

Under the Residential Tenancies Act 2004, tenants must not engage in or allow anti-social behaviour or act in a way that would invalidate the landlord's insurance.

Part 6 of the Residential Tenancies Act 2004 states that disputes arising between landlords and tenants, in relation to complaints by neighbours regarding tenant behaviour, are to be referred to the PRTB instead of the courts.

2.4 **Our recommendations are** that PRTB take the following key actions to enhance procedural simplicity and efficiency:

- Implement the methodology used by Local Authorities for example - Fingal County Council, where fear of reprisal for those people reporting anti-social behaviour is an issue or serious antisocial activity is alleged.
- Clearly set out the procedures, steps and timelines for neighbour's complaints.
- Fast track notification to landlords that *anti-social behaviour complaints were received*.
- Set up and maintaining a comprehensive database to record and monitor third party anti-social behaviour complaints
- Work in collaboration with the Gardai to speedily deal with anti-social behaviour complaints.



- Review tribunal decisions and related enforcements required in relation to third party anti-social behaviour disputes to assess the effectiveness of existing mechanisms.
- Working in collaboration with the local authorities to develop good practice guidelines for dealing with clients with a history of anti-social behaviour across the sectors
- Promote and encouraging the use of mediation to deal with neighbour to neighbour disputes where intimidation is not an issue.
- Examine available noise legislation in Ireland to assess its adequacy for dealing with noise-related complaints and relative to such legislation in the UK and elsewhere within the EU.
- Explore with relevant local authorities and with landlord and tenants groups the optimal way of dealing with such disputes in relation to the Rental Allowance Scheme
- Develop guidelines for preventing and minimizing such disputes in the private rented sector, drawing on experience in the social housing sector in Ireland and abroad, in collaboration with landlords and tenants groups
- Encouraging individual landlords and landlord groups to incorporate ‘good behaviour’ clauses in tenants’ contracts.
- Amend the categories of “certain third parties who may be affected by a landlord’s failure to enforce tenants’ obligations (e.g. neighbours)” to specifically include Residents Associations, Neighbourhood Watch schemes & Local Authorities.
- Publish anti-social behaviour procedures, policies and statistical data on the PRTB web site.
- Publish a breakdown of 3rd party complaints by type, speed of resolution and outcome in the PRTB annual report.
- To have a process where a back log of 12 weeks is the norm is not an efficient system. This is a perceived as a deterrent to log a complaint and has to change. Is it ambitious to expect an improvement in services to improve this backlog and provide a high quality service to the customer which include third parties?
- A web ticket service number could be allocated so customers can track their request at any given time.
- Examples of dispute forms filled out of third party disputes and case studies so third party victims are not daunted by the task and process of making a complaint. Give them an idea and acts as a job aid or template. From experience most complaints from the various residences have a common theme, these could speed up the process by standardizing the third party complaint process.

3.0 To consider the existing Board and Committee structure and the functional relationship between the Board and Executive

3.1 Enforcement. Comparison between PRTB and Fingal County Council in resolving 3rd party complaints.

The public confidence in the effectiveness of the PRTB in resolving 3rd party complaints particularly anti-social behaviour is very low. A brief internet search of the Irish discussion boards on the internet reveals a widespread cynicism about the effectiveness of the PRTB in dealing with this problem. Our own experience outlined above (in 2.1 & 2.2) confirms this opinion.

Compare the PRTB with the resources available to local authorities to deal with this issue; it appears as if there is an organisational unwillingness to confront these problems.

Fingal County Council has had an estate management section under its Housing Department for more than ten years and there are now seventeen employees in the section dealing with such issues as investigations of anti-social behaviour; maintenance and cyclical repairs programmes; estate refurbishment; tenant participation and estate refurbishment programmes.

Fingal County Council Estate Management Section – Number of Employees

- 1 Admin officer
- 1 Senior staff officer
- 3 Staff officers
- 5 Assistant staff officers
- 7 Clerical officer

Contrast the Fingal County Council Estate Management Section with the entire resources of the PRTB. From the 2007 annual report “*At the end of December 2007 the permanent staff complement stood at 26. Sanction was sought and approval was granted by the Department of Finance for an additional 14 staff in early 2008. The additional staff will enable the PRTB to provide a better quality of service generally*”. The scope of the PRTB while not responsible for the maintenance activities of Fingal county council has the deal with the adjudication of landlord- tenant disputes (the vast bulk of its work)

The main activities of the Fingal County Council estate management section are:

- Investigation of anti-social behaviour
- Organising and facilitating tenant induction courses (10 tenant induction courses were held during the year)
- Meeting resident associations
- Dealing with maintenance queries
- Administration of central heating installation programme, boiler maintenance programme, cyclical maintenance, insurance claims for fire damage dwellings
- Estate refurbishment programmes

The Estate Management Section officially recorded attendance at 64 meetings in 2004 in relation to anti-social behaviour. Of the total, 23 meetings were with resident associations, 19 meetings corresponded with tenant induction courses, 3 meetings were held with Gardai and 19 meetings were met with “others” including the Health Board and the Drugs Task Force.

Fingal County Council Estate Management Section’s internal document “Guidelines and Procedures for Dealing with Anti-Social Behaviour” states that its objectives are:

- To investigate all complaints of anti-social behaviour
- To interview/ challenge/ caution the alleged perpetrators
- To take preventative measures
- To pursue legal remedies, including court orders for evictions, where necessary.

In 2004 there were 307 reports of anti-social behaviour county wide to the Council’s Estate Management Section, the lowest number of complaints in five years. The length of the eviction process and fear of reprisal for those people reporting anti-social behaviour is a issue. Fingal County Council state that the persons making anti-social behaviour complaints are ensured confidentiality.

The PRTB operate a two-stage dispute resolution system. Stage 1 consists of either mediation or adjudication. Stage 2 is a hearing by a Tenancy Tribunal.

If both parties agree to mediation, a PRTB Mediator will be appointed to assist the parties to resolve the dispute themselves. The mediation process is non-confrontational. It assists the parties to explore each other’s respective positions and reach a resolution of the dispute to which both are agreed.

Should either of the parties decide not to use the services of a PRTB Mediator, a PRTB Adjudicator will be appointed to examine the evidence of the parties and investigate the dispute fully. The Adjudicator will decide how the dispute is to be resolved.

The matter will be referred to a Tenancy Tribunal If any of the parties wishes to appeal the Adjudicator’s decision within 21 days or in the event that mediation is unsuccessful and any of the parties request a Tribunal hearing.

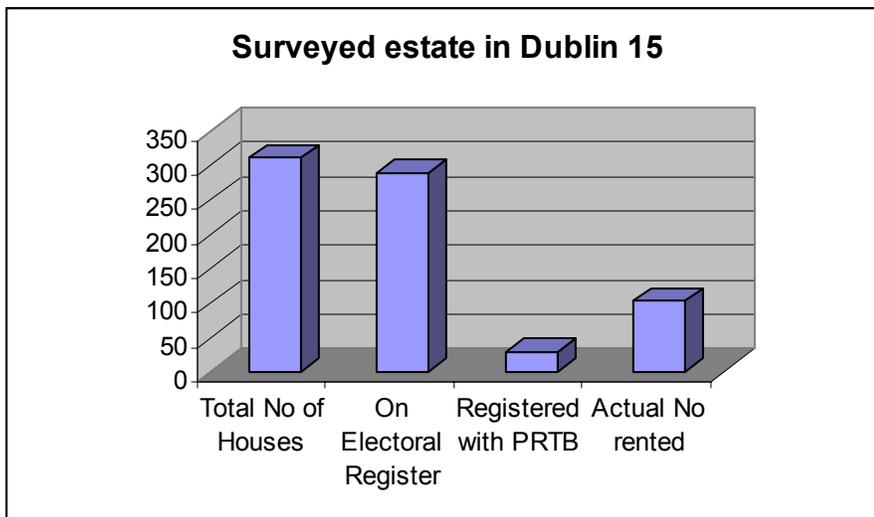
All these PRTP dispute resolution processes require the persons making anti-social behaviour complaints to confront the tenant. Where the tenant has engaged in aggressive, threatening or where fear of reprisal for those people reporting anti-social behaviour is an issue, this process is unworkable.

3.2 Commitments in the PRTB corporate plan 2009-2011

In relation to Tenancy Registrations, the PRTB undertakes the:

- A. processing of registrations by landlords and the collection of the appropriate fees
- B. enforcement of registration requirement and action on non-compliance including sanctions against unregistered landlords
- C. publication of a register of tenancies updated twice each year available on the web-site or in hard copy at its offices
- D. supply of a register to each local authority on a functional area basis to assist with the enforcement of standards and rent book regulations.

A survey of a housing estate in the Castheany-Ongar area in D15 showed the following results. The data was compiled using local knowledge, house to house survey, the Electoral Register and PRTB registry.



29 properties are registered with the PRTB, less than 50% of these are known to Revenue
 103 properties are actually rented as surveyed by the Residents Association
 74 properties are not registered with the PRTB and are unlikely to be known to Revenue

In this estate surveyed 28% of properties are unlikely to be known to Revenue. If we apply this figure to the Dublin 15 area with 25,724 properties and an average rent of €1,200 per month there are potentially as much as €8m per month of undeclared rent.

The estate chosen is at the high range of the 10–30% typical for rented properties in private estates, this analysis indicates that there is the potential undeclared rental income of €3-5m per month in the Dublin 15 area. It would appear to make financial sense to redeploy more public servants to the PRTB to assist it with its enforcement duties.

The ideal state of the PRTB is to have 100% compliance of landlord and tenant registry. The current state is far from that with sample figures from RA data base showing over 70% of landlords not registered.

The current reality is a system that is top down (or pulls system) where the onus is on the landlord to register. There is no enforcement or team set up to conduct surveys of actual figures.

The emphasis need to change to bottom up system, starting with the landlords declaring for revenue and 2nd Non Residential tax (this will need to be sought by local governments in order for them to retain the 200 euro outline in the 2009 budget). This status to be cross reference to the PRTB register.

Simply put there seems to be a disconnection between Public Service Agencies IT databases.

A possible solution to this would be to:

- Share data along the lines proposed in the Fingal County Development Board report “Fingal Data Sharing Initiative” www.fdb.ie/fingaldatahub which was developed with Fingal County Council, the Health Service Executive Northern Area, An Garda Síochána the County Dublin VEC, FAS, Department of Social & Family Affairs, Blanchardstown Area Partnership and Swords Chamber of Commerce.
- Seconded an IT database specialist from each Dept to meet up to cross reference the database involves and compile a finite list of landlord and tenants as a starting point. Using Revenue claims, housing, social welfare, local government, land registry and business searches to compile a list as a starting point. We see this IT team as one leg of an enforcement team having the same emphasis as CAB i.e being empowered to obtain what ever information necessary to reach the ideal state of 100% compliance and pursue prosecutions against unregistered landlords. It would also give the PRTB teeth.

3.3 **Our recommendations** are that PRTB take the following key actions:

- Implement the methodology used by Fingal County Council where fear of reprisal for those people reporting anti-social behaviour is an issue or serious antisocial activity is alleged.
- Working in collaboration with the local authorities to develop good practice guidelines for dealing with clients with a history of anti-social behaviour across the sectors
- Promoting and encouraging the use of mediation to deal with neighbour to neighbour disputes where intimidation is not an issue.
- Provide dispute resolution mechanisms where persons making anti-social behaviour complaints are ensured confidentiality and are protected from reprisal.
- 3rd party complainants have no commercial interest in the tenancy, whereas both landlord and tenancy have a commercial interest. It would be unfair if the cost of dispute resolution was born by the 3rd parties.
- Developing guidelines for preventing and minimizing anti-social behaviour disputes in the private rented sector, drawing on experience in the social housing sector in Ireland and abroad, in collaboration with Residents Groups, County Community Forums, Local Policing Forums and Local Authority Housing Departments
- Encouraging individual landlords and landlord groups to incorporate ‘good behaviour’ clauses in tenants’ contracts. This good behaviour clause should include the behaviour of invited guests of tenants, who may not be on the lease agreement. That a vehicle of complaint can be made for such instances.
- Amend the categories of “certain third parties who may be affected by a landlord’s failure to enforce tenants’ obligations (e.g. neighbours)” to specifically include Residents Associations, Neighbourhood Watch schemes & Local Authorities.
- The terms Tenants to be expanded to include siblings, relatives, children of tenants, which may not appear on the lease agreement and would not be liable to register with the PRTB.
- Landlords and tenants need to be aware of obligations to the with regard to grass verges outside their homes, County Councils do not carry out the cutting of grass verges along side or outside dwellings.
- Where a registered Residential Association exists landlords should join it and contribute, encouraging tenants to do so as well. This helps tenants new to an area to integrate in to the community. Rented sector are sometimes classified as transient community and do not feel they can contribute to the community as they are only renting. To include in best practice guideline would be a start to overcome this scenario. If landlords leave contact details with RA and it complies with the data protection act, it can be seen as a partnership.

- Publish anti-social behaviour procedures, policies and statistical data on the PRTB web site.
- Actively search for non-compliant landlords by comparing PRTB register with Revenue, Housing, Social Welfare, Local Government, Land Registry and registered business databases.
- Make the fine for non registration significant (for example 3 months typical rent).

We would welcome research with various registered Residents Associations to get the vital customer feedback and to ensure landlord are accountable not only for their tenants but to the contribution well being of the community sprit.

4.0 To consider the relationship between the Minister/Department and the PRTB.

- We have no comment to make on this section

5.0 **Legislative issues**, including proposals already made by the Board, and to examine the need for additional legislative provisions arising from the review.

5.1 Lack of teeth to address the problems discussed above.

- Current legislation permits 3rd parties to make complaints about the problems of anti social behaviour, there is no right to make complaints to the Private Residential Tenancies Board against landlords who fail to properly care for the outside of their rented houses. We would like to see an amendment to the Residential Tenancies Act to enable residents associations make complaints to the Private Residential Tenancies Board against landlords who fail to properly care for the outside of their rented houses. Giving residents associations the power to make complaints is the only way standards will be policed.
- Lack of enthusiasm to get landlords to register. The publication of the register of rented properties is a welcome transparency and openness. One thing that never fails to amaze Residents Associations is that when they receive a complaint from their members and look at the register 8 times out of 10 the rented property is not registered. This has to change. The only way is to make it financially painful for non compliance by landlords.

5.2 Participation of PRTB in Joint Policing Committees and local Policing Fora's.

The Garda Siochána Act 2005 allows for the establishment of Joint Policing Committees (JPC) and local Policing Fora's.

The act states (section 36, 2) "the JPCs function is to serve as a forum for consultations discussions and recommendations on matters affecting the policing of the local authorities ADMINISTRATIVE area and in particular to –

- (a) keep under review
 - (i) the levels and patterns of crime, disorder and anti-social behaviour in that (administrative)area
 - (ii) the factors underlying and contributing to the levels of crime, disorder and anti-social behaviour in the area

If we contend that absentee or unresponsive landlords and their tenants are contributing to levels of crime and anti-social behaviour in the administrative area of Fingal County Council, then surely the responsibility rests with the JPC/Fingal County Council. The case could be made at least at a local level the PRTB should come under the guidance of the JPC. This surely would give greater control locally, to the PRTB, Council and Gardaí in locating landlords and tracking anti-social tenants.

The relevant section of the Residential Tenancies Act 2004 should be amended directing the PRTB to participate in the Joint Policing Committees and local Policing Fora's.

5.3 Legislative anomalies

Legislation is required around the definition of dwelling under the terms of the act. This is to ensure scope of dwelling is curtailed within the building, and to ensure portacabins in gardens of dwellings, building sites, yards do not fall under the definition of rented accommodation.

We have seen examples of where outhouses are used as rented accommodation. Recent cases in the newspapers have detailed cases where people (generally exploited foreign workers who are unaware of their rights in Ireland) where living in outbuildings not fit for human habitation.

This legislation should also address the growing concern and experience of over crowding in rented accommodation. We have experience of one 4 bed house with 20 people living in it. It is essential to limit the number of people living in a house to the state amount as per the PRTB web site for health and safety reasons.



Summary

We welcome the opportunity to participate in the public consultation of the *Review of the Residential Tenancies Act 2004*. We appreciate that the act and the PRTB are in existence for a relatively short time, however there is considerable room for improvement in this important function.

We hope you will address the issues raised and incorporate our recommendations in your final report.

Yours faithfully

Dublin 15 Community Council