

RTB Investigations & Property Inspections What To Expect & How To Prepare

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Today's CPD will be in Two Parts

A) The first half of the presentation will cover RTB Investigations, the process, sanctions and how to prepare for it

It will be followed by:

B) Property Standards Inspections in regards to Notifications, Access to the Property, Visits Feedback, Remedial Works and Final Report

A) Areas to be covered in RTB Investigation

- **New Legislation giving RTB Powers to Investigate and Inspect Properties**
- **Examples of what Constitutes Improper Conduct**
- **What Type of RTB Sanctions can Apply?**
- **What & Who Triggers an RTB Investigation?**
- **RTB Investigation Reports, Results & Outcomes**
- **How to Prepare for an RTB Investigation?**

B) Topics to be covered on Property Inspections

- **Who are conducting these Property Inspections?**
- **Why are these Property Inspections taking place?**
- **What is the process during these Property Inspections and Reports?**
- **The legislation covering the inspection and standards of rented dwellings**
- **The general outcome of these Property Inspections and Reports**
- **How to prepare for a Property Inspection?**

****New Legislation giving RTB Powers to Investigate and Inspect Properties****

The new Residential Tenancies (Amendment) Act 2019 establishes an investigations and sanctions process that will allow the RTB to proactively monitor and enforce key areas of the legislation

Allows RTB to impose penalties on landlords who are found to have committed improper Conduct

There is a list of what constitutes “improper conduct” on RTB website but some examples of these are....

Examples of what Constitutes Improper Conduct

Failure to comply with the Rent Pressure Zone (RPZ) requirements. This occurs by increasing rent by more than 4% in an RPZ in a 12-month period (24 months for an existing tenancy in an area newly designated as an RPZ)

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.

Failure to notify the RTB about the reliance on an exemption to the RPZ requirements within 1 month from the setting of the rent.

Failure to register a tenancy with the RTB within 1 month of the tenancy commencing

Citing in a Notice of Termination a reason for terminating the tenancy that is false or misleading in a material respect.

What Type of RTB Sanctions can Apply ?

Landlord cautioned

The RTB will publish any sanctions imposed

Criminal offence. The landlord can be found guilty of a criminal offence

Financial penalty. Landlord may be fined (The maximum financial penalty is €15,000) + Up to €15,000 in costs

The RTB will take into consideration a number of factors when deciding on level of sanction. They are;

The **gravity** of the improper conduct

Any **acknowledgement** on the part of the landlord

Any **failure** on the part of the landlord to **co-operate** with the investigation

The **duration** of the improper conduct, and

Any **history** of the landlord engaging in similar instances of improper conduct

****What & Who Triggers an RTB Investigation ?**b>**

*****Please note that the RTB can start an investigation on their own volition by using internal RTB records such as the register of tenancies. A Complaint does not need to be registered by a 3rd party.**

Very important to note as that the new powers are not just against landlord but as an agents you may also be part of this investigation. If the RTB feel that you have relevant information regarding the investigation you will be also involved.

Investigations are conducted by specially appointed RTB Authorised Officers. Their powers include:
Entering, inspecting, examining and searching any premises

Inspecting and taking copies of records including removing and retaining records for as long as is considered reasonable

Compelling any person at the premises / its owner or person in charge or employed there to assist, inform and produce records
To requiring a landlord to provide any necessary explanations

If someone who is party to the investigation and does not co-operate they can be the subject of a District Court Order

Failure to engage with the RTB could be subject to a fine of up to €50,000 and / or a maximum of 12 months imprisonment.

While the powers of the RTB are many, they cannot enter a dwelling without a) the consent of the occupant or b) having obtained a warrant.

RTB Investigation Reports, Results & Outcomes

When Authorised Officer (AO) has finished RTB investigation a **draft report will be produced** setting out findings and sent to landlord

If the investigation was triggered by a complaint from a **3rd party** they will receive the report too (like Adjudications)

Both parties have **21 days to make submission** on the contents of the report which will be considered by the Authorised Officer

Possible **alterations to the Draft Report** will be made if, in the opinion of the Authorised Officer an alteration is warranted

The final Investigation Report will then be **submitted to an independent Decision Maker**.

The Decision Maker will consider the final Investigation Report and **if they agree that a breach has occurred**, they can apply a caution or a fine.

The landlord does have a **right of appeal** to the Circuit Court. Any sanction will ultimately be confirmed by the Circuit Court

Any further appeal, **on a point of law only**, is possible in the High Court

The RTB will **publish** sanctions on their website

An RTB investigation for a landlord can be serious in terms of costs, time and potential reputational damage

How to Prepare for an RTB Investigation ?

- 1) When you are notified by the RTB on the investigation, although frustrating respond immediately
- 2) If you feel the investigation has no merit or contains false, frivolous & vexatious allegations & claims state this in your submission to the Authorised Officer
- 3) Make sure that you co-operate at all times. Remember slide 5. This will have a bearing on the final outcome !
- 4) Approach an RTB Investigation like you would a RTB Adjudication or Tribunal Hearing and provide;
 - a) Hard Evidence to back up your position in the form of
 - b) Copy of Current & Old Lease Agreements
 - c) Your RTB RPZ Calculations
 - d) Photos of property before and after substantial change
 - e) Builders/Surveyors reports
 - f) Old and New Building Energy Rating Certificates
 - g) Statements from Your Managing Agent showing correct procedures took place (increase rents/ending tenancy)
 - h) Copy of RTB Registration within 28 days of commencement of Lease Agreement (not when it was signed)
 - i) Providing Hard Evidence that a Termination of Tenancy was not served under false pretences (Statutory Declaration)
 - j) Sending in a copy of the Termination of Tenancy with your submission

Property Standards Inspections

How are the property and owner details acquired by the inspecting parties ? Random ? Yes

Relationship with RTB Registrations & The Local County Council the property is located within

The Local County Council may choose to do one of two things:

1) Send out one of their own personnel from their Housing Department/Division

Or

2) Appoint a 3rd Party to inspect the subject property on their behalf (Inspex Limited)

What is the Purpose of these property inspections ?

Simple; To make sure that they comply with the current minimum standards for all private rented accommodation are set out in the Housing (Standards for Rented Houses) Regulations 2019

Powers of the Local County Councils for Inspections

Our local authorities are responsible for checking and enforcing these minimum accommodation standards while landlords are responsible for ensuring their rented properties meet these standards

Officers of the Housing Authority are authorised under section 18(2) of the Housing (Miscellaneous Provisions) Act 1992 to access all rented properties in South Dublin for the purpose of rented house inspections

In 2019 South Dublin County Council entered into a contract with Inspex Limited to carry out inspections on behalf of this Local Authority.

The Council has issued Inspex Ltd. with a schedule of rented properties for inspection as registered with the Residential Tenancies Board (RTB) together with landlord and tenancy details as registered for the purpose of processing inspections of these properties in accordance with Housing Standards Regulations.

What are the stages of these Property Inspections ?

- 1) Notification from the Local County Council or if it is South Dublin County Council Inspex will notify you and/or landlord
- 2) Notifications can be in the form of an email with attached letter or sent to the home of the landlord and/or agents office address
- 3) Agent and/or landlord must notify the tenant of the up-coming property inspection
- 4) Agree with the tenant(s) what is an appropriate date to visit the property subject to Covid-19 rules
- 5) Property Inspection takes place. I would advise that the landlord and/or their agent be present
- 6) The County Council will write to the landlord and/or their agent on the outcome of the inspection
- 7) Work/improvements may be required and will be set out in the report sent to the landlord and/or agent
- 8) The landlord and/or their agent should organise works/improvements as soon as they can subject to Covid-19 rules
- 9) A re-inspection will be done and subject to all the works/improvements been done in accordance with the minimum standards a final letter of confirmation will be issued

General outcome of Property Inspections and Reports

Summary of Findings after Property Inspections;

- 1) No BER Certificate for the Property
- 2) Boiler has not been serviced on a yearly basis and no copies of RGI Service Certs
- 3) Absence of Carbon Monoxide Sensors
- 4) No Fire blanket in property in the correct location
- 5) The correct ventilation is not in place particularly in bedrooms
- 6) The correct window locks are not in place for up-stairs windows or windows above ground floor in apartments
- 7) The absence of independently regulated space and water heating systems in the property
- 8) Apparent Damp/Mildew “problems” in the property

*****In my experience of RTB Dispute resolution Property Inspections are triggered by tenants complaints to the Local CC*****

How to prepare for a Property Inspection

- 1) On receipt of the notification of the property inspections consult with your landlord immediately
- 2) Since there is generally 2 weeks to a month before inspections takes place agree on a plan with you landlord
- 3) This plan would entail that the property 100% conforms to minimum standards for rental properties
- 4) If property has not been checked since 2019 and you or the landlord are nervous it does not arrange a visit to check
- 5) After visit arrange for maintenance man/plumber to call out to property to carry out work (window locks/boiler service)
- 6) ***Refer to the Minimum Standards for Rental Dwellings as your “Check List” to make sure all is in order
- 7) Purchase and install any items missing such as CM sensor, fire blanket, etc, etc
- 8) Arrange visit with tenant and the property inspector and attend in person to hear any observations they have on the day
- 9) If you have already prepared for visit all should be in order but if not the report after inspection will direct you what to do

Summary of Topics Covered Today & Take Home Message

The policing of residential property standards & tenancies has increased dramatically in recent times

Landlords and/or their Letting and/or Managing Agents need to be aware of these and constantly up-date themselves

Our industry needs to start looking at placing clauses in the PSRA Letters of Engagement just in case they get pulled into a RTB Investigation and/or CC Property Inspection so they have the option to increase fees in those circumstances to reflect the potential significant additional work

Agents should make sure that all current & new properties coming onto their books conform to minimum standards for rented dwellings if not already done so

Suggest it would be “Best Practice” to do an internal audit on the above if not done since 2019

In the last 10 years legislation around residential property and their tenancies has increased so much that the Landlord/Tenant & Letting/Managing Agent relationship is no longer what it was and the landscape has changed completely

Questions & Answers Time

Thank you for listening

Please feel free to contact me at marcus@mfo.ie if you have any further questions on my presentation

Stay Safe