The Role of the Landlord's Intention in Terminating Residential Tenancies

Laura Farrell*

Abstract: On 10 June 2025, the government announced reforms to the rules governing security of tenure in residential tenancies. At the time of writing, a Bill has not been published. Under the existing rules on security of tenure, a Part 4 tenancy is of potentially unlimited duration, and whilst this seems like significant security of tenure, there are 'no fault' grounds on which a landlord may terminate which hinge on the landlord's intention in relation to the premises, e.g. they may intend to sell it. Therefore, this article argues that how a landlord is required to establish this intention becomes the measure of security of tenure. To assess this, this article discusses the evidential requirements including statutory declarations, and how the courts and the Residential Tenancies Board assess whether a landlord has established the requisite intention. It is expected that after the proposed reforms, a large landlord (to be defined in the legislation) will no longer be able to terminate on these grounds, whilst a small landlord will be able to terminate on these grounds at the end of a six-year tenancy. The proposed reforms make this article's review of the security of tenure offered by the current rules all the more important. Government discussions around the reforms have focused on largely banning 'no-fault evictions' to curb what they call 'economic evictions', or cases where landlords end tenancies in order to raise rents. However, looking closely at 'no fault' evictions, as this article does, we see that a 'no fault' eviction is not coterminous with an 'economic eviction' and these reforms represent a significant rebalancing of landlord and tenant rights, with stronger security of tenure for tenants. Less far-reaching reform to the rules of security of tenure could have prevented a landlord from terminating simply to re-let the residential dwelling at a higher (market) rent.

Keywords: residential tenancies; security of tenure; eviction; statutory declaration; law reform; landlord and tenant.

Introduction to Tenancy Termination

The Residential Tenancies Act 2004 ('the Act')[1] was commenced in September and December 2004.[2] In the preamble to the Act, the first stated purpose is to provide:

> In accordance with the exigencies of the common good, for a measure of security of tenure for tenants of certain dwellings.

Part Four of the Act contains the provisions on security of tenure.[3] Not all tenancies that fall within the ambit of the Act have the benefit of Part Four. For those tenancies that do, one of the main innovations of the Act was the so-called Part 4 Tenancy.[4] The statutory Part 4 Tenancy only arises once a person has been in occupation of a dwelling under a tenancy for a continuous period of 6 months, and no valid notice of termination has been served during that period.[5] Once a tenant has the benefit of a Part 4 Tenancy, that tenancy is of unlimited duration.[6]

A Part 4 Tenancy may be terminated by the landlord and/or the tenant. The grounds for terminating a Part 4 Tenancy are included in a table to section 34 of the Act. Certain faults by the tenant will allow a landlord to terminate.[7] In this article we are concerned with termination by a landlord where there has been no fault of the tenant. In outline, these reasons are:

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* Laura Farrell MA (Oxon), LL.M (Dub.) read law at Jesus College Oxford, where she was a scholar, and has been called to the Bars of England and Wales and Ireland. Having practiced at the Bar in Ireland for over ten years, Laura was admitted to the roll of solicitors and is a senior knowledge lawyer in the real estate team in McCann FitzGerald. Laura is the author of *Residential Tenancies* (Bloomsbury, 2018).

[1] References to the Act are references to the Residential Tenancies Act 2004-2024.
[2] Residential Tenancies Act 2004 (Commencement) Order 2004 (SI No 505 of 2004) and Residential Tenancies Act 2004 (Commencement) (No 2) Order (SI No 750 of 2004).
[3] The Act, s 25.
[4] "Part 4 Tenancy" is defined in the Act, s 29.
[5] ibid s 28(1).
[6] ibid s 28(1) as amended by the Residential Tenancies (Amendment) Act 2021, s 5(1)(a). See further, modification (not altering the Act's text) by the Residential Tenancies (Amendment) Act 2021, s 5(2)-(4).
[7] ibid s 34, table, grounds 1 and 1A.

- The dwelling is no longer suitable to the accommodation needs of the tenant;
- The landlord intends, within nine months after the termination of the tenancy under this section, to enter into an enforceable agreement for the transfer to another, for full consideration, of the whole of his or her interest in the dwelling or the property containing the dwelling and the notice of termination is accompanied by a statutory declaration (referred to herein with the shorthand of the ground of 'sale' or where the landlord 'intends to sell');[8]
- The landlord requires the dwelling for their own occupation or for the occupation of a family member;
- The landlord intends to substantially refurbish or renovate the dwelling or the property in a way that requires the property to be vacated for that purpose; and
- The landlord intends to change the use of the dwelling.[9]

To terminate for any of these reasons the landlord must serve a notice of termination in accordance with the requirements of the Act. The notice is served on the tenant, and on the same day a copy is required to be served on the Residential Tenancies Board ('the RTB').[10] The Act stipulates the information that must be contained in the notice,[11] and the period of notice that must be given.[12] There are other specific requirements for certain grounds of termination.[13] In this article we are concerned with those grounds that specifically refer to the landlord's intention and/or respond to the landlord's plans for the dwelling. For ease of reference those reasons (and their number in the table to the Act, section

[8] Since 17 January 2017 termination because of an intention to sell has a different application if the landlord is seeking to sell ten or more dwellings within a development but this so-called 'Tyrellstown amendment' is outside the scope of this paper.
[9] s 34 table, grounds 2-6.
[10] ibid s 39A.
[11] ibid s 62.
[12] ibid s 66.
[13] ibid s 34, table, grounds 2-6 and s 35.

34) are: sale (ground 3); own or family member's occupation (ground 4); refurbishment (ground 5); and change of use of the dwelling (ground 6).

Reasons for Termination that Respond to the Landlord's Intention

The specific requirements for each of those four reasons for termination are split, in a somewhat *ad hoc* manner, between the Act, sections 34 and 35. Each of those grounds require an offer to reoccupy to be made, and the rules regulating the offer to reoccupy are discussed for all grounds below. The other specific requirements for each ground are as follows:

- For the third ground in the table to the Act, section 34 (sale), the notice of termination must be accompanied with a statutory declaration, and that declaration must include:

> a declaration that the landlord intends to enter into an enforceable agreement to transfer to another, for full consideration, of the whole of his or her interest in the dwelling or the property containing the dwelling.[14]

- For the fourth ground in the table to the Act, section 34 (landlord's or family member's use), the notice of termination must be accompanied with a statutory declaration, and that declaration must specify the intended occupant's identity and (if not the landlord) the occupant's relationship with the landlord and the expected duration of that occupation.[15]

- For the fifth ground in the table to the Act, section 34 (refurbishment which requires the dwelling to be vacated for that purpose), if planning permission is required, that planning permission needs to be obtained *before* the notice of termination is served.[16] The notice of termination must be accompanied by a copy of any required planning permission. If planning permission is not required, the notice of termination must

[14] ibid s 35(8)(a).
[15] ibid s 34, table, ground 4(a)(i) and (ii). A member of the landlord's family is defined in the Act, s 35(4).
[16] ibid s 34, ground 5.

contain or be accompanied by a written statement which sets out: (i) the name of the contractor, if any, employed to carry out the intended works, and (ii) the dates on which the intended works are to be carried out and the proposed duration of the period in which those works are to be carried out.[17] Whether or not planning permission is required, the notice needs to contain or be accompanied with a statement specifying the nature of the intended works.[18]

- For the sixth ground in the table to the Act, section 34 (change of use), if planning permission is required, that permission needs to be obtained before the notice is served.[19] A copy of the planning permission should accompany the notice of termination.[20] Where works are required to be carried out in relation to the change of use, then the notice of termination needs to contain or be accompanied with a written statement specifying details of those works, the name of the contractor, if any, employed and the dates and expected duration of those works. Where no planning permission is required and/or no works will be required, there is no statutory requirement to state that fact explicitly. Any notice of termination served in reliance on the sixth ground needs to contain or be accompanied by a written statement specifying the nature of the intended use.

As noted above, each of these four grounds of termination contain a requirement that the landlord will offer the dwelling back to the tenant in certain circumstances. In respect of grounds 3 and 4, this statement needs to be contained in a statutory declaration. This obligation is considered in more detail below.

The Landlord's Intention as a Measure of Security of Tenure

As we have seen, the Act allows termination where there has been no fault on the part of the tenant. Four of those ‘no fault grounds’ of termination respond to the landlord’s intention. This means that measuring the security of tenure in the Act depends on the role ascribed to the landlord’s intention. In other words,

[17] ibid s 35(9)(b).
[18] ibid s 34, ground 5(a).
[19] ibid s 34, ground 6.
[20] ibid s 35(10).

measuring the security of tenure requires an assessment of how the landlord establishes and/or proves that intention, and the consequences when that intention changes or is revealed to never to have existed. To investigate these issues, this article considers:

- How the courts have approached the landlord's required intention;
- The importance of the requirement for a statutory declaration;
- Establishing the intention in evidence;
- Offer to reoccupy;
- Ulterior motive and penalisation; and
- Prohibited conduct and offences.

Exactly what intention must the landlord have?

The intention here is not to interrogate each of the grounds of termination that refer to the landlord's intention, but only ground 3 (sale) and 4 (landlord's or family member's use), which have received judicial attention.

The specifics of the required intention have received the most judicial attention. For example, must the landlord prove an intention 'to sell', or an intention 'to sell in nine months'? Baker J considered this issue in *Hennessy v PRTB*,[21] in 2016. The law at the time the notice of termination in *Hennessy* was served (11 June 2014) was different to the current rules in two respects: (i) the required intention was to sell in three months (subsequently extended to nine months)[22] and (ii) there was no requirement for a statutory declaration.[23] As was later repeated with approval by Simons J in *Gunn v RTB*,[24] Baker J said,

[21] [2016] IEHC 174.
[22] It was extended to nine months by the Residential Tenancies (Amendment) Act 2019, s 12(2)(a).
[23] The requirement for a statutory declaration was inserted by the Residential Tenancies (Amendment) Act 2015, s 28(c) and then amended by Planning and Development (Housing) and Residential Tenancies Act 2016, s 39.
[24] [2020] IEHC 635.

> the operative reason for termination on account of ground 3 in the table to s 34 is not that the landlord intends to sell the premises, but that he intends to bind himself to a contract for sale within three months of termination. There is a difference in emphasis and meaning between the two statements of intent, and that difference is relevant and central to the protection afforded by the legislation. An intention to sell simpliciter is not sufficient to terminate.

When the Act was amended by section 28(c) of the Residential Tenancies (Amendment) Act 2015 to include a requirement that the notice of termination be accompanied by a statutory declaration, the statutory declaration in question was required only to include a 'declaration that the landlord intends to enter into an enforceable agreement to transfer to another, for full consideration, of the whole of the landlord's interest in the dwelling'. Notably, the declaration does not include a declaration of an intention to sell in nine months. In *Residential Tenancies*,[25] I wrote that Baker J's decision in *Hennessy* now sat uneasily with the lack of a legislative requirement for the content of the statutory declaration to refer to 'nine months'.

Hennessy also considered when the landlord's intention is assessed, noting that before the notice of termination may be served, the landlord must intend to sell the dwelling. This was further extrapolated in *Gunn* such that regard *may* be had to steps taken by a landlord before *and* after the service of the notice of termination, but the probative value of acts taken after the service of a notice of termination cannot be a substitute for a lack of intention as of the date of service.

Turning to ground 4 (landlord's or family member's use), in *O'Sheehan v Residential Tenancies Board*[26] there was some disagreement between the parties as to whether the landlord must intend to occupy the property as a self-contained residential unit. The tenants submitted that the intended occupation must be occupation as a dwelling. By contrast, the RTB, at hearing, accepted that the landlord must intend the occupation as a dwelling, in the sense of a form of residential use, but that there is a certain 'elasticity' to the concept, which is

[25] Laura Farrell and JCW Wylie (eds), *Residential Tenancies* (Bloomsbury 2018) [6.80].
[26] [2024] IEHC 409.

ultimately a question of fact and degree. In *O'Sheehan*, the High Court explained the meaning of 'occupation' in ground 4 as follows for the 'accommodation needs' of the landlord or their family:

> Here, the object of Part 4 of the RTA 2004 is to confer security of tenure on certain classes of tenant. This is achieved by restricting a landlord's right to recover possession to specific circumstances. One of these is where the landlord requires the property for his or her own occupation or for occupation by a member of their family. A landlord is not entitled to exercise his property rights by terminating a tenancy for the purpose of letting it out, at a higher rent, to a third party. The legislature has, however, drawn a distinction where the intended occupation will be by the landlord or his or her family. *The legislature has ordained that a landlord retains the right to recover a tenanted property for his or her own accommodation needs or those of their family*. This right prevails over any right which a tenancy would otherwise enjoy to a secured tenancy of unlimited duration.[27]

In *O'Sheehan*, Simons J goes on to consider that ground 4 must refer 'to occupation of the property for its existing use, i.e., as a self-contained residential unit' because change of use of the property is addressed separately (ground 6). Simons J said that what will constitute occupation as a dwelling is a question of fact and degree:

> It is not necessary that the premises be occupied as the sole or principal residence of the landlord or family member ... At the other end of the spectrum, occasional or intermittent occupation will not be sufficient. It must be doubtful, for example, whether a landlord would be entitled to rely on the landlord/family occupation ground where the proposed use of the tenanted property is a holiday home.[28]

In *O'Sheehan*, the time at which the landlord's intention must be assessed was also considered. The use to which the landlord/landlord's family members

[27] ibid [23] (emphasis added).
[28] ibid [26].

intended to put the property had changed through time, and Simons J said that the proper approach for the Tribunal was to

> identify which, if any, of the various proposed uses posited by the Landlords represented the operational use which could be relied upon to ground the notice of termination. Thereafter, the Tenancy Tribunal was required, secondly, to consider whether this identified proposed use, if *bona fide*, would constitute occupation as a dwelling, i.e., as a self-contained residential unit, for the purposes of section 34.[29]

The Requirement for a Statutory Declaration

In *Gunn v RTB,*[30] the RTB argued before the High Court that the statutory declaration that accompanies the landlord's notice of termination has a particular evidential status, specifically that the legislative intention was that the statutory declaration sworn by the landlord would *evidence* the intention stated therein. The RTB made the further argument that in the absence of cross-examination, it is not possible to go behind such a statutory declaration.[31] Whilst expressing his comments to be *obiter*, Simons J did consider these arguments:

> The legislative intent in prescribing a requirement for a statutory declaration is to ensure that this ground of termination is not invoked lightly. It would, however, be inconsistent with the overall scheme of the legislation to confer some sort of presumptive evidential status upon such a statutory declaration.[32]

If the statutory declaration was given a presumptive evidential status, then the effect would have been to diminish the tenant's rights (i.e., remove from the tenant the right to challenge the landlord's intention, once the landlord had sworn a statutory declaration).[33]

[29] ibid [74].
[30] *Gunn* (n 24).
[31] ibid [51].
[32] ibid [55].
[33] ibid [57].

Following *Gunn*, the High Court has further considered the evidential status of the statutory declaration in *Stulpinaite v The Residential Tenancies Board*[34] and in *O'Sheehan*.[35] The argument made in relation to the statutory declaration in *Stulpinaite* was not as strong as that made in *Gunn*: in *Stulpinaite* it was only urged that having regard to the fact that there were penal sanctions where a person made a false or misleading statutory declaration, the making of the statutory declaration was itself a significant piece of evidence that the Tribunal was entitled to take into consideration.[36] Barr J was satisfied that notwithstanding the *obiter* status of Simons J's comments on statutory declarations in *Gunn*, those comments represent an accurate statement of the law.[37] In answering the specific arguments made before him, Barr J said that a statutory declaration is some but not strong evidence of the intention stated therein:

> Given the informal nature of proceedings before the Tribunal, the better view is that a statutory declaration constitutes evidence of intention, due to the fact that there are penal consequences if the statement made therein is not true; however, given that the statutory declaration is essentially just a statement by the interested party confirming his own stated intention, it is not strong evidence of intention, but is nonetheless some evidence that can be taken into account by the Tribunal.[38]

In *Kelly v RTB*[39] the landlord, a commercial entity, served a notice of termination on the ground of intended sale, and the statutory declaration was sworn by a director of the landlord, who did not give evidence at the Tribunal hearing. The point of law on which the tenant appealed to the High Court was that the RTB had erred in finding that the statutory declaration was sufficient evidence of the truth of its contents. In *Kelly*, Bradley J noted that the comments in *Gunn* were expressly *obiter* and then made the following observation on those comments as follows: '[t]here is no suggestion, however, that a statutory declaration is

[34] [2021] IEHC 178.
[35] Where it was affirmed that the statutory declaration does not have presumptive evidential status, *O'Sheehan* (n 26) [19].
[36] [2021] IEHC 178 [66].
[37] ibid [67].
[38] ibid [69].
[39] [2024] IEHC 730.

impermissible *per se* in a hearing.'[40] Just as in *Stulpinaite*, Bradley J characterised the statutory declaration served in *Kelly* as 'some (albeit not strong) evidence' that the landlord had the requisite intention.[41]

Establishing the Intention in Evidence

It is clear that the notice of termination/statutory declaration are intended to be interrogated/looked behind and this is evidenced by the Act's dispute resolution procedures.[42] Section 78(1)(g) of the Act[43] allows a tenant to bring a challenge to a notice of termination on the basis that a landlord did not have the requisite intention as stated in the notice. The legislation envisages that adjudications and then the Tribunal on appeal will proceed by oral hearing, with the Tribunal having statutory power to administer an oath or affirmation. How easy or difficult it is for the landlord to establish their intention before the Tribunal then becomes a further measure of the degree of security of tenure afforded by the Act.

In *Stulpinaite*, the tenant queried the landlord's intention to sell as set out in the notice of termination, and accompanying statutory declaration. The landlord did not attend at the Tribunal, and the tenant did not subpoena the landlord to attend before the Tribunal. Before the High Court, the tenant submitted that having regard to the dispute between the parties with regards to the *bona fides* of the landlord's intention, it was incumbent upon the Tribunal to exercise the power given to it under section 105(3) Act, to summon the landlord to appear before it and give evidence. Ultimately the High Court held that the tenant could not complain that the landlord did not give evidence as she did not call him as a witness. When analysing this decision, it should be noted that it was a particular feature of this case that the landlord had not attended at the adjudication, and so the tenant could have predicted he would not attend at the Tribunal. It should also be noted that the High Court expressed considerable sympathy for the tenant, noting that it seemed

[40] ibid [54]
[41] ibid [59].
[42] See for example the comments of Simons J in *Gunn* (n 24) [56].
[43] '(g) an allegation that the ground stated by the landlord for the purposes of terminating a tenancy was not valid or that the notice used to terminate a tenancy did not comply with this Act'.

> incongruous that where the sole issue is the intention which a landlord had at the date of service of the notice of termination … the landlord can elect to establish his state of mind, not by giving evidence himself of his intention, but by sending in his letting agent and by submitting a plethora of documents, to establish that fact.[44]

The High Court further noted that the letting agent could only give evidence of what he was told by the landlord, which was hearsay evidence, and that it is 'almost impossible to cross-examine a witness on the accuracy or veracity of their hearsay evidence.'[45]

In *Rathdrinagh Land Limited v Donfield*[46] there was a conflict of fact in the affidavit evidence on the determinative issue in the application, namely whether the tenant had received the notice of termination from the landlord. From that basis, the Tribunal went on to cross-examine the tenant but not to cross-examine the landlord. The High Court held that this was 'a manifest procedural unfairness',[47] and later 'this lack of procedural fairness leaps off the pages'[48] of the Tribunal transcript.

Stulpinaite was cited and distinguished in *Rathdrinagh* on the basis that in *Rathdrinagh*, the landlord 'did give evidence to the Tribunal by way of affidavit and his evidence was accepted.'[49] However, distinguishing the case in this way arguably overlooks the fact that, in *Stulpinaite,* the landlord's statutory declaration[50] was also before the Tribunal and constituted some evidence of intention, even though the landlord did not attend in person, or provide an affidavit. This raises the question of whether a statutory declaration, in the absence of oral or affidavit evidence, should be regarded as a lesser form of evidence, or whether the Tribunal ought to have required the landlord's attendance for cross-examination, particularly where intention is disputed.

[44] *Stulpinaite* (n 34) [87].
[45] ibid [88].
[46] [2024] IEHC 749.
[47] ibid [85].
[48] ibid [91].
[49] ibid [82].
[50] The landlord had sworn the statutory declaration, *Stulpinaite* (n 34) [13].

Appeal to the High Court

Having considered how the landlord establishes their intention in evidence, it is important to move on to consider the tenant's ability to appeal the Tribunal's findings in relation to the landlord's intention to the High Court. The scope of the statutory appeal brought under section 123 of the Act where the landlord's intention is in issue was considered in *Kelly* (above) where the tenant characterised the central issue in its appeal as a *legal question* concerning an error of law as to whether the Tribunal properly directed itself as to its approach to the *sufficiency* of the evidence before it. The tenant contended that as the appeal centred on the question of the landlord's intention, establishing intention as a matter of evidence is necessarily a matter of inference which can be reviewed by the High Court on a statutory appeal on a point of law. By contrast, the RTB said that the issue (i.e., whether the landlord held an intention to sell the dwelling within nine months of the termination date) was a *question of fact*. Bradley J described the jurisdiction of the High Court as follows:

> The following principles apply to the exercise of my statutory appellate jurisdiction in this appeal when considering whether the RTB erred as a matter of law: (a) in its determination; and/or (b) in its process of determination: (i) I may not interfere with first instance findings of fact unless I find that there is no evidence to support them; (ii) as to mixed questions of fact and law, I: (a) may reverse the RTB on its interpretation of documents; (b) can set aside the RTB determination on grounds of misdirection in law or mistake in reasoning, if the conclusions reached by it on the primary facts before it could not reasonably be drawn; (c) must set aside the RTB determination, if its conclusions show that it was wrong in some view of the law adopted by it; (iii) even if there is no mistake in law, or misinterpretation of documents on the part of the RTB, I can, nonetheless, set aside its determination where inferences drawn by the Tribunal from primary facts could not reasonably have been drawn.
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> Accordingly the parameters of the remit of my statutory appellate jurisdiction in this case are as follows: (i) I cannot set aside findings of primary fact unless there is no evidence to support such findings; (ii) I ought not set aside inferences drawn from such facts unless such

> inferences were ones which no reasonable decision-making body could draw; (iii) I can and should, however, reverse such inferences, if the same were based on the interpretation of documents which was incorrect; and (iv) if the conclusion reached by the RTB shows that it has taken an erroneous view of the law, then that is also a ground for setting aside the resulting decision.[51]

Bradley J also quoted Ferriter J in *Web Summit Services v RTB*[52] where he observed that 'an appeal may not succeed unless, *inter alia*, there was no evidence to support a material finding of primary fact, or an inference or conclusion on the facts was one which no Tribunal could reasonably have reached.' Ultimately, Bradley J decided 'that, taken together … [there was] evidence to support the material findings of primary fact made by the RTB and that the inferences and conclusions drawn from those facts were ones which the RTB could reasonably have reached.'[53] In elaborating on what constituted 'sufficient evidence' that the landlord had the requisite intention, Bradley J explained that the Tribunal was entitled to rely on the statutory declaration (which he described as 'some (albeit not strong) evidence'), together with the oral evidence of a company director as to the landlord's intention at the relevant time, and the absence of any direct evidence to the contrary from the tenant. He noted that the Tribunal could consider the statutory declaration, oral testimony, and the surrounding circumstances in combination, and that this amounted to sufficient evidence to support the finding that the landlord intended to enter into an enforceable agreement for sale within the statutory period.[54] If we seek to rely on *Kelly* as a precedent to define the scope of a statutory appeal under section 123 of the Act, where the landlord's intention is in issue, we face a difficulty. While the judgment appears to describe the High Court's jurisdiction in terms that align more closely with the RTB's position (i.e., that the High Court cannot interfere with findings of fact unless there is no evidence to support them), its ultimate conclusion seems

[51] *Kelly* (n 39) [24]-[25].
[52] [2023] IEHC 634 [27].
[53] *Kelly* (n 39) [41].
[54] ibid [42] and [77].

to be framed in a way that reflects the tenant's test (i.e., that there was sufficient evidence).

Offer to Reoccupy

The fact that the intention has not materialised, e.g., the fact that the property has not been sold within nine months, is not a basis for negating the fact that the landlord ever had the requisite intention.[55] However, to deter landlords from terminating a tenancy based on a disingenuous intention, there are consequences if the stated intention does not materialise. Specifically, each of the four grounds of termination that rely on the landlord's intention require the landlord to offer the dwelling back to the tenant in certain circumstances. In respect of grounds 3 and 4, this statement needs to be contained in a statutory declaration.

- For the third ground (sale) it is triggered where the landlord does not enter into an enforceable agreement for the transfer to another for full consideration of the whole of their interest in the dwelling or the property containing the dwelling in nine months.[56]
- For the fourth ground (landlord's or family member's use) it is triggered where the landlord/family member occupant vacates within 12 months.
- For the fifth ground in the table to the Act, section 34 (refurbishment which requires the dwelling to be vacated for that purpose) it is triggered if the dwelling becomes available by reason of the completion of the works of refurbishment or renovation.[57] The Act does not stipulate a period of time.
- For the sixth ground in the table to the Act, section 34 (change of use) it is triggered if the dwelling becomes available for reletting within the period of 12 months.[58]

In each of these scenarios, where a period of time is stipulated, time runs from the expiry of the notice period, or if a dispute has been referred to the RTB, from the final determination of that dispute. Where the tenancy has been validly

[55] ibid [72].
[56] The Act, s 34, table, ground 3 and s 35(8)(aa).
[57] ibid s 34, table, ground 5.
[58] ibid s 34, table, ground 6.

terminated for an additional reason, the obligation to 'offer back' will not be triggered.[59]

If the offer is accepted within 7 days (or such lesser reasonable period as was included in the offer), the resulting agreement is enforceable by landlord and tenant.[60] If it is not accepted within that period, the tenant loses their right to reoccupy.[61]

Ulterior Motive – penalisation

Motive and intention are different. The landlord's motive in forming an intention to terminate is certainly relevant insofar as the Act prohibits a landlord from penalising a tenant. Penalisation is governed by section 14 of the Act. A tenant may be penalised if a landlord is motivated in serving a notice of termination by virtue of any acts of the tenant as described in section 14(1) of the Act (such tenant acts include referring a dispute to the RTB or making a complaint to a public authority). If a notice of termination is served in retaliation in a way prohibited by section 14 of the Act, then the consequence is that the notice will be invalid.[62]

The landlord's intention must be *bona fide*. One of the questions of law referred to the High Court in *O'Sheehan* was whether the Tribunal failed to carry out any enquiry or properly adjudicate upon whether the claimed requirement of possession of the subject property by the landlords was a *bona fide* requirement and not a requirement that in truth did not exist or one that was advanced to achieve an unlawful objective. The tenant further contended that relevant evidence in this regard had not been taken into consideration by the Tribunal. The High Court clarified that the Tribunal must consider both the subjective dimension (what the landlord claims their intention is) and the objective dimension (whether that stated intention is genuine and not advanced to achieve an unlawful objective). In *O'Sheehan*, the Court was satisfied that the Tribunal had

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[59] The alternate basis for termination that mean the offer to reoccupy does not need to be made vary depending on which ground in any given scenario has given rise to the necessity of making an offer to reoccupy, see the Act, s 34 grounds 4-6, and s 35(8)(aa).
[60] ibid s 35(6).
[61] ibid s 35(6A).
[62] *O'Sheehan* (n 26) [33].

correctly addressed both aspects and reached a valid finding in accordance with the law.

Prohibited Conduct and Offences

The Residential Tenancies Amendment Act 2019 was signed by the President on 24 May 2019.[63] The Act introduced a significant enhancement to the powers of the RTB in regulating the conduct of landlords. The 2019 Act brought in new criminal offences for landlords, and extensive investigative powers of the RTB along with provision for sanctions for improper conduct by landlords. Schedule 2 of the Act sets out what constitutes improper conduct in respect of which investigations can be carried out. These grounds include giving a reason on a notice of termination that is known to be false or misleading and/or failure to offer a tenancy back to a tenant when certain conditions have been met. The decision-makers have a wide discretion in imposing sanctions for improper conduct. The maximum financial penalty is €15,000 for improper conduct.

The Act makes provision for several offences. A person who is guilty of an offence under the Principal Act is liable on summary conviction to a fine not exceeding €4,000[64] or imprisonment for a term not exceeding six months, or to both. Section 74 of the Act makes it an offence to act in reliance on an invalid notice of termination, which actions affects adversely, or are calculated to affect adversely, any interest of the person on whom the notice is served.

Conclusion and Reform

Following legislative reform in 2022, the Part 4 tenancy became of potentially unlimited duration. This sounds like significant security of tenure, but the tenants' rights are balanced by the landlord's ability to terminate a Part 4 tenancy for the reasons set out in section 34 of the Act. It is especially important for landlords that section 34 of the Act, allows termination for several reasons that do not

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[63] The Residential Tenancies Amendment Act 2019, <https://www.oireachtas.ie/en/bills/bill/2018/140/> accessed 08 January 2026.

[64] The fine of €3,000 provided for in s 9(1) of the Principal Act, translates into a class B fine, not greater than €4,000 as provided for by ss 3 and 5(2) of the Fines Act 2010 and table ref. no. 1, S.I. No. 662 of 2010.

correspond to the tenant's fault. These reasons respond to the landlord's intention/future use of the dwelling, and so, in a very real way, how a landlord is required to establish this intention is a measure of the security of tenure offered by the Act.

Since the talk on which this article is based was given in the Law Society, the government has announced significant reforms to the Act. At the time of writing, we do not yet have a Bill to consider. However, from a government press release, it appears that the rules on security of tenure will be subject to significant revision. There is to be a distinction between a large and a small landlord, with a large landlord having four or more residential properties for letting. A further new statutory construct will be introduced, being that of a tenancy of minimum duration, with the existing Part 4 tenancy being one of rolling six-year terms. Depending on the final text of the Bill, some existing grounds in section 34 of the Act, may be restricted to small landlords and/or engaged at the end of a minimum-duration term. During the six-year term, the small landlord will only be able to terminate on limited grounds, which we expect to be where the landlord requires the dwelling for its own use or that of an immediate family member, or where the termination is necessitated by the landlord's financial hardship. It seems that the large landlord will not have a right to terminate for sale, renovation, occupation or change of use at any time.

These security of tenure reforms are part of a package of reforms relating to rent some of which have already been commenced[65] while others have yet to be set out in a Bill. Insofar as rent is concerned, a major innovation of these reforms will perhaps be the landlord's power to reset to market rent between tenancies. The consequent incentive for landlords to terminate existing tenancies that are not at market rents is obvious. Accordingly, the government has been clear: economic terminations, i.e., terminations for the purpose of entering into another tenancy at a higher (market) rent, will not be allowed. It is in this context that the new security of tenure reforms have been proposed, but, is this what the new reforms achieve?

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[65] Residential Tenancies (Amendment) Act 2025 (which made the whole country a rent pressure zone).

This article has been concerned with the existing 'no fault' grounds of termination, which depend on the landlord's intention/future use of the property. We have seen the methods which give teeth to the requirement that a landlord have a particular intention. It is submitted that these 'no fault' grounds of termination do not allow for an 'economic termination'. In other words, the existing no fault grounds of termination do not provide for a scenario where a landlord, motivated by increasing rent, may terminate, and let out at a higher rent, without more. It may be that the dwelling would be ultimately let at a higher rent, but first, something else would need to happen, for example the dwelling would need to be sold; and in respect of other grounds (for example where a family member moves in, or the use of the dwelling is changed), the dwelling would leave the residential rental market, at least for a time.

The subject matter of this paper is therefore important in understanding the proposed reforms. The proposed changes to the rules on security of tenure are more than simply a step to disincentivise economic evictions; it is submitted that the reforms go beyond what would be necessary to achieve this.