

Guide to Making an Acknowledgement of Improper Conduct



Bord um Thionóntachtaí Cónaithe
Residential Tenancies Board

1. Introduction

This guide has been developed to assist landlords who have received a Notice of Investigation (NOI) and wish to make an acknowledgement in respect of the allegations of Improper Conduct outlined in the NOI. This guide outlines the acknowledgement process and should be read in conjunction with the Residential Tenancies Act 2004 (as amended) and the Investigations and Sanctions Guide, which both provide more detail on the Investigations and Sanction process as a whole.

2. What does it mean to acknowledge Improper Conduct?

By making an acknowledgement, the landlord is admitting to the Residential Tenancies Board (RTB) that Improper Conduct occurred in the past or is still occurring. The landlord also has an opportunity, when acknowledging Improper Conduct, to describe the steps taken to correct and remedy the Improper Conduct.

By admitting at an early stage that Improper Conduct has occurred or is occurring, the landlord can shorten the investigation process. No further investigation of this Improper Conduct will take place by the Authorised Officers once an acknowledgement has been made.

A landlord who wishes to acknowledge Improper Conduct must complete the attached Acknowledgement Form and return it to the assigned Authorised Officers **within 21 days of receiving the Notice of Investigation (“the NOI”)**. In cases where a landlord is represented by a solicitor, agent or other representative, the Acknowledgement Form must be signed by the landlord. Where the landlord is a Corporate Body, the Acknowledgement Form must be signed by a person having authority to bind the company.

3. Does a landlord have to acknowledge ALL allegations of Improper Conduct?

No. It is the landlord’s decision to acknowledge some or all of the allegations of Improper Conduct outlined in the Notice of Investigation.

Where **all of the allegations** of Improper Conduct are acknowledged by the landlord, the Authorised Officers do not investigate the matter(s) any further and the acknowledgement is sent directly to an independent Decision Maker. An acknowledgement by a landlord is one of the factors a Decision Maker may consider when deciding on what sanction, if any, to impose on the landlord.

4. What happens if a landlord only acknowledges SOME allegations of Improper Conduct?

Where some, but not all, instances of Improper Conduct are acknowledged, the remaining alleged breaches will be investigated fully by the Authorised Officers. The acknowledgement, and any attached information from the landlord relating to the acknowledgement, will be submitted to the Decision Maker along with the Authorised Officer's Investigation Report, which would be related to the alleged breach(es) the landlord did not acknowledge.

5. What happens after a landlord makes an acknowledgement?

When the Authorised Officers receive an acknowledgement from the landlord, the Authorised Officers will write to the landlord to confirm the documents have been received. If any information provided in an acknowledgement requires further confirmation or clarification, the Authorised Officers may contact the landlord to seek such information. However, it is important to stress that the Authorised Officers will not investigate the matter any further, if all instances of Improper Conduct have been acknowledged. If the Authorised Officers contact the landlord on foot of an acknowledgement, it will be solely for the purpose of clarifying a piece of information.

The Decision Maker may consider the following factors when deciding whether to impose a sanction and the nature and level of the sanction:

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

It is important that you take these factors into consideration when making your acknowledgement. See Section 6 for examples of documents you may wish to consider including with your acknowledgement.

The Decision Maker may decide to hold an Oral Hearing, if it is required, to assist them in making their decision or for the purposes of observing fair procedures.

The sanction imposed by a Decision Maker can include **any or all** of the following:

- ▶ A written caution to the landlord.
- ▶ A penalty of up to a maximum value of €15,000 for each instance of Improper Conduct.
- ▶ Additional costs of up to a maximum value of €15,000, incurred by the RTB for investigating the matter, may also be payable by the landlord.

6. Rectification and Refunds

This section applies to Improper Conduct related to a failure to comply with the Rent Pressure Zone (RPZ) requirements. If you are acknowledging that an incorrect rent was charged, it is important that you clearly set out all the information relating to this incorrect rent, when calculating any refund issued to tenants and any reduction in rent.

An RPZ calculator is available on the RTB website www.rtb.ie. An RPZ calculation may have been included with the Notice of Investigation which issued to you. This document provides a calculation showing the maximum permissible rent for this dwelling at the time the alleged breach took place in addition to the dates and previous rent amount used in the calculation.

If you believe different date(s) and/or rent amount should be used in the calculation, please use the rent calculator on the RTB website to complete a new calculation. A copy of the new calculation from the RTB website should be attached to your acknowledgement along with an explanation of why you have used the alternative date(s) and/or rent amount.

Appendix 1 of the Acknowledgement Form contains a guide to calculating the amount of overpaid rent which should be completed and submitted with your acknowledgement.

Refund of Rent

If you have refunded the overpaid rent to the tenant, please provide proof of payment e.g. bank statements, EFT transfers or receipt from the tenant. Alternatively, you can ask the tenant to contact the Authorised Officers directly to confirm the refund.

If you have refunded a different amount than that set out in Appendix 1, please explain the reason why and detail how you calculated this amount in the main body of the Acknowledgement Form.

If you have agreed with the tenant that the amount be repaid through rent discount or other means, please provide details of the arrangement in the main body of the Acknowledgment Form and attach proof of this agreement.

Reduction in Rent

For an ongoing tenancy, if the rent has been reduced to an amount equal to or less than the maximum permissible rent as per the RPZ calculator, please clearly state the new rent amount in the main body of the Acknowledgement Form. In addition, please provide copies of the following, if relevant:

- ▶ communication with the tenant(s) regarding the new rent amount
- ▶ updated lease agreement
- ▶ communication regarding or confirmation of the RTB tenancy registration update
- ▶ documents/correspondence issued with HAP (if applicable) in recognition of the reduced rent/refund

Calculating an Overpayment of Rent

(See Appendix 1 of the Acknowledgement Form attached to this Guide)

Example 1

Monthly Rate Calculation	
Incorrect Rent Charged	€1400
Less Correct Rent (Amount equal to or less than the maximum permissible rent).	€1200
<i>Equals</i> Overcharged Rent	€200
Period of Time the Incorrect Rent was Applied	
<i>Multiply</i> by Time (The number of calendar months or part thereof for which the incorrect rent was charged).	3 months
<i>Equals</i> Overpaid Rent	€600

Example 2

Monthly Rate Calculation	
Incorrect Rent Charged	€1800
Less Correct Rent	€1400
<i>Equals</i> Overcharged Rent	€400
Period of Time the Incorrect Rent was Applied	
<i>Multiply</i> by Time (The number of calendar months or part thereof for which the incorrect rent was charged).	3 months and 21 days
<i>Equals</i> Overpaid Rent	€1479.15 (€1200 + *€276.15) *see below for Daily Rate Calculation

Daily Rate Calculation	
If you have calculated a daily rate for the purposes of working out the amount owed, please show the calculation used here.	Overcharged rent = €400 per month
For example:	€400 x 12 months = €4800 overcharged per annum
Daily Rate = rent per month	€4800 ÷ 365 days = €13.15 overcharged per day
x 12 months ÷ 365 days	21 days x €13.15 = €276.15

7.

What should a landlord include in their acknowledgement?

A landlord wishing to acknowledge Improper Conduct should complete the attached form by signing the declaration under each allegation which is being acknowledged. Once complete, return the form to the RTB **within 21 days of receipt of the Notice of Investigation.**

Landlords may wish to include the following information and supporting documentation with the Acknowledgement Form to assist the Decision Maker in making a decision:

- a. An explanation and any mitigating factors or extenuating circumstances regarding the Improper Conduct;
- b. Steps taken by the landlord to end the Improper Conduct (if it is ongoing);
- c. Steps taken by the landlord to remedy the situation resulting from the Improper Conduct; and
- d. Any other information the landlord believes to be relevant.

The following is a list of the types of supporting documents a landlord may wish to consider submitting with the acknowledgment. **Please note this is not a mandatory or exhaustive list.**

Improper Conduct	Examples of Supporting Documents
Improper Conduct related to a failure to comply with the Rent Pressure Zone (RPZ) requirements	<p>Evidence of any refund made to the tenant(s) and evidence of any reduction of rent. For example:</p> <ul style="list-style-type: none"> ▶ A copy of bank statement(s)/screen shots showing the transaction(s). ▶ Any communication from the tenant(s) and/or Local Authority/Department of Employment Affairs and Social Protection, if rental assistance provided, confirming receipt and monetary value of any refund/reduction of rent. <u>Where possible this should be sent directly from the tenant or other body to the Authorised Officer.</u>
Improper Conduct related to exemptions to RPZ requirements	<p>Evidence of any exemption relied upon. For example:</p> <ul style="list-style-type: none"> ▶ A notification, if any, to the RTB regarding the exemption. ▶ A copy of the RPZ Exemption Form, if submitted to RTB. <p>For claims relying on the substantial change exemption, examples include:</p> <ul style="list-style-type: none"> ▶ Invoices/receipts for completed works. ▶ Copy of bank statement(s) showing the payment transaction(s) for invoices, materials and services for works undertaken. ▶ Floor plans for property showing changes to layout/size, etc. ▶ BER Certificates showing improvements in BER rating. ▶ Photographs before and after the works were completed. ▶ Where there is an extension to the dwelling, images from a maps website of dwelling before and after works were completed.
Improper Conduct related to failure to register a tenancy or notify the RTB of changes to a tenancy	<ul style="list-style-type: none"> ▶ Evidence of registration with the RTB. ▶ Evidence of changes notified to the RTB. ▶ Copy of a signed and dated lease/tenancy agreement to verify the registration/change details.
Improper Conduct related to false or misleading information in the Notice of Termination	<ul style="list-style-type: none"> ▶ Notice of Termination. ▶ Invoices/receipts for completed works. ▶ Copy of bank statement(s) showing the payment transaction(s) for invoices, materials and services for works undertaken. ▶ Evidence of property being offered for sale.

Improper conduct related to seeking a deposit in excess of one month's rent or an advance payment in excess of one month's rent	<p>Examples of supporting documents:</p> <ul style="list-style-type: none"> ▶ Any relevant communication with the tenant/ prospective tenant relating to the deposit or to an advance payment. ▶ Bank statements showing the actual amount of deposit or advance payment made and the actual amount of rent paid. ▶ Receipts showing the actual amount of deposit or advance payment made and the actual amount of rent paid. ▶ Copy of a lease showing the amount of deposit or advance payment sought and the amount of rent agreed.
Improper Conduct related to failure to offer a tenancy back to a tenant	<ul style="list-style-type: none"> ▶ Evidence of any offer sent to tenant. ▶ Evidence if any of tenants response to offer. ▶ Evidence of any attempts to obtain tenants contact details. ▶ Evidence if any of contacting the RTB to request tenants contact details.
Improper Conduct related to the duration of a Student Specific Accommodation tenancy	<ul style="list-style-type: none"> ▶ Copy of a lease/licence agreement showing that a tenancy duration of more than 41 weeks was requested or required by the landlord (in the case of Student Specific Accommodation) ▶ Any relevant communication with the tenant/ prospective tenant relating to the tenancy duration.

If any details of the tenancy in question change during the investigation process, for example the rent amount, please ensure you update your tenancy registration details with the RTB. This can be done online or by submitting a Tenancy Update Form, which can be downloaded from the Forms, Tools and Templates section of the RTB website (www.rtb.ie). The lease agreement with the tenant should also be updated. Updated leases do not need to be submitted to the RTB.

For further information regarding the Investigations and Sanctions process, please refer to the enclosed Investigations and Sanctions Guide.



Acknowledgement of Improper Conduct Form

This form is to be completed only in the event of acknowledging Improper Conduct

Investigation Case Ref No:

Landlord Full Name:

Dwelling Address:

Authorised Officer:

Date of Notice of Investigation (NOI):

A landlord who has committed or is committing Improper Conduct has the opportunity to acknowledge the Improper Conduct, pursuant to section 148W (1) of the Residential Tenancies Act 2004 (as amended) ("the Act"). Improper Conduct in relation to a landlord is defined in Section 148R of the Act.

If you wish to acknowledge any instances of Improper Conduct, you must fill in and send this Acknowledgement Form to the Authorised Officer named in the Notice of Investigation (NOI), within 21 days of receiving the NOI.

If the landlord is a Corporate Body, the Acknowledgement Form must be signed by a person having authority to bind the company.

1. Alleged Improper Conduct:

I , the landlord of

acknowledge the above Improper Conduct occurred and my explanation, including any mitigating factors, regarding this Improper Conduct is as follows:

(Please attach a separate page if necessary)

The steps I have taken to end the Improper Conduct and/or remedy the situation are as follows:

(Please attach a separate page if necessary)

Please attach any relevant documentation to support the information provided above.

Signed

(The Landlord)

Date

2. Alleged Improper Conduct:

I , the landlord of

acknowledge the above Improper Conduct occurred and my explanation, including any mitigating factors, regarding this Improper Conduct is as follows:

(Please attach a separate page if necessary)

The steps I have taken to end the Improper Conduct and/or remedy the situation are as follows:

(Please attach a separate page if necessary)

Please attach any relevant documentation to support the information provided above.

Signed (The Landlord) Date

3. Alleged Improper Conduct:

I , the landlord of

acknowledge the above Improper Conduct occurred and my explanation, including any mitigating factors, regarding this Improper Conduct is as follows:

(Please attach a separate page if necessary)

The steps I have taken to end the Improper Conduct and/or remedy the situation are as follows:

(Please attach a separate page if necessary)

Please attach any relevant documentation to support the information provided above.

Signed Date
(The Landlord)

4. Alleged Improper Conduct:

I , the landlord of

acknowledge the above Improper Conduct occurred and my explanation, including any mitigating factors, regarding this Improper Conduct is as follows:

(Please attach a separate page if necessary)

The steps I have taken to end the Improper Conduct and/or remedy the situation are as follows:

(Please attach a separate page if necessary)

Please attach any relevant documentation to support the information provided above.

Signed
(The Landlord)

Date

Appendix 1

Calculation of Overpaid Rent

Please refer to Section 6 of the Acknowledgement Guide for further information.

Calculation Method for Overpaid Rent	
Monthly Rate Calculation	
Incorrect Rent Charged	€
Less Correct Rent (Amount equal to or less than the maximum permissible rent).	€
<i>Equals</i> Overcharged Rent	€
Period of Time the Incorrect Rent was Applied	
<i>Multiply</i> by Time (The number of calendar months or part thereof* for which the incorrect rent was charged). *If a daily rate is used to calculate a partial month, please complete the Daily Rate Calculation section below.	
<i>Equals</i> Overpaid Rent	€
Daily Rate Calculation	
If you have calculated a daily rate for the purposes of working out the amount owed, please show the calculation used here.	

Checklist for an Acknowledgement of Improper Conduct

Landlord's signature for each breach being acknowledged.

If applicable, explanation provided for each breach being acknowledged.

If applicable, details included of any steps taken to end the Improper Conduct and remedy the situation.

If applicable, supporting documentation attached.

Please specify any documents attached below:

1.

2.

3.

4.

5.

6.

7.

8.