



Bord um Thionóntachtaí Cónaithe  
Residential Tenancies Board

# Section 148AF

## Procedural Rules:

### RTB Complaints,

### Investigations and

### Sanctions Procedure



These rules are made by the Residential Tenancies Board (the “**RTB**”) under section 148AF of the Residential Tenancies Act 2004 – (as amended) (the “**Act**”) and are subject to the provisions of the Act. They may be amended at any time by the RTB with the consent of the Minister and they supersede any previous such rules pursuant to section 148AF as adopted by the RTB.

## Complaints

1. All complaints must be made in writing and addressed to the RTB. Complaints must be made using the “Sanctions Procedure Complaint Form” which is available on [www.rtb.ie](http://www.rtb.ie).
2. A complaint must specify the nature of the improper conduct alleged against a landlord.
3. The RTB is obliged to investigate the complaint unless any of the following factors apply -
  - a. Insufficient information is provided with the complaint;
  - b. The complaint does not relate to improper conduct, as defined in Schedule 2 of the Act;
  - c. The complaint is not made in good faith;
  - d. The complaint is frivolous or vexatious or without substance or foundation;
  - e. The complaint should be referred to the RTB for dispute resolution under Part 6 of the Act.
4. If any of the foregoing factors apply the RTB must give notice to both the complainant and the landlord of its decision not to investigate the complaint and the reasons for same.
5. Where there is good and sufficient reason for doing so the RTB may cause an investigation into a complaint to continue, even after the complaint is withdrawn by the complainant, in accordance with Section 148T(4). In such situations, the investigation is treated as if it had been initiated by the RTB.

## Appointments

6. For each investigation, the RTB will appoint an authorised officer and a decision maker. The RTB may appoint more than one authorised officer to carry out an investigation; in that scenario, the investigation report must be prepared jointly by them. In appointing an authorised officer the RTB may set parameters to the investigation but it is not obliged to do so.

## Notice of investigation

7. If the investigation arises following receipt of a complaint, the authorised officer must (i) give written notice to the landlord in question of the complaint and its details; (ii) give the landlord copies of relevant documentation, if any; (iii) give the landlord a period of time within which to respond; this period must be a minimum of 21 days from the date on which the landlord received the notice, but the authorised officer may extend that period, provided the extension does not exceed a further 21 days. The written notice must advise the landlord that under section 148W of the Act, he or she may acknowledge his/her improper conduct.
8. If the investigation arises on the volition of the RTB, the authorised officer must (i) give written notice to the landlord in question of the matters to which the investigation refers; (ii) give the



landlord copies of relevant documentation, if any; (iii) give the landlord a period of time within which to respond; this period must be a minimum of 21 days from the date on which the landlord received the notice, but the authorised officer may extend that period, provided the extension does not exceed a further 21 days. The written notice must advise the landlord that under section 148W of the Act, he or she may acknowledge his/her improper conduct.

## Right of complainant during investigation

9. Where an investigation arises following receipt of a complaint by the RTB, the authorised officer must, as soon as is practicable, give the complainant a copy of the notice of the investigation which was furnished to the landlord and make reasonable efforts to ensure that the complainant is kept informed of the investigation's progress. The complainant must be provided with the authorised officer's draft investigation report, a copy of section 148X of the Act and a written notice advising the complainant on the timeframe for receipt of any written submission from the complainant on the draft investigation report. The complainant must be given a copy of the RTB decision notice relating to their complaint at the same time as the notice is given to the landlord or as soon as practicable thereafter. Where the Circuit Court confirms or decides on any sanction to be imposed, the RTB shall, as soon as practicable thereafter give notice to the landlord and at the same time to the complainant, where applicable, or as soon as practicable after giving notice to the landlord.

## Acknowledgement of improper conduct

10. A landlord who is notified of an investigation arising out of a complaint, or arising out of the volition of the RTB, may acknowledge that improper conduct by him or her has occurred or is occurring. Such an acknowledgement should be made to the authorised officer, and should be made within 21 days of the landlord receiving notice of the investigation. If a landlord makes such an acknowledgement, the authorised officer must give to the decision maker a copy of (i) the notice of investigation which was provided to the landlord and (ii) the landlord's acknowledgement. Upon receipt of the foregoing, the decision maker must determine as soon as practicable and in accordance with Part 7A of the Act whether or not to impose a sanction on the landlord.

## Conduct of investigation

11. Investigations shall be carried out by authorised officers, who shall have the powers conferred on them by section 148S of the Act.
12. At the outset of an authorised officer's interaction with any person in the performance of his or her functions, the authorised officer must explain in plain language the offences provided for under section 148S of the Act.
13. An authorised officer may enter a private dwelling with the consent of the occupier for the purposes of inspecting, examining and searching it in connection with an investigation under Part 7A of the Act. The authorised officer does not require the consent of the landlord. In default of such consent, the authorised officer may not enter a private dwelling without a warrant



authorising such entry. Applications for warrants are made to the District Court, grounded on the sworn information of an authorised officer.

14. Authorised officers are not restricted to the inspection and examination of private dwellings but may inspect and examine any premises wherein, in their reasonable belief, any activity is carried on in connection with the letting or tenancy of a dwelling. An authorised officer must be able to demonstrate reasons as to why they held such a reasonable belief.
15. An authorised officer may take copies or extracts from records which may be material to the investigation, and same may be done by using the photograph function of a smart phone or tablet or similar devices, though an authorised officer is not restricted to such methods.
16. An authorised officer may remove any records from a premises and retain them, in as secure a manner as is reasonably possible, for such a period as he or she reasonably considers to be necessary in the carrying out of his or her function.
17. If an authorised officer has reasonable cause to apprehend any serious obstruction in the performance of any of his or her investigative functions under section 148S(1) of the Act, he or she should seek the accompaniment of An Garda Síochána.
18. An authorised officer may require a landlord to provide an explanation in relation to any matter which the authorised officer deems relevant to the investigation. If the authorised officer has entered a premises which may contain material which is relevant to the investigation, the authorised officer may require any person at that premises to assist in giving information or producing records if same is or are within that person's possession, control or procurement. In the absence of such co-operation, the authorised officer may draw whatever inferences he or she deems appropriate when writing his or her report.
19. When an authorised officer informs a person that his or her co-operation is required in relation to the answering of questions or production of documents, the authorised officer must – if the matter cannot be dealt with immediately – give that person a time and date by which that request for co-operation shall be complied with.
20. An authorised officer shall be free to draw such inferences as may be reasonable from a failure, on the part of any party, to co-operate with the investigation.
21. An authorised officer may require any person who – in the authorised officer's opinion – possesses information that is relevant to the investigation or has documents within their possession, control or procurement that relate to the investigation to provide that information or those records. Furthermore, the authorised officer may require such a person to attend before him or her for the purpose of providing that information or those records. Such persons must comply with the authorised officer's request and failure to do so is an offence. Such persons may be required, when attending before the authorised officer, to answer questions put by the authorised officer under oath or affirmation. The oath or affirmation may be administered by the authorised officer. Failure of such persons to fully co-operate with an authorised officer may result in the authorised officer making an application to the District Court to compel

compliance. Such an application shall be made on notice to the person who is the subject of the application, and shall be made in a summary manner. No such applications shall be made without the consent of the RTB.

22. In relation to documentation, the only documentation which a person is not compelled to provide to an authorised officer when a request for all relevant documentation is made is documentation which is subject to legal professional privilege.
23. Any person who withholds, destroys, conceals or refuses to provide any information or records for the purposes of an investigation is guilty of an offence and is liable to a fine and/or imprisonment. Such persons may be tried summarily or on indictment. When tried summarily, a person may be liable to a Class A fine (which is currently defined in the Fines Acts 2010 to be a maximum of €5,000) and/or a term of imprisonment not exceeding 12 months. On indictment, a person may be liable to a maximum fine of €50,000 and/or a term of imprisonment not exceeding 5 years. At the outset of an authorised officer's interaction with a person from whom he or she is requiring co-operation in the manner outlined above, the authorised officer must explain in plain language that any statements or admissions made in the course of that co-operation may be admissible against that person in criminal proceedings where the person is tried with the offence of withholding, destroying, concealing or refusing to provide information or records for the purposes of an investigation under the Act.
24. Any person who fails or refuses to comply with any requirement of an authorised officer in the performance of his or her functions, or who otherwise obstructs or hinders an authorised officer in the performance of his or her functions is guilty of an offence and is liable to a fine and/or imprisonment. Such persons may be tried summarily or on indictment. When tried summarily, a person may be liable to a Class A fine (which is currently defined in the Fines Acts 2010 to be a maximum fine of €5,000) and/or a term of imprisonment not exceeding 12 months. On indictment, a person may be liable to a maximum fine of €50,000 and/or a term of imprisonment not exceeding 5 years. At the outset of an authorised officer's interaction with a person from whom he or she is requiring co-operation in the manner outlined above, the authorised officer must explain in plain language that any statements or admissions made in the course of that co-operation may be admissible against that person in criminal proceedings where the person is tried with the offence of failing or refusing to comply with a requirement of an authorised officer in the performance of his or her functions, or where that person is tried with the offence of otherwise obstructing or hindering an authorised officer in the performance of his or her functions.

## Oral hearing with authorised officer

25. An authorised officer may conduct an oral hearing during the course of the investigation if he or she thinks it proper to do so, taking into account any request from the landlord to whom the investigation relates for such an oral hearing to be held. It is not possible to be exhaustive as to the exact cases in which an authorised officer will decide that an oral hearing will be required but it will generally be in circumstances where there is a conflict of fact that cannot be resolved by another means.



26. The authorised officer may take evidence on oath. The authorised officer may administer the oath.
27. The oral hearing shall be conducted in private and members of the public will not be entitled to attend.
28. The authorised officer may require any person – by notice in writing – to attend the oral hearing at a given time and place. Such a person may be called to give evidence in the matter or to produce relevant documents. Such a person may be examined and cross-examined at the oral hearing and is entitled to the same immunities and privileges as if that person were a witness before the High Court.
29. Where a person who is required to attend an oral hearing does not comply in any manner, the authorised officer may apply in a summary manner to the District Court, on notice to the relevant person, for an order requiring the compliance in question. Such an application may be brought in the district where the person required to attend ordinarily resides or carries on any profession, business or occupation.
30. An authorised officer may direct that a person who is required to attend an oral hearing recover the whole or part of the reasonable travelling and subsistence expenses incurred as a result of that persons appearance at the oral hearing. Such a direction is subject to the consent of the RTB and such monies may be paid out of monies at the disposal of the RTB.
31. The authorised officer shall circulate all evidence and written submissions submitted by the parties to each party in advance of the hearing. The authorised officer may do so by way of written communication including via email and attachments.
32. In the event that a party does not attend an oral hearing on the appointed day in circumstances where that party has not given written notice of an inability to attend, for health or other significant reasons, the authorised officer may elect to conduct the oral hearing in the absence of that party if he or she thinks it proper to do so.

## Investigation report

33. In preparing the investigation report, the authorised officer must consider any information, records, statements, admissions, submissions or other relevant evidence sourced during the investigation.
34. As soon as is practicable after the foregoing matters have been considered the authorised officer must prepare a draft investigation report.
35. The authorised officer must make findings of fact. Where the authorised officer states in the Report that he or she is satisfied that improper conduct on the part of the landlord has occurred or is occurring, he or she must not make any recommendation or express any opinion as to any sanction that he or she thinks ought to be imposed.



36. The authorised officer must provide a copy of the draft investigation report to the landlord and, where applicable, the complainant.
37. The landlord and, where applicable, the complainant shall be afforded a period of 21 days within which they may make written submissions to the authorised officer in relation to the report. The authorised officer may, at his or her absolute discretion, extend the period for submissions by a further period, which period shall not exceed 21 days.
38. The authorised officer may, in light of any submissions received, make any revision to the draft investigation report as he or she believes appropriate. The authorised officer shall annex any submissions of the parties on the draft investigation report to the final form of the investigation report.
39. Following the receipt and consideration of submissions by the landlord and/or complainant, if any, the authorised officer must, as soon as is practicable, prepare the final form of the investigation report and submit it to the decision maker.

## Decision maker

40. The decision maker must consider any acknowledgement from a landlord of his/her improper conduct, submitted to him or her by an authorised officer, together with the associated notice of investigation which was provided to the landlord and determine, in accordance with Part 7A of the Act, what if any sanction to be imposed on the landlord.
41. The decision maker must consider any investigation report submitted to him or her by an authorised officer and decide to do one of the following:
  - i. Where he/she is satisfied that improper conduct by the landlord has occurred or is occurring, he / she may impose an appropriate sanction on the landlord;
  - ii. Where he/she is not satisfied that improper conduct by the landlord has occurred or is occurring but is of the opinion that a further investigation of the landlord is warranted, direct the RTB to carry out a further investigation and specify the matters to which that investigation should relate;
  - iii. Where he/she is not satisfied that improper conduct by the landlord has occurred or is occurring and is not of the opinion that a further investigation of the landlord is warranted, dismiss the complaint or, in cases where the investigation arose on the volition of the RTB, decide that no further action is warranted.
42. In deciding on any sanction to impose on a landlord on foot of his or her improper conduct, the decision maker must take into account the circumstances of the improper conduct concerned (including the factors occasioning it) and may have regard to the list of matters set out in section 148AD of the Act. <sup>1</sup>Such a sanction may, at the absolute discretion of the decision maker, be one, more than one or all of the following: (i) a written direction to the landlord to pay to the RTB

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<sup>1</sup> <http://www.irishstatutebook.ie/eli/2019/act/14/section/28/enacted/en/html#sec28>

a sum not exceeding €15,000 by way of financial penalty; (ii) a written direction to the landlord to pay to the RTB a sum not exceeding €15,000 in respect of the costs of the investigation; (iii) a written caution to the landlord.

43. The decision maker must give notice in writing of the decision and the reasons for it to the RTB as soon as is practicable after the making of the decision.

## Oral hearing with decision maker

44. The decision maker may conduct an oral hearing into the matters which are the subject matter of the investigation report if he or she considers it proper to do so for the purposes of assisting in the making of a decision or for the purposes of observing fair procedures. It is not possible to be exhaustive as to the exact cases in which a decision maker will decide that an oral hearing will be required but it will generally be in circumstances where there is a conflict of fact that cannot be resolved by another means.

45. Where a decision maker has considered an acknowledgement by a landlord of his or her improper conduct, he or she may also decide to conduct an oral hearing if he or she considers it proper to do so for the purposes of assisting in the making of a decision or for the purposes of observing fair procedures.

46. If the decision maker decides to conduct an oral hearing, he or she shall give the landlord and, where applicable, the complainant, a copy of the acknowledgement by the landlord of his or her improper conduct or of the authorised officer's investigation report (and any annex), as appropriate, with a written notice stating that the parties may make written submissions to the decision maker in relation to same. Such submissions must be received by the decision maker not later than 14 days from the date on which such written notice is received. The decision maker may, in his or her absolute discretion, extend this time period for receipt of written submissions by a period not exceeding 14 days.

47. At the oral hearing, the decision maker may administer an oath and take evidence under oath

48. The oral hearing shall be conducted in private and members of the public will not be entitled to attend.

49. The decision maker may require any person – by notice in writing – to attend the oral hearing at a given time and place. Such a person may be called to give evidence in the matter or to produce relevant documents. Such a person may be examined and cross-examined at the oral hearing and is entitled to the same immunities and privileges as if that person were a witness before the High Court.

50. Where a person who is required to attend an oral hearing does not comply in any manner, the authorised officer may apply in a summary manner to the District Court, on notice to the relevant person, for an order requiring the compliance in question. Such an application may be brought in the district where the person required to attend ordinarily resides or carries on any profession, business or occupation.



51. A decision maker may direct that a person who is required to attend an oral hearing recover the whole or part of the reasonable travelling and subsistence expenses incurred as a result of that persons appearance at the oral hearing. Such a direction is subject to the consent of the RTB and such monies may be paid out of monies at the disposal of the RTB.
52. The decision maker shall circulate all evidence and written submissions submitted by the parties to each party in advance of the hearing. The decision maker may do so by way of written communication including via email and attachments.
53. In the event that a party does not attend an oral hearing on the appointed day in circumstances where that party has not given written notice of an inability to attend, for health or other significant reasons, the decision maker may elect to conduct the oral hearing in the absence of that party if he or she thinks it proper to do so.

## Receipt of decision by RTB

54. When the RTB receives a written notice of a decision and the reasons for it from a decision maker, it must prepare a “decision notice”, i.e. a written record of it, and send this to the landlord and, where appropriate, to the complainant.
55. If a decision was taken to impose a sanction, the decision notice must set out the sanction imposed on the landlord and the reasons for the sanction.
56. If a decision was taken to direct the RTB to cause a further investigation into specific matters, the decision notice must set out reasons for the further investigation and the specific matter(s) to which the investigation is to relate and the RTB shall carry out the required investigation.
57. If a decision was taken to dismiss a complaint or to take no further action where an investigation was caused on the volition of the RTB, the decision notice must set out the reasons for the decision.
58. The decision notice prepared by the RTB must represent the written notice of a decision and where a sanction is to be imposed, the reasons for it given to it by a decision maker. The decision notice shall be concise and informative.
59. The decision notice shall inform the landlord when the decision shall become binding.
60. A decision to impose a sanction shall not take effect unless it is confirmed by the Circuit Court on appeal or pursuant to an application from the RTB for confirmation.
61. Where the Circuit Court confirms or decides on any sanction to be imposed, the RTB shall, as soon as practicable thereafter give notice to the landlord and at the same time to the complainant, where applicable, or as soon as practicable after giving notice to the landlord.



