# **Introduction**

An essential component of any rental assistance programme is supporting the target population with their security of tenure, this is an essential component of the right to adequate housing: “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”[[1]](#footnote-2)

As part of this, as practitioners, we must use our assessment and understanding of tenure arrangements (information gathered in SoP 1.7 Security of Tenure Assessment) and then support in a way that facilitates access to rental accommodation with security of tenure for the target population.

Tools and Examples from the toolkit include:

* 2.1.8\_Example\_Rental ContractSlovakia\_RentalAssistance.docx
  + Tenant and Property Owner agreement used in Slovakia as part of their rental programme in the 2022-2023 Ukraine response. The example is specific to the Slovakia context, informed by the specific national laws and regulations, so should not be reused directly.
* 2.1.8\_Example\_TripartiteRentalAgreement\_RentalAssistance.docx
  + Bespoke tripartite agreement (tenant, property owner and National Society), produced specifically for the 2022-2023 Ukraine response in Slovakia, it shows the key elements that could be part of a tripartite agreement in other countries.

# **Unwritten agreements**

If working in a context where rental practices do not normally call for a written tenancy agreement, but instead verbal agreements are made that afford some level of security of tenure, then this process should be supported. This is to avoid requiring prospective tenants to need a written agreement, which the property owner may be unfamiliar with and therefore may damage the target population’s competitiveness to access the rental market.

The following process is recommended:

1. Consult with local expert in rental tenure (in the context you are working in) on how to support security of tenure. For example, there may be campaign groups or tenant or property owner associations who can advise on how best to support.
2. Where appropriate, discuss with community representatives who should be called upon to witness verbal agreement meetings. This could perhaps be a community elder, religious leader, or it may be appropriate to have only the NS programme team staff present.
3. Develop a check list to ensure key points related to tenure and roles and responsibilities of both property owner and tenant are discussed at this meeting. See later the section on roles and responsibilities.
4. Keep a contemporary record of what was agreed and who was present at the agreement meeting and send a written summary to the tenant and property owner.

# **Written agreements**

## **Tenant and Property Owner Directly Contract**

The following process should be considered:

1. Investigate standard tenancy agreements (for example is there one mandated by national regulations or city regulations?) or are there standard terms that must be incorporated as mandated by legislation? Although legal advice can be sought in relation to this, it is generally possible to find this information from online searches and/or discussions with reputable letting agents. As appropriate a review by a legal practitioner who understands residential tenancy can still be useful. Note that there might be different legislation and tenancy agreements related to the type of rental:
   1. Apartment/house rental
   2. Room (in a shared house with shared facilities) rental
   3. Summer house rental

There might also be differences in requirements of any tenancy depending on the duration of the contract.

1. Where no standard tenancy agreement exists, consider producing a model tenancy agreement for the programme that can be suggested to prospective tenants to suggest these to property owners. These should not be forced on tenants and property owners, since we do not want to reduce the prospective tenant’s competitiveness in the rental market by adding to property owner hesitancy. The terms used must be specific to the regulatory framework around tenancy in-country and a legal practitioner conversant in tenancy law should be involved.
2. Establish a process for tenancy agreements to be reviewed, including staffing to undertake this. It is important to establish a check list of what terms are included and which terms are red or yellow warnings, where potentially we can support the tenant to negotiate them away or manage the risk in another way.

*Note that in many countries, property owners/ letting agents may use tenancy agreements which are outdated, and not fully compliant with current laws and regulations. The laws and regulations override the terms in the agreement however. Nevertheless, it needs to be carefully considered whether there is any benefit in pointing out to a property owner the unfair terms, it depends on whether it is thought an issue will arise during the life of the tenancy and on the regulatory and enforcement environment.*

1. In some contexts, such as where there are standard tenancy agreements used and accepted by all or there is a strong regulatory and enforcement environment, there may be no need to review every tenancy agreement in detail, but merely to check one exists.
2. Ensure that the tenant (especially if a cross-border migrant and potentially unfamiliar with the language) is offered support (such as a translator) in understanding the contract offered and the terms and obligations.

Note that in some instances property owners may be hesitant to enter into an agreement directly with the tenant because they may not be able to prove they can pay the rent. This can be overcome in a various ways including:

* Furnishing of a letter to the tenant stating that the RC National Society agrees to pay for x number of months, as long as certain conditions related to occupancy and engagement on the programme are met. It is intended that this letter should be used to reassure the property owner.
* Provision of a letter from the NS directly to the property owner assuring them of the commitment to the tenant to make monies available to pay for the rent.
* Increasing the deposit amount, or paying rent two months in advance rather than one.
* Some smaller programmes like that in St Vincent and the Grenadines rental programme 2021, paid via the tenant, but visited each home, and met the tenant in front of the property owner. They transferred the rental payment to the tenant via cash-in-envelope, counting out the funds in front of both the tenant and the property owner, handing the funds to the tenant and receiving a signature of receipt. They then watched as the tenant handed funds to the property owner.
* Signing a formal guarantor agreement with the tenant and issuing a copy of it to the property owner. This has been used by Luxembourg Red Cross as part of their rental assistance programme for a number of years.
* Signing a formal guarantor agreement with the property owner/letting agent
* Paying for insurance (normally available as an off-the-shelf insurance product) for the property owner to cover the risk of a tenant not paying the rent and the cost of eviction.

See example in the toolkit.

## **Tripartite agreement: Tenant, National Society and Property Owner**

Depending on the rental assistance approach adopted it may be necessary to make the rental payment directly from the National Society to the property owner, however the rest of the tenancy agreement is between the specific Tenant and the property owner.

The following process should be considered:

1. Investigate standard tenancy agreements
2. Produce a model tripartite agreement which allows for the National Society to use the property to place vulnerable households who are being assisted with rental assistance. This will likely need to be produced by a legal practitioner.
3. Consult with letting agents and property owners (potentially associations representing them) regarding this contract.
4. Prepare specific engagement material for explaining to the property owner and tenant the function of the tripartite agreement, since this will likely be very new to both, and property owners in particular may be hesitant.

See example in toolkit.

## **National Society and Property Owner**

Depending on the rental assistance approach adopted it may be appropriate for the National Society to contract the apartments directly. The following process should be considered:

1. Investigate standard tenancy agreements
2. Produce a model contract which allows for the National Society to use the property to place vulnerable households who are being assisted with rental assistance. This will likely need to be produced by a legal practitioner. The terms used may be specific to the regulatory framework around tenancy in-country.
3. Consult with letting agents and property owners (potentially associations representing them) regarding this contract.
4. An agreement for use of the property will have to be developed. See SoP 3.1.2 Programme Agreements.

Note that contracting a Property Owner may be considered a logistical process, and should be discussed with CVA, Finance and Logistics colleagues. However, on past IFRC projects where 100s of small property owners have been taken onto the programme this has not been a logistics process taking several months.

# **Risks & Liabilities**

It should be noted that the process of RCRC entering into direct contracts, for example in a tripartite agreement or where we are directly contracting with property owners, can increase risks to the organisation. These could be financial (e.g. responsible for damage) or reputational (e.g. target household supported in the rental accommodation accrues rights related to occupancy and an eviction process may take time and could be problematic reputationally).

To simplify processes, reduce administrative burden and reduce risks to the organisation we may want to avoid tripartite agreements wherever possible. Where there is hesitancy from property owners to enter into agreements directly with the target population, a separate letter could be issued to the prospective tenant confirming that the RC commits to pay their rent for example. Such a letter can be useful to give confidence to property owners, without requiring a direct contractual relationship between the property owner and the National Society. This approach has been used in Luxembourg Red Cross rental programmes.

# **Roles and Responsibilities**

To avoid problems which might give rise to security of tenure issues in the future it is useful to discuss with tenants and property owner who is responsible for undertaking what in relation to the tenancy, in advance of the tenancy agreement being agreed. [IFRC (2020) Step-by-step guide for rental assistance to people affected by crisis](https://cash-hub.org/resource/step-by-step-guide-for-rental-assistance-to-people-affected-by-crisis/) , step 2, sub-step 1.8 suggests the following list:

* Rent payment (time, method, reminder, delay clauses, etc)
* Maintenance responsibilities (property owner and tenant)
* Repair in case of damages or wear and tear
* Payment of utilities and local, regional, and national taxes (time and average cost, and how it will be split in case of joint occupancy). Unless these are exploitative, generally follow local customs on which party would normally pay what taxes & utilities in normal rental practices.
* Payment of any service charges relating to cleaning of communal areas, garbage disposal, lift maintenance etc.
* Payment of deposit /guaranties
* Use of the property (number of people living in property, inviting guests, drying laundry, use of external/shared spaces)
* Process in case contract is not respected or contested (eviction, abuse, lack of rent payment, collaborative dispute resolutions)
* Termination clauses
* Extension clauses

Even if the above are explicitly mentioned in the contract it can be useful to discuss these at least with the prospective tenant but also ideally with the property owner together with the prospective tenant.

Translation might be required at any meeting.

# **Eviction Monitoring & Actions**

As part of the programme (depending on the context and objectives) it may be necessary to ensure there is adequate eviction monitoring. This could be undertaken as part of case management support when the RCRC engages directly with the tenant and can also be assessed through engagement with property owners, during regular property owner & tenant relationship monitoring phone calls.

In general, the following should be considered:

* Consider who is eligible for support when there is a threat of evictions. For example, is it just recipients who are enrolled on the programme or could some support be given to those outside of the group that are receiving rental payment support?
* If eviction risk support is offered, ensure affected people (such as tenants supported on the programme) have a communication channel with the RCRC that they can use to notify of such threats when they arise. Ensure tenants are aware of the communication channel and examples of eviction threats.
* Regularly try to anticipate any increased eviction threats due to changes in context (e.g. the host government removing the “right-to-rent” of specific status migrant tenants, or a change in rental subsidies under the social welfare programme. It may also be possible to monitor data from government sources or elsewhere which can give a proxy of increased eviction risk in general (e.g. aggregated data on filings for eviction at court).
* Ensure RCRC caseworkers are aware of legal process / protections (when in a high regulatory framework environment) for eviction and how it is enforced. Ensure there is also an understanding of what constitutes illegal eviction.
* Provide mediation and negotiation support. This could include case workers who could bring tenant and property owners together to try to find a solution to disagreement or threat from the property owner of eviction. If not possible to find a complete solution to avoid eviction, eviction should be delayed through negotiation to enable the household (or the RCRC) to find another accommodation option. This support could be contracted to a 3rd party trained in mediation and negotiation.
* Determine what the RC rapid eviction response could be e.g. temporary hostel accommodation and/or supporting the tenant to file a police report in the case of illegal eviction.
* Forced eviction can be violent and/or require psycho-social support, there may be a need for complimentary programming related to this support.

1. Committee on Economic, Social and Cultural Rights, 1991, General Comment Number 4 on the right to adequate housing , para. 8. http://www2.ohchr.org/english/bodies/ cescr/comments.htm [↑](#footnote-ref-2)