

20 October 2018

Residential Tenancies Act Reform

Ministry of Business, Innovation and Employment

PO Box 1473

Wellington 6140

**SUBMISSION on**

**Reform of the Residential Tenancies Act 1986 discussion document**

**1. Introduction**

Thank you for the opportunity to make a submission on the reform of the Residential Tenancies Act 1986 discussion document. This submission is from Consumer NZ, New Zealand’s leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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**2. General comments**

Consumer NZ supports the review of the Residential Tenancies Act (RTA). Law reform in this area is long overdue and we welcome changes to improve consumer protection.

Our answers to specific questions in the discussion document are set out below.

**3.** **Answers to specific questions**

***Question 2.1.4: Landlords are currently required to give tenants 42 days’ notice if they have sold the property with a requirement for vacant possession, want to move in, or need it for an employee or family member. What do you think the impact would be if this notice period was extended from 42 to 90 days.***

In our view, 42 days’ notice is not sufficient to enable a tenant to find a new property and arrange relocation. In the current market, rental demand exceeds supply so it can be difficult for tenants to find a new property, particularly with only 42 days’ notice. We consider an extension from 42 to 90 days would better protect tenants in situations where their rental property is sold.

***Question 2.1.5: When a rental property is sold, should the new owner only be able to require vacant possession if they want to use the property for a purpose that can’t reasonably be accommodated with the existing tenants in place? E.g. to live in the property themselves, for a family member to live in, to renovate or to convert to a commercial property. Please explain your answer.***

We consider the tenancy should transfer with the sale unless there is a valid reason for the tenancy being terminated. This will give tenants greater security of tenure but still provide landlords and purchasers with sufficient flexibility should they intend to live in the property.

***Question 2.1.6: Should a landlord be able to end a tenancy so they can advertise the property for sale with vacant possession? What impact do you think this will have on tenants?***

A landlord should not be able to end a tenancy because they want to advertise a rental property for sale with vacant possession. We consider requiring tenants to move out because of the possibility the new owner may want the property vacant is unfair on tenants and likely to be of little benefit to owners.

We’re not aware of any robust evidence which suggests owners experience problems selling tenanted properties. If the new owner wants to rent the property, the original tenants will have been required to move unnecessarily and are likely to have incurred significant costs in doing so.

***Question 2.1.7: Do you think that landlords should give tenants evidence about why they are terminating a tenancy?***

We think landlords should provide evidence about why they are terminating a tenancy. In many European countries, such as France, Scotland, Netherlands, Ireland, Denmark and Germany, landlords cannot evict tenants without a specific reason. We suggest the evidence requirements in Scotland provide a useful model.

***Question 2.1.8: Do you think using a false reason to terminate a tenancy should be considered an unlawful act and subject to penalties, such as those described in Section 5? If you answered yes, what kind of penalty do you think would be appropriate?***

Using a false reason to terminate a tenancy should be considered an unlawful act and subject to penalties. In Scotland, the tribunal can award up to six months’ rent in compensation for a “wrongful termination order”. We support a similar penalty in New Zealand.

***Question 2.1.9: If landlords are required to give 90 days’ notice, should tenants be required to give more or less than 21 days’ notice? If you would prefer more or less than 21 days’ notice, what would be the ideal notice period.***

In our view, 21 days’ notice will allow a landlord sufficient time to re-advertise a property and find new tenants. We therefore support the notice period remaining at 21 days. There is no evidence this period is causing problems for either landlords or tenants.

With a growing number of New Zealanders living in rental accommodation, the demand for rental properties is high and properties are generally not difficult to re-let. Re-letting a property may be a problem if the property is sub-standard or the rent is too high. These matters are within the landlord’s control.

In our view, having a rental property vacant is a business risk a landlord takes when they purchase the rental property.

***Question 2.1.12: What impact do you think removing 90 day ‘no cause’ terminations and only allowing terminations for the reasons in the table above would have?***

We fully support removing 90 day “no cause” terminations. New Zealand is one of few OECD countries that allows “no cause” terminations. “No cause” terminations allow landlords to evict tenants without reason. This exacerbates the power imbalance between landlords and tenants, and reduces security of tenure.

Removing 90 day “no cause” terminations would provide greater security and stability for tenants and allow them to interact with their landlords without fear of having their tenancies terminated for no good reason. In our rental survey, 30 percent of renters had held off complaining about a problem because they worried it would result in eviction.[[1]](#footnote-1)

We agree with the grounds for termination on page 15 of the discussion document. However, as mentioned above, we think landlords should only be able to terminate a tenancy upon selling the premises in limited circumstances.

***Question 2.1.15: Do you agree with our assumption that if ‘no cause’ terminations are removed from periodic agreements, landlords could be more likely to offer fixed-term agreements? Please explain your answer***

Our survey found property management companies were more likely to use fixed-term agreements than private landlords. More than half of those who rented through a property manager were on fixed term contracts.

It is possible landlords could favour fixed-term agreements if “no cause” terminations are removed from periodic agreements. Fixed-term agreements are typically offered on a “take-it or leave-it” basis and the tenant has no ability to negotiate. If they need to end the tenancy early, they can also face considerable fees.

For these reasons, our preference is for open-ended tenancies as discussed below.

***Question 2.1.20: Do you think only allowing open-ended tenancies which the landlord can’t end unless they require the property for another purpose or the tenant isn’t meeting their obligations (option 3) is the best way for the Government to meet its objective to improve security and stability for tenants? Please explain your answer.***

We agree only allowing open-ended tenancies is the best way for the government to meet its objective to improve security and stability for tenants.

As noted, our survey showed fixed-term contracts are favoured by property managers and are typically offered on a take-it or leave-it basis meaning tenants can feel pressured to sign up for a fixed-term even when it may not suit their requirements.

This can result in tenants being “stuck” in a fixed-term tenancy for longer than they want the property. For example, tertiary students often have no choice but to sign up to 12-month fixed-term leases even though they only require accommodation from March to October.

In some circumstances, a landlord or property manager will allow the tenant to terminate early, but only upon payment of an early termination or break fee. These fees can be up to $650 and some property managers will insist on charging the fee even when the tenancy only has a few weeks to run.

Break fees are often not disclosed in the tenancy agreement and we consider these fees risk breaching the unfair terms provisions of the Fair Trading Act.

***Question 2.1.21: Do you think the government should further investigate removing fixed term tenancies from the market? Please explain your answer.***

We support allowing open-ended tenancies and doing away with fixed-term tenancies as it would mean tenants are no longer required to sign fixed-term leases that don’t suit their needs. It would also mean tenants could move house without facing unfair break fees.

***Question 2.1.22: If fixed-term tenancies were removed, what changes could be made to periodic agreements to balance security for tenants and landlords?***

We support the approach taken in Scotland.

***Question 2.2.12: How do you think landlords and tenants should share the responsibility for maintaining heating equipment, ventilation methods, and any other improvements installed under the Healthy Homes standards?***

We think tenants should only be responsible for the day-to-day maintenance of this type of equipment, provided it is straightforward for a tenant to do (for example, cleaning filters in a heat pump, replacing batteries in the remote control).

The landlord should be responsible for regular servicing of equipment and ensuring it works properly, as well as maintenance that requires specialised equipment or services.

***Question 2.2.13: If a landlord makes improvements to a property to make it warmer or drier, should tenants be obligated to use those improvements? Please explain your answer.***

In regard to heating equipment, we do not consider it appropriate for tenants to be obliged to use it if it’s installed. Rising power prices have had a significant impact on many households, particularly low-income households that are more likely to be renting. We consider existing obligations on tenants are adequate.

***Question 2.3.3: Should a tenant be under an obligation to reverse any modifications they make in rental properties, unless the landlord agrees to take on the modification? Please explain the answer.***

Tenants should be able to feel at home in the houses they rent. We think reasonable, minor modifications (such as hanging pictures) should be allowed without the tenant being required to reverse them.

In circumstances where a tenant makes a major modification without the landlord’s consent, we consider it reasonable for the tenant to reverse the modification, unless the landlord agrees to it remaining.

***Question 2.3.4: Do you think that if the landlord doesn’t wish to take on a modification at the end of a potential tenancy and the tenant doesn’t reverse it, that this should be an unlawful act with a potential financial penalty? Please explain your answer.***

In situations where the tenant has made a major modification, and does not comply with an agreement to reverse it, the landlord should be able to apply to the Tenancy Tribunal to retain some or all of the bond to remedy the matter. We consider this is the only penalty that should apply.

***Question 2.3.10: If the government was to develop either option one or two further, which model do you prefer and why?***

We support option 2 (tenants having a statutory right to make specified modifications) as we do not think a tenant should have to seek the landlord’s permission to make minor modifications, such as hanging pictures and securing furniture to the walls.

If the rental property is subject to special rules (such as body corporate rules or heritage listing rules), then the landlord should communicate these rules to the tenant when they sign the tenancy agreement.

***Question 3.1.2: Do you think rental bidding should be banned or controlled? Why or why not?***

We think rental bidding should be banned. The practice exacerbates the power imbalance between landlords and tenants. In the current tight rental market, the practice means tenants are pressured to compete against each other and push the limits of what they can afford.

The process of rent bidding is not transparent and may result in a tenant paying more than what is required to secure the property. In our view, rents should be set at no more than the advertised amount, and requesting or accepting rental bids should be disallowed.

***Question 3.1.3: If you think something should be done about rental bidding, do you have a preference between option one or option two, or another option? Please explain.***

We prefer option two, prohibiting the request and acceptance of rental bids. A similar ban has been introduced in Victoria, Australia.

***Question 3.2.1: An application for a rent adjustment under a fixed-term tenancy agreement must be made to the Tenancy Tribunal within three months of the last rent review or from the commencement of the tenancy. Do you think three months is an appropriate amount of time to allow for this process? Why or why not?***

We agree three months is not sufficient. A tenant might not know they can challenge the rent or might only find out the rent they are paying is excessive after the three months is up. For example, a tenant in an apartment block may only find out their rent is excessive after a conversation with a neighbour many months after their rent review or tenancy commencement. In our view, a 12-month limit would be more appropriate.

We also support the use of standardised forms to advise tenants of rent increases (similar to those used in Australia and Scotland). These forms set out the information a tenant needs to know about the increase, including information about how the increase can be challenged.

***Question 3.2.2: Do you think the RTA should include guidance on what constitutes ‘substantially exceeding market rent’? If you answered yes, what you think constitutes ‘substantially exceeding market rent’?***

Yes, the RTA should include guidance on what constitutes “substantially exceeding market rent”.

***Question 3.3.2: Do you agree that rent increases should only be allowed once every twelve months?***

We agree rent increases should only be allowed once every 12 months. In Scotland, landlords can only increase rents once a year and must give at least three months’ notice of any increase. Similarly, in some states in Australia, rental increases can only take place every 12 months. Our preference is for similar rules to those in Scotland.

***Question 3.3.3: Should landlords be required to disclose how they calculate future rent increases when a new tenancy is entered in to? Please explain.***

The tenancy agreement should specify how future rent increases will be calculated. This would give tenants greater certainty.

In circumstances where the landlord wishes to increase the rent by more than the amount or percentage stipulated in the tenancy agreement (for example, where the property has undergone significant improvements), the landlord should only be able to increase the rent with the consent of the Tenancy Tribunal.

***Question 4.1.3: Are stronger enforcement powers needed to improve the quality of boarding houses?***

Stronger enforcement powers are needed to improve the quality of boarding houses. Media reports on these properties show there are major issues with substandard accommodation. Better enforcement powers are needed to improve protection for consumers who live in these premises.

***Question 5.1.1: Have you ever had a situation related to your tenancy where you felt that action, in some form, was warranted but decided against it? Please explain***

In our survey of the rental market, just over a third (35 percent) of tenants said they had held off making a complaint about an issue at their rental property. The main reasons given by those who held off complaining were concern that:

* the request would be rejected (41 percent)
* they would get a bad reference (39 percent)
* their rent would increase (37 percent)
* it would result in eviction (30 percent)
* they would have to pay the cost of repairs (27 percent).

***Question 5.1.4: Do you consider it appropriate for MBIE to have the power to enter the common spaces of boarding houses without the prior agreement of at least one of the tenants?***

Yes, we agree this would be appropriate.

***Question 5.1.6: Do you think it’s appropriate for MBIE to carry out audits of a landlord or property manager? Please explain your reasons.***

We agree allowing MBIE to carry out audits of a landlord or property manager would help uncover systemic issues and encourage compliance.

***Question 5.1.7: Do you think it’s appropriate for MBIE to be able to take a single case in respect of multiple breaches of the RTA?***

We agree this would be an efficient use of MBIE and tribunal resources, and enable faster resolution of cases.

***Question 5.1.9: Do you consider it appropriate for MBIE to enter into enforceable undertakings with landlords? Please explain.***

Enforceable undertakings may be appropriate in some cases. However, for enforceable undertakings to be successful there would need to be sufficient consequences for failing to comply with the undertaking. We consider undertakings should also be made public.

***Question 5.1.10: Do you think it’s appropriate for MBIE to issue improvement notices? If so, in what situations?***

We think it is appropriate for MBIE to issue improvement notices. In the UK, improvement notices are used to require landlords to carry out repairs or improvements to remove or reduce risk to a tenant’s health or safety.

***Question 5.1.11: What should the penalty be for failing to comply with an improvement notice?***

For a penalty to be effective, it must provide a sufficient deterrent to non-compliance. In South Australia, the maximum penalty for failing to comply with a housing improvement order is $10,000. In England, landlords who fail to comply with an improvement notice can be subject to a penalty of up to £30,000.

***Question 5.1.12: Do you agree MBIE should have the ability to issue infringement notices in circumstances where a breach of the RTA is straightforward to prove?***

Yes, we agree MBIE should have the ability to issue infringement notices where there is a clear-cut breach of the RTA.

***Question 5.1.13: Do you think infringements for landlords would be effective in holding them to account for poor behaviour, and/or encouraging positive behaviours?***

We consider infringement notices would assist in holding landlords to account for poor behaviour and encourage compliance. Infringement notices and improvement notices should be published.

***Question 5.1.15: Do you think these existing exemplary damage levels are appropriate for breaches considered to be unlawful acts?***

We do not think the current level of exemplary damages is sufficient to deter landlords from breaching the law. For example, the level of exemplary damages for a landlord interfering with the privacy of a tenant is only $2000. We consider levels need to be increased.

***Question 5.1.18: Do you think MBIE should have the ability to apply to the Tenancy Tribunal to award a penalty where unlawful acts have been committed? If yes, what do you consider would be appropriate maximum penalty MBIE should be able to apply for?***

Yes, we support MBIE having the ability to apply to the Tenancy Tribunal. A penalty of at least $10,000 per offence should be considered.

***Question 5.1.19: Do you think a landlord, tenant, or MBIE should be able to take a case and seek exemplary damages after 12 months from when the act was committed?***

Twelve months is not sufficient time. In our view, timeframes should be consistent with other consumer legislation such as the Fair Trading Act.

**Section 4. Other issues**

***4.1 Regulation of property managers***

We are disappointed the discussion document does not address regulating property managers. Our survey of the rental market found voluntary, self-regulation of property managers is not working. The industry continues to attract complaints from tenants and landlords for substandard service and failure to comply with the basic requirements of the RTA.

Our survey found tenants who rented through a property management company were significantly more likely to experience problems than those who rented through a private landlord. For example:

* Just 36 percent of tenants who rented though a property management company were satisfied with the condition of their property, compared with 51 percent of tenants who rented through a private landlord.
* Tenants who dealt with a property manager were also more likely to report delays in having repairs done and more likely to worry about the repercussions of making a complaint.
* Just 35 percent rated their property manager’s service highly. In comparison, 54 percent of those who rented through a private landlord rated their landlord’s service highly.

Regulating property managers is common in other jurisdictions. In Australia, property managers must meet the same rules as real estate agents, including being licensed and having required qualifications.

In 2008, the Justice and Electoral Select Committee recommended regulating property managers in New Zealand to address problems being experienced by landlords and tenants. In the absence of regulation, these problems remain.

***4.2 Unfair terms in rental agreements***

We receive regular complaints from tenants who have been disadvantaged by terms in tenancy agreements that we consider unfair. Under the Fair Trading Act, unfair terms are banned in most standard form consumer contracts. We would like to see this protection extended to tenancy contracts entered into under the RTA.

We recommend the RTA includes a blacklist of unfair terms and fees to make the rules clear. Terms we consider unfair include those that allow a landlord or property manager to:

* charge fees to end a fixed-term tenancy early (see our answer to question 2.1.20)
* hold tenants liable for the landlord’s own expenses, such as advertising costs
* increase rent under a fixed term agreement
* limit liability for the landlord’s agents
* unilaterally vary the services provided as part of the tenancy
* charge a re-letting fee for renewing a tenancy
* charge fees for changing one name on a tenancy agreement.

***4.3 Advocacy service for tenants***

In the landlord-tenant relationship, tenants are in a weaker bargaining position. They are also less likely to be familiar with tenancy law or have the knowledge or confidence to enforce their rights.

We therefore recommend the government consider establishing an advocacy service to help renters enforce their rights. Advocates could help support tenants to ensure problems are fixed and landlords meet their obligations. They could also represent tenants at the Tenancy Tribunal, if requested by the tenant.

Thank you for the opportunity to make a submission on the discussion document. If you require any further information, please do not hesitate to contact me.

Yours sincerely



Sue Chetwin

Chief Executive

1. Our nationwide survey involved 1062 consumers who rent their home. The survey was carried out between December 2017 and February 2018. [↑](#footnote-ref-1)