

25 March 2020

Committee Secretariat
Social Services and Community Committee
Parliament Buildings
Wellington
By email: ssc@parliament.govt.nz

**SUBMISSION on
Residential Tenancies Amendment Bill**

1. Introduction

Thank you for the opportunity to make a submission on the reform of the Residential Tenancies Amendment Bill. 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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We wish to speak to our submission.

2. Comments

Consumer NZ supports the introduction of the Residential Tenancies Amendment Bill. Our specific comments on the bill are set out below.

New sections 22F and 22G

We support the introduction of a prohibition on landlords advertising or offering tenancies without specifying the rental charges. We also support a prohibition on landlords inviting or encouraging rental bids from prospective tenants. However, we do not consider these amendments go far enough. In our view, accepting rental bids should also be disallowed. Allowing landlords to continue accepting rental bids could result in tenants paying more than necessary to secure a property. We encourage the committee to consider banning rental bids altogether.

Amended section 24

We support the proposed amendment to section 24 which limits rent increases to once every 12 months. However, we consider landlords should be required to give 90 days' notice of a rent increase. We also believe landlords should be required to set out how rent increases will be calculated. This would enable tenants to better plan for increases and give them more time to find a new property if they are unable to afford the increase.

New section 42A and 42B

We support new provisions allowing a tenant to more easily make minor changes to their rental property. However, we consider a tenant should be entitled to make minor modifications without the prior consent of the landlord. We consider the Bill should include a list of minor modifications, such as hanging pictures and securing furniture to the walls, that do not require the prior consent of the landlord. This is similar to the approach taken in law changes soon to be introduced in Victoria, Australia.

New section 43A

We support new section 43A, which will improve a tenant’s ability to assign a fixed-term tenancy agreement. However, we think the term “reasonable conditions” should be clarified.

New section 44A

We support landlords being required to provide an itemised account of expenses to a tenant before recovering reasonable expenses related to an assignment, subletting, parting with possession or surrender by agreement.

We receive regular complaints about the exorbitant break fees charged by some rental agencies when a tenant requests to break a fixed-term tenancy early. In many cases, the fees are more than \$700 and aren’t justified.

In some cases, agencies also require tenants to move out of the rental properties several business days before the tenancy is terminated to allow them time to prepare it for the next tenants.

To improve protection for tenants, we consider the bill should clarify the scope of costs able to be recovered. Actual fees, or the basis on which they’re calculated, should be set out in rental agreements so tenants are aware of the charges before entering into an agreement. In any other consumer contract, this information would be expected.

Sections 45 and 45B

We support amended section 45, requiring the landlord to, upon request, provide information relating to compliance with healthy homes standards within 21 days of receiving the request.

We also support new section 45B, requiring the landlord to permit and facilitate a fibre installation.

Amended sections 50 and 51

We support the end of “no cause” terminations for periodic tenancies. This will result in 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.

However, we are concerned the grounds for terminating a periodic tenancy are too wide and will undermine a tenant’s security of tenure. We consider clauses 50 and 51 should be redrafted with a narrower focus to limit the circumstances in which landlords can terminate a periodic tenancy and thereby provide greater assurance for tenants.

We agree landlords should be required to provide better notice to a tenant when terminating a periodic tenancy. However, we consider the notice period should be 90 days in all situations. This would allow tenants more time to find a replacement property.

We also don’t support a tenant having to provide 28 days’ notice to terminate a periodic tenancy. 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.

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.

Amended section 60A

We support the new restrictions on a landlord's ability to give notice at the end of a fixed-term tenancy. However, we are concerned a landlord will still be able to force tenants out of a rental property at the end of a fixed-term tenancy by substantially increasing the rent. A tenant would then have to apply to the Tribunal and show the increase is substantially above market rent. We therefore consider tighter controls on rent increases are needed.

Amended section 77

We support increasing the monetary limit of the Tribunal's jurisdiction from \$50,000 to \$100,000.

Amended section 86

We support the amendments to section 86 allowing the chief executive to file an application to commence proceedings in relation to multiple tenancies.

New section 95A

We support name suppression but consider the process in section 95A(3) to be too onerous for tenants. We consider this section should be amended to require anonymisation unless it is in the public interest for identifying information to be published.

New section 126A to 126R

We support the introduction of the infringement offence, improvement notice and enforceable undertakings regimes. These tools will help the regulator hold parties to account when they breach their obligations.

However, we are concerned the penalties set out in the schedules, and in the Act, are too low. For a penalty to be effective, it must provide a sufficient deterrent to non-compliance. For example, breaching an enforceable undertaking only carries a \$1000 maximum penalty and terminating a tenancy without lawful grounds only carries a maximum penalty of \$6500.

The penalties are also well below those in Australia for similar offences. For example, a landlord failing to keep records would be subject to a maximum fine of \$350 in New Zealand. However, in Western Australia, the maximum fine for failure to keep records is \$1000.¹ Similarly, if a landlord in New Zealand fails to give a receipt for rent, they will be fined a maximum of \$350. In Victoria, Australia, the maximum fine is 10 penalty units or \$1652.20.²

We are also concerned tenants will not be able to claim exemplary damages if the chief executive seeks exemplary damages, or imposes an infringement fee or pecuniary penalty against the landlord. This is an impingement on tenants' rights. We consider any damages obtained by the chief executive should be passed on to the tenant.

¹ <https://www.commerce.wa.gov.au/consumer-protection/infringements-lessors>

² <https://www.consumer.vic.gov.au/housing/renting/penalties>

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

Yours sincerely

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