



Department of
Building and Housing
Te Tari Kaupapa Whare

Review of the Residential Tenancies Act 1986: Synopsis of Submissions

This report does not necessarily reflect the views of the Department of Building and Housing and does not reflect official Government policy.

Appendix 3: Summary of Public Meetings

Introduction

Between November 2004 and February 2005 staff from the Department of Building and Housing ran fifteen public consultation meetings on the Residential Tenancies Act Review ('RTA Review').

At each meeting a presentation was made on the Residential Tenancies Act 1986 ('RTA') and the review. This was followed by a structured series of questions to the floor, on issues covered in the review discussion document. Comments from the floor were recorded as closely as possible in real time. Meetings were run as brainstorming sessions – all ideas were captured and treated as equal. The notes from each meeting reflect what people said – they do not reflect agreement at the meeting on any particular point.

Summary of Feedback from Meetings

The following notes summarise the feedback we received from participants at the fifteen meetings. It is difficult to state exactly how many people held a particular view, although we have stated where a view was held by a number of participants.

Notice Periods

A number of landlords raised concerns about the different notice periods for terminating tenancies and believed that notice periods should be the same for landlords and tenants. There was also concern expressed about the length of notice landlords are required to give.

Tenants were concerned about the ability for landlords to give 90 days' notice without having to have a reason. Some tenants felt that the ability of the landlord to terminate the tenancy without having to give a reason created a power imbalance.

Rent Arrears

Rent arrears were an issue raised consistently by landlords. Particular concerns related to:

- the need to issue a 10 day letter¹ or wait until the tenant is 21 days in rent arrears before seeking termination of the tenancy through the Tenancy Tribunal²;
- time delays in getting before the Tribunal;
- problems with tenants using bond in lieu of rent at the end of a tenancy;
- the inability to charge more than 2 weeks' rent in advance;

¹ This is a warning letter that gives the tenant 10 working days to remedy the rent arrears. The Tenancy Tribunal may terminate the tenancy if the rent is not paid within this timeframe.

² It would appear that a number of landlords are not aware that applications can be filed at the same time as issuing a 10 day letter.

- the inability to charge interest or penalties if rent is late;
- the perceived inability to void a contract if rent or bond is not paid before commencement of a tenancy³; and
- the fact that exemplary damages cannot be awarded against recidivist rent defaulters.

Redirection of Benefits

Many landlords felt that it was unfair that WINZ redirected benefits for payment of rent to Housing New Zealand Corporation ('HNZC') but not to private landlords, unless there was "good cause". Redirection of benefit was seen as a possible solution to issues with rent payment and generally also received support from tenants.

Abandoned Goods

A number of landlords expressed concern about the cost and time involved in dealing with goods that have been abandoned by tenants at the end of a tenancy.

Interpretation

Some people felt that parts of the RTA are too open to interpretation, resulting in abuse, misunderstandings or disputes.

Joint and Several Liability / Insurance

It is generally accepted under common law that tenants have joint and several liability. This means that tenants can be held collectively or individually liable for breaches of a tenancy agreement, regardless of which tenant actually committed the breach.

A number of people felt that the doctrine of joint and several liability should not apply to residential tenancies. Particular concerns were raised about the actions of insurance companies pursuing tenants through rights of subrogation. There appears to be little awareness that a tenant's liability for careless damage is not affected by the fact that a landlord may have house insurance.

Identifying Bad Landlords / Tenants

There was strong support amongst landlords (and some tenants) for Tenancy Tribunal orders to be made available on-line and some support for the introduction of a "rating" system for landlords and tenants.

Filing Fees

A \$20 filing fee is payable when Tenancy Tribunal applications are filed. Applicants want to be able to automatically claim filing fees as a cost if their application is successful.

³ Landlords can make agreements conditional upon payment of rent and bond prior to commencement of the tenancy.

Letting Fees

Some felt it was unfair that only registered real estate agents could charge letting fees, while others felt that the fee should be payable by the landlord (and not the tenant).

Enforcement of Tenancy Tribunal Orders

Comments about enforcement of Tribunal orders included:

- difficulty tracing tenants – it was suggested that tenancy debts should be treated like parking fines, as opposed to the judgement creditor having to supply an address;
- enforcement costs – it was suggested that enforcement should be covered by the Tribunal Application fee, as is the case for the Disputes Tribunal or that enforcement fees should only be payable if enforcement is successful;
- difficulty proving ownership of items to be seized when applying for a Distress Warrant;
- people lying about income and liabilities at examination hearings;
- a suggestion that debtor's names be published; and
- why can't landlords evict tenants themselves?

Household Costs

There was little consensus as to how household costs should be split between landlords and tenants, although there was call for liability to be clarified, either via the RTA or as agreed between the parties.

Most comments related to costs associated with water and wastewater. One argument was that landlords should be liable for health and sanitation, including water and wastewater charges. The counter to this argument was that landlords should not be held liable for something they have no control over (i.e., the amount of water used). Passing on costs to the user was seen as a means of conserving resources.

There was also no clear agreement as to how fixed and variable costs should be divided between landlords and tenants.

There was some suggestion that landlords should be liable for costs relating to the provision of facilities or maintenance, but there were also calls to balance this against the practical implications of splitting utilities bills.

Meeting the Diverse Needs of Tenants

In the centres we visited people complained about a shortage of suitable accommodation for large or extended families, people with disabilities and single people.

A number of sectors of the community appear to be reliant on social housing providers to meet their housing needs. Concerns were expressed about waiting lists

for social housing and that some tenants do not appear to be moved on from social housing when their circumstances change.

There were a number of comments about the difficulties beneficiaries and low income earners have finding accommodation. A number of landlords suggested that they would be more willing to meet these housing needs if the government helped to ensure payment of rent.

Stable Housing

There was little consensus about the factors leading to turnover of tenancies and a number of people questioned whether turnover was an issue. Suggested drivers of turnover included:

- landlords selling properties in order to realise capital gains;
- people moving due to problems with housing quality or lack of maintenance; and
- large or extended families moving as larger premises become available.

There seemed to be reluctance by landlords and tenants to enter into fixed-term tenancies due to their lack of flexibility and a feeling that they were difficult to enforce. It was noted that fixed-term tenancies also created issues for landlords who wanted to renovate properties or sell them.

It was suggested that the Department should investigate the drivers of “churn” in the rental market.

Housing Quality

A number of people expressed concerns about the quality of rental houses. While there was fairly universal support for the fact that houses should be safe and sanitary, there was more debate when it came to minimum standards for things like insulation, drapes, soundproofing, heating and smoke detectors.

Both landlords and tenants expressed concerns about the impact that a minimum standard could have on rent levels.

A number of people supported a free market approach to rental housing standards, with the market dictating quality received at each price level.

There was good support for a voluntary rental housing quality standard, such as a star rating.

Maintenance

It would appear that that a number of maintenance issues are the result of conflicting interpretations of the RTA. Particular reference was made to use of the word “reasonable” in the Act (*reasonable* state of repair). There was no clear understanding as to who is responsible for things such as trimming trees, cleaning gutters and cleaning chimneys.

A number of tenants said that they didn't ask for repairs to be done because they were concerned that the request would result in a rent increase or eviction. Others said that they didn't know what their options were if repairs were not done.

Some tenants commented that there should be a specific requirement for repairs to be carried out within a reasonable timeframe.

Professionalism of Landlords / Property Managers

Once again, there were strongly conflicting views as to whether or not there was a problem with standards of property management. A number of people suggested that market forces already do a satisfactory job of maintaining standards.

There was good support for provision of more education and information to landlords and property managers. Specific mention was made of the benefits of attending the Department's landlord seminars, joining a landlord association and obtaining a copy of the RTA.

A number of people suggested that there was a problem with landlords and property managers not carrying out regular property inspections.

It was also suggested that it should be possible to close down property managers who continually fail to comply with the provisions of the RTA.

Support Services and Information

A common theme at all the meetings was the need for more information and education on the RTA for those who are subject to it, as well as the need to raise the profile of Tenancy Services. A number of people indicated that they only sought advice or information on their rights and responsibilities when something went wrong, rather than seeking information to prevent disputes.

Suggested channels for the provision of information included:

- enclosing information with bond receipts;
- distributing information through schools, churches and community organisations;
- providing more translated information;
- providing translators or using Language Line;
- putting information in community newspapers;
- networking and attending community meetings;
- including information with migrant and refugee settlement packs;
- providing tenants with a copy of the RTA;
- Pacific radio;
- providing a "plain English" list of landlord and tenant obligations;
- newsletters to landlords; and

- videos.

Concerns were raised about the accessibility of Tenancy Services. Specific comments were made about offices not being on the ground floor, having to press bells and not being able to phone 0800 numbers from a cell phone. Suggested improvements included the ability to pay bonds electronically and mobile mediation services.

A number of people raised concerns about consistency and impartiality of advice, mediation and adjudication.

Advocacy

There was fairly good support for the provision of an independent advocacy service, provided it was a neutral service accessible by both landlords and tenants. It was thought that some people would find an advocacy service less intimidating than approaching Tenancy Services and that an advocacy service could also assist in dealing with underlying issues or language barriers.

Discrimination

A number of tenants felt discriminated against when seeking rental accommodation, although the discrimination didn't tend to be overt and was therefore hard to prove or complain about.

Particular mention was made of discrimination against large families, people with a mental illness and people on benefits or low incomes. Language barriers were also identified as a cause of discrimination.

A small number of landlords said that they *did* actively discriminate against tenants from particular groups (interestingly, in each case, the landlord was themselves from that group).