

# Residential Tenancy Act Changes

On Tuesday July 20, Parliament passed into law the RTA Amendment Bill, which will come into effect upon the Governor General's signature.

The following is a summary of the key changes affecting Rental Property Owners, with other changes detailed at the end of the report.

## Summary

The RTA Amendment Bill has been discussed and argued over for more than six years. The NZPIF has been involved in the changes to the RTA throughout the entire process and at a high level.

We are mostly pleased with the result of the Bill and believe that it will have many beneficial outcomes, improving retention of rental income and making property management easier.

Changes to the Bill may mean that changes to Tenancy Agreements and best Practice Management will need to be made.

There were three key positive outcomes in the Bill, some points to look out for and some negative proposals that thankfully didn't make it into the final Bill.

## Four key positive outcomes

### 1. Increasing the number of unlawful acts that are attributable to tenants

The Federation sought a balancing of the Act by increasing the number of unlawful acts that are attributable to tenants. Although our suggestion to increase the level of exemplary damages was not taken, we are pleased that the number of unlawful acts is now more balanced. Some of the new unlawful acts applying to tenants are:

1. A tenant's failure, without reasonable excuse, to quit the premises on the termination of the tenancy may have exemplary damages of \$1,000 applied against them.
2. Using the premises for an unlawful purpose may have exemplary damages of \$1,000 applied against them.
3. Harassment of other tenants or neighbours may have exemplary damages of \$2,000 applied against them.
4. Exceeding the maximum number of persons who may reside in the premises may have exemplary damages of \$1,000 applied against them.

### 2. Abandonment of premises

A tenant who abandons the premises when rent is owing, without reasonable excuse, is committing an unlawful act with damages up to \$1,000.

Tenants will now have a consequence if they stop paying the rent and abandon the property. Previously there were no disincentives to a tenant abandoning the property with money owing which encouraged good but financially challenged tenants to make poor choices.

When signing up new tenants, landlords should make them aware of this new law as a preventative measure in avoiding rental losses.

### 3. Refund of filing fee for a successful Tenancy Tribunal Hearing

Entitles an applicant who has been wholly successful in a Tribunal application to obtain a refund of the application fee from the respondent. If the applicant has been only partly successful, the Tribunal has a discretion to order the respondent to refund the filing fee.

The amendment also permits the Tribunal to award costs for any reasonable expenses or commissions incurred in attempting to recover an overdue payment owing under an order of the Tribunal if the tenancy agreement provides for the recovery of those expenses.

#### **4. Improvement in treatment of abandoned goods**

Landlords can still apply to the Tribunal to dispose of goods left behind at a tenancy. However Landlords now have a second option which is to immediately dispose of goods left behind at a tenancy if they obtain a market assessment of the value of the goods and it is less than the cost of storing, transporting and selling them.

If the market assessment is greater than the cost of storage, transporting and selling them, the landlord must secure the goods for no less than 35 days and after that the goods can be sold for a reasonable market price. Personal documents are surrendered to the police. The landlord can then apply to the tribunal to specify the amount owing to the landlord and able to be retained from the sale proceeds. The landlord is not liable in respect of the goods sold nor can the ex-tenant claim them back from the purchaser.

### **Key points to look out for**

#### **1. Leaving the country**

Landlords can still apply to the Tribunal to dispose of goods left behind at a If you are going to be out of the country for more than 21 consecutive days, you must appoint a New Zealand based agent and notify tenants and the bond centre if a bond is held.

The agent can be a friend (fellow PIA member) or relative and has the rights and obligations of the landlord. If a bond is held, the Tenancy Bond Centre must be notified on a prescribed form (yet to be developed).

#### **2. Outgoings**

The landlord is responsible for all outgoings that are incurred when the premises are empty and the tenant is responsible for all outgoings that are exclusively attributable to the tenant's occupation eg, power, metered water, telephone and gas.

This may cause some problems when fixed charges for items such as water occur whether the property is occupied or vacant.

#### **3. Fixed term tenancies**

At the end of a fixed term tenancy, the tenancy will become a periodic tenancy under the same terms and conditions as the previous fixed term tenancy.

Either party not intending to continue with the tenancy at the end of the fixed term must give the other party written notice of this no earlier than 90 days and no later than 21 days before the end of the fixed term.

The tenant must advise the landlord (in writing) at least 21days before the end of the fixed term

#### **4. Serving notices after a tenancy has ended**

If a landlord is serving notices to a tenant more than 2 months after a tenancy has ended, the landlord must supply an address for service that the tenant supplied to them in the previous 2 months.

## **Negative proposals that not included in the final Bill**

The NZPIF has successfully had three negative proposals withdrawn from the Bill

### **1. Advocates**

Advocates were going to be allowed to represent tenants at tenancy tribunal hearings. Although it wasn't stated in the Bill, Tenant Advocates in other countries receive Government and Local Body funds to pay for their advocates.

This was extremely concerning and seen as a lack of equitable justice.

The NZPIF successfully campaigned for the status quo to remain.

### **2. Limiting tenants liability for damage**

A tenants liability for damage was to have been limited to four weeks rent.

The NZPIF and Insurance Council successfully campaigned for the status quo to remain, arguing that the proposal would significantly remove tenants' responsibility and lead to more damage of rental property plus a requirement for more Tenancy Tribunal hearings.

The change to the RTA was un-required, totally unjust and was thankfully withdrawn.

### **3. Disclosing of P-Lab cleansing**

This was a surprise addition to the RTA Amendment Bill and would have required a landlord to disclose to tenants if a property had been subject to a local body cleansing order as a result of a 'P' lab.

Not only would an owner would have to pay the high cost of cleaning the property and getting certification that the cleaning had taken place, they would also have to inform anyone applying to rent the property.

The NZPIF managed to successfully argue that this would severely impact on a landlords ability to re-let a property and achieve the same rental price. If the property was certified as safe to live in, then why should a stigma be attached to the property?

## **Changes In Detail**

The following is a list of other changes coming from the RTA Amendment Bill.

**Section 4-** All property managers (REINZ and Independents) are now called Letting Agents and they can all charge a letting fee (previously only REINZ Members and lawyers could)

**Section 7** – Previously a rental property owner could take a new tenant on under a short term fixed tenancy, essentially as a trial period. The Tenancy Tribunal will now be able to over-rule trial tenancies of less than 90 days duration.

**Section 13-** Addresses for service can also be a Post Office box number, email address or a facsimile number

**Section 16B-** Tenancy agreements on Unit Title properties are now subject to the body corporate rules.

**Section 40-** The following become unlawful acts with exemplary damages to the landlord

- tenant's failure to comply with a tribunal termination order
- assigning or subletting a tenancy when prohibited to do so or without the landlord's written consent
- interference with the means of escape from fire

**Section 50A-** upon the death of a tenant the personal representative or the next of kin shall be able to give 21 days notice whether it is a fixed term or periodic tenancy.

**Section 56-** The 10 working day notice period is changed to 14 consecutive days.

**Section 60-** at the end of a fixed term tenancy it is proposed that it will become a periodic tenancy under the same terms and conditions as the previous fixed term. Either party with an intention not to continue with the tenancy at the end of the fixed term must give the other party written notice of their intentions no earlier than 90 days and no later than 21 days before the end of the fixed term. The tenant must advise the landlord (in writing) at least 21 days before the end of the fixed term.

**Section 62-** under the proposed changes, tenant's goods left at the premises on termination of the tenancy (abandoned goods) can be disposed of in the following order;

-foodstuffs and other perishables can be disposed of

-with other goods the landlord must make reasonable efforts to contact the previous tenant and come to an agreement upon a period within which the tenant can collect the goods.

-if unable to contact the tenant, agree on a period with the tenant or if the tenant fails to collect the goods within the agreed period the landlord may remove them to safe storage and apply to the tribunal for a disposal order (as at present) or he or she can get a market assessment of the goods, and if the market assessment value is less than the cost of storing, transporting and selling them then the landlord may immediately dispose of the goods. If the market assessment is greater than the cost of storage, transporting and selling them, the landlord must secure the goods for not less than 35 days and after that the goods can be sold for a reasonable market price (by auction or private treaty) with personal documents surrendered to the police. The landlord can then apply to the tribunal for an order specifying the amount owing to the landlord from the tenancy from the sale proceeds. The landlord is not liable in respect of the goods sold nor can the ex-tenant claim them back from the purchaser.

**Section 66 -** Boarding houses will come under the Residential Tenancies Act. A Boarding House is specified as 6 or more tenants at any one time when the landlord specified which tenant has which room-i.e. studio room.

**Section 77-** the tribunal can now award against a guarantor of a tenant (previous this had to be taken to the disputes tribunal)

**Section 102-** if the applicant is wholly successful in his or her claim, the tribunal must order the respondent pay the filing fee paid or if partially successful the tribunal may order the respondent pay the applicant the filing fee.



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