

Residential Tenancies Amendment
Bill 218-1 (2020)
Explanatory note for landlords

by the Auckland Property Investors' Association Incorporated

Preface

We, at the Auckland Property Investors' Association Incorporated has produced this explanatory note to help our members better understand the Residential Tenancies Amendment Bill 218-1 (2020). It is our opinion that summaries provided by the government now in the public domain fall short at accurately reflecting the many more-than-minor impacts this Bill has on landlords.

These notes are organised under eight headings. The first seven (in blue) are summary changes offered by Tenancy Services. The final heading (in red) covers those material changes that are being proposed but not highlighted to the public.

These notes reflect our plain reading understanding of the Bill. They are not intended as legal advice. Should you wish to share your expertise by adding to/improving these notes, please email admin@apia.org.nz.

We recommend all readers to use these notes as a basis to form your opinion about the Bill before making a submission either for or against (in whole or in part) before the submission deadline of 25th March 2020.

1. Improve tenant's security by requiring the use of a justified reason to end a periodic tenancy, including new provisions to respond to anti-social behaviour and removing the use of no cause terminations to end a periodic tenancy agreement.

- Note that this heading refers specifically to reasons for ending a periodic tenancy.
- Justified reasons being:
 - owner and or family member moving into property as principal place of residence (63-days notice)
 - landlord required to house employees in the property (63-day notice + clause in TA)
 - property is to be listed on the market to be sold (90-day notice, listing must happen within 90-days of termination/180-days from notice)
 - property has been sold and purchaser requires vacant possession (90-day notice, agreement to sale unconditional)
 - landlord is not the owner and his/her interest in the land is coming to an end (90-day notice)
 - property was acquired to facilitate the use of nearby land for a business purpose (90-day notice + clause in TA + facilitation requires residents to vacate)
 - property to be converted into a commercial premises (90-day notice)
 - extensive alteration/work to be carried out making it impracticable for tenants to continue residing at the property (90-day notice)
 - property is to be demolished (90-day notice)
 - rent arrears over 21 days (application to TT to terminate, TT could grant conditional continuation)
 - rent arrears 3 x of over 5 days in a 90-day period (notice requirements to be met, application to TT to terminate, TT could refuse if arrear is remedied)
 - anti-social behaviour 3 x in a 90-day period (noticed requirements to be met, application to TT to terminate, TT to consider fairness and determine that application was made in good faith)
 - hardship relief (application to TT to terminate, hardship on landlords > hardship on tenant, TT to consider impact on tenant)
- Tenants can terminate with a 28-day notice without stating any reason.
- The heading refers to 'removing the use of no cause terminations' whereas the Bill's explanatory notes more accurately refers to '[removing] the ability for landlords to end a periodic tenancy agreement for any reason and without a requirement to tell the tenant why.' The term 'removing ... no cause termination' has the effect of misleading the public into assuming that landlords can and do terminate a tenancy with no reason.

2. Flatten the inflated demand that has been created in some regions by tenancies all ending at the same time by mandating that fixed-term tenancy agreements must become periodic tenancy agreements upon expiry unless both parties agree otherwise, or certain conditions apply.

- Changes apply to fixed-term tenancies that are more than 90-days.
- Currently a fixed-term rolls over to a periodic tenancy on expiry unless
 - Both parties enter into a new tenancy agreement or agree to extend existing tenancy
 - Notice is given at least 21 days before the expiry of the fixed-term to not continue
 - Or TT makes an order for termination if it considers that one party would suffer greater hardship than the other (TT could order application for early termination to make reasonable compensation to the other party)
- Bill provides for fixed-term to roll over into periodic unless
 - TA is renewed or extended before fix-term expires
 - Both parties agree before the expiry not to continue
 - Tenant give notice not to continue at least 28 days before expiry of fixed-term

- A party can give notice to terminate on or before expiry for one of the following reasons
 - Property is unlawful
 - Property transferred to a mortgagee or another person who becomes entitled to the property, that the person is not bound by the tenancy, the person gives notice to terminate
 - Property is destroyed
 - Property is seriously damaged as to become uninhabitable
 - Death of sole tenant

3. **Improve compliance with the law** by increasing financial penalties and giving the Regulator new tools to take direct action against parties who are not meeting their obligations.

- Overall increase of penalty for unlawful acts (refer to bold items under Schedule 1A of the Bill)
 - Range of unlawful acts increase
 - Upper penalty limit for unlawful acts increased by approx 1.5x across the board
- Introduction of the concepts of infringement offences, infringement notices, infringement fees and infringement fines
 - The result of which is to criminalise certain breaches to the amended Act
 - An infringement office could result in an infringement notice or filing of a charging document (no conviction can be entered as a result of an infringement)
 - TCIT (or similar such body) would have the power to impose infringement penalties if it has reasonable grounds to believe that the person is committing or has committed an infringement offence.
 - Infringement offences refer only to acts and omissions by landlords *not* tenants.
 - Infringement fees are scaled depending on the size of the landlords' portfolio.
 - See Schedule 1B of the Bill for infringement offences and fees.
- Other broader powers to be granted to the TCIT includes
 - Issuing of improvement notices
 - Acceptance and oversight of enforceable undertakings (whereas a landlord gives an promise to perform certain act and that the TCIT can legally enforce that promise)

4. **Remove a disincentive for parties to use the Tenancy Tribunal** by allowing for identifying details to be anonymised in situations where a party has been wholly or substantially successful in taking a case.

- A new protection that is afforded to both landlords and tenants
- Parties can apply for suppression or the Tribunal can order to suppress on its own initiative
- In granting suppression, TT will balance interests of parties against that of the public.

5. **Make rental properties safer and more liveable** by ensuring that tenants can add minor changes, such as brackets to secure furniture and appliances against earthquake risk, baby proof the property, install visual fire alarms and doorbells and hang pictures.

- 'Changes' in this context refers to any fixture, renovation, alteration or addition.
- The Bill carves out two different types of changes:
 - minor and
 - more than minor.
- 'Minor' if all of the following are met:
 - No to low risk of material damage to the property (note risk or damage not actual damage)
 - Reversal of which would allow the property to easily return to substantially the same condition (not the exact same condition)
 - Health and safety risk associated with install and removal can reasonably be either eliminated or minimised

- Work would preserve the structural integrity, weathertightness and character of the building
- Work would not negatively impact other people's enjoyment or use or surrounding properties
- Work does not require any regulatory consent
- Work does not breach any of the property's existing obligations e.g. bylaws, body corporate rules
- Change is 'more than minor' if one or more of the above conditions is not met
- Tenant can make change if
 - TA allows for the change or
 - With the landlord's consent
- Landlord's consent for minor and more than minor change:
 - Cannot unreasonably withhold consent
 - Can impose reasonable conditions
 - If the tenant requests to make change in writing then the landlord must respond within 21 days of receipt (unlawful act if response deadline is missed - \$1,500)
 - Response must indicate whether landlord considers the change to be minor or more than minor (unlawful if not included - \$1,500)
 - If change is more than minor, landlord's response can include an extension of time to consider the request. Extension of time must be reasonable (unlawful if landlord fails to respond in writing within a reasonable time - \$1,500)
- For more than minor change
 - Tenant can undo/remove at any time during the tenancy unless the removal would irreparably damage the property
 - All fixtures not removed at the end of the tenancy becomes the property of the landlord unless tenant has either a prior agreement with landlord to remove after or reasonably believes that he/she is entitled to remove based on statements made by landlord
 - Tenant to inform landlord immediately if property is damaged by removal of fixture. Landlord can elect for tenant to fix or be compensated by the tenant for fixing.
- For minor change
 - Tenant must make-good: Before expiry of tenancy, tenant must return the property to substantially the same condition as it was before the change unless both landlord and tenant agree otherwise
 - Failure to make-good by tenant is an unlawful act (\$1,500)

6. Prohibit the solicitation of rental bids by landlords and limit rent increases to once every 12 months.

- Landlord must advertise a specified asking rent.
 - Not doing so would be an unlawful act (\$1,500) and an infringement offence (fine of \$2,000 for landlords with 6 or more tenancies or \$1,000 for landlords with 5 or less tenancies and fee of \$1,000 for landlords with 6 or more tenancies and \$500 for landlords with 5 or less tenancies)
- Landlord not to invite or encourage rent bidding (neither 'invite' nor 'encourage' is defined). To do so would be an unlawful act (\$1,500)
 - However, the section does not prohibit anyone else from offering to pay a higher rent than that which has been advertised by the landlord.
 - The Bill is silent on how the landlord's response to the offer of higher rent will be treated.
- Rents can only be increased once every 12 months

7. Improve the process for the installation of fibre in rental properties by requiring landlords to permit and facilitate the installation of Ultra-Fast Broadband, subject to specific triggers and exemptions.

- Landlord must permit the installation if all of the following conditions are met:
 - Tenant has made a request for fibre connection

- There is no existing fibre connection
- Installation is possible
- Installation will be at no cost to the landlord
- Exemptions (i.e. landlord is not required to permit installation)
 - Installation would compromise the property in one or more of the following ways
 - Structural integrity
 - Weathertightness
 - Any building's character (visual impact is not considered a 'character' for the purpose of withholding consent to installation)
 - Installation would put the landlord/property in breach of an existing obligation/restriction (e.g. bylaw, body corporate rule, a covenant)
 - Installation would impede intended work (i.e. extensive alterations, refurbishments, repair or redevelopment)
 - Installation would require the consent of a third party and that consent cannot be obtained
 - If the TT determines that the circumstance of the property or installation should exempt the landlord from permitting the installation.
- Landlord (not tenant) to facilitate installation within a reasonable period of time. It would be unlawful not to (\$1,500).
- Landlord must respond to tenants written request for installation within 21 days. It would be unlawful not to (\$1,500).
- Landlord must respond to the network operator's request for consent within 21 days of receiving the request. It would be unlawful not to (\$1,500).

8. Other proposed changes not specifically highlighted but are, in the opinion of the APIA, worthwhile being pointed out to members

- No-assignment clauses will be of no effect
 - Notice 'of no effect' refers to the change being applied to all existing and future no-assignment clauses.
 - Tenant will still need to seek consent from the landlord to assign (the consent cannot be unreasonably withheld) and commits an unlawful act if assignment is made without the landlord's consent
 - Landlords can seek compensation for reasonable costs incurred for an assignment (itemised list of expenses to be provided)
- Terminating or purporting to terminate without grounds
 - If a landlord, knowing that he/she is not entitled to terminate under the amended Act, terminates (whether by notice or application) or 'purport[s]' to terminate/apply for termination then he/she commits an unlawful act (\$6,500).
 - Terminating whether by notice or application is clear cut enough but 'purport to' is not defined.
 - Plain English interpretation of 'purport to' covers a wide range of behaviours that communicate an inclination/intention/implication to do something. To what extent the section intends to gag landlords from their ordinary expressions could only be resolved by the TT's application of this section. The concern for now is that this is too wide a mandate and too great a penalty that would have the effect

of fear mongering landlords from having a transparent relationship with their tenants and property managers.

- TT's mandate broadened from \$50,000 to \$100,000
- Broadening of the list of documents a landlord must retain to (existing in black, new additions in red) during the tenancy and for 12 months after the expiry of the tenancy:
 - TA + any variations or renewals
 - All inspection reports
 - Records of all building work, prescribed electrical work, maintenance or repair work carried out by or for the landlord
 - All records and documents relating to landlord's HHS compliance
 - All notices, letters, emails and any other forms of correspondence between the landlord (or agent) and the tenant (or agent) or a prospective tenant (or agent) in relation to the tenancy
 - All reports/assessments by a professional tradesperson of compliance related work
 - All advertisement of the tenancy including advertisement from before the tenancy
- Strengthening of obligation on landlord to ensure TA is in writing and signed
 - Currently the law says TAs *shall* be in writing and signed by both parties and that the landlord *shall* provide a copy of the TA to the tenant before the tenancy starts.
 - The Bill proposes to impose a strict legal obligations (*must*) on the landlord to ensure the following:
 - TA is in writing
 - Landlord to sign before providing a copy to the tenant before the tenancy (may or may not contain the tenant's signature)
 - Unlawful act (\$750) and infringement offence if the landlord does not ensure the above (fine of \$2,000 for landlord with 6 or more tenancies/\$1,000 for landlord with 5 or less and fee of \$1,000 for landlord with 6 or more tenancies/\$500 for landlord with 5 or less)