

## Proposed reform of the Residential Tenancies Act 1986

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### Why the perceived need for reform?

The Residential Tenancies Act 1986 (the RTA) has governed legal arrangements between residential landlords and tenants in New Zealand for over 30 years now.

Following on from the healthy homes legislation in 2017, the Government has committed to a reform of the RTA largely in response to shifting demographics in the housing market which have seen:

- Home ownership at a 60-year low
- An increase in long term renters which has swelled to over a third of New Zealand households
- The number of children in rented homes increase from 26% in 1986 to 43% in 2013.

The primary focus of the reforms is to provide greater protection to tenants by giving them increased security in their tenancies.

The Government has recently issued a [discussion document](#) seeking written submissions from the public on various proposals to reform the RTA. Submissions are due in by **21 October 2018**, with any changes expected to come into force in **2020**.

This article discusses some of the significant proposals and looks at some of the potential consequences for landlords and tenants.

### What are some of the key aspects of the proposed reform?

#### Termination provisions

The Government is committed to amending the termination provisions of the RTA so that tenants who are meeting their obligations are able to stay in their homes longer and have greater control over their tenancies. To meet this objective, the Government has proposed to amend the law by:

- Extending the period of notice landlords must give tenants prior to termination under periodic tenancy agreements from 42 to 90 days
- Removing the ability for landlords to end periodic tenancy agreements on 90 days notice for any reason and without needing to tell the tenant why (in other words a termination without cause).

#### Effect of extending notice periods

Currently, landlords can give 42 days notice to end a tenancy where:

- The property has been sold
- The owner or a member of the owner's family is going to live at the property
- The property is normally used as employee accommodation and is needed again for that purpose, (and the fact that this might happen was stated in the tenancy agreement) or where the property has been specifically acquired for such a use.

Under the proposed reforms these termination grounds would still be available on 90 days notice, but some additional grounds would be added including where the landlord:

- Intends to carry out alterations and repairs to the premises and it would not be possible for the tenant to continue to live there while works were being completed
- Intends to change the use of the premises (for example from residential to commercial use)
- Does not own the premises and the landlord's interest at the property ends (for example where the landlord is leasing the premises from the owner)

- If a person, such as mortgagor, becomes entitled to possession and needs the tenant to vacate the premises to meet the requirements of a mortgagee sale or similar.

Extending the notice period for the above is likely to provide tenants with greater comfort that they will have enough time to find an alternative home if they are required to leave the property. However, increasing the timeframe to 90 days would reduce a landlord's ability to swiftly deal with their property, whether it be to move back into the property themselves or sell the property with vacant possession.

### **Effect of removing no-cause terminations**

Removing no-cause terminations is likely to make tenants feel more secure in their homes. In addition, it may also make tenants more willing to raise issues about the condition of the property as fears of retaliation from the landlord by terminating the tenancy without cause should be reduced.

If landlords are unable to rely on no-cause terminations to end periodic tenancies, they will have to follow the current process of applying to the Tenancy Tribunal for an order to terminate a tenancy. This process requires a landlord to provide a notice to the tenant of a breach. This notice gives the tenant at least 14 days to remedy the breach and where not remedied, the landlord can apply to the Tribunal for an order to terminate the tenancy. The landlord will have to present evidence in support of their application.

This process is more time consuming and costly for landlords, who have historically had the option of simply issuing a 90 day no-cause termination notice to end a periodic tenancy. If landlords consider that the proposed changes to periodic tenancies will make it too difficult to remove tenants who don't meet their obligations, they may instead opt for fixed-term agreements or choose to not provide their properties for rent at all.

### **Forms of tenancy agreement**

The RTA currently provides for two main types of residential tenancy agreement, being:

- A periodic tenancy which is flexible and either party is able to end the tenancy by giving a set amount of notice
- A fixed-term tenancy which neither party can terminate before the expiry date without involving the Tenancy Tribunal.

The Government has proposed a review of the types of tenancy agreements available. Submissions have been sought on proposals to:

- Provide tenants with a right to extend their fixed-term agreement
- Specify a minimum length for fixed-term agreements
- Allow open term tenancies only (by getting rid of fixed-term tenancies).

### **Effect of providing tenants with a right to extend their fixed-term tenancy**

Typically, fixed-term agreements are for a period of around 12 months and it is common for agreements to expire around January and February. With the majority of fixed-term tenancies ending in the same period, high demand can make it challenging for tenants to find alternative accommodation. Providing tenants with a right of renewal provided they have not breached their obligations during the tenancy may decrease the uncertainty that tenants typically feel around the expiry. A negative consequence of this may be that landlords instead issue a notice in respect of minor breaches of the tenancy agreement during the fixed term, in order to be able to position themselves to terminate an agreement at the end of that term.

### **Minimum length fixed-term agreements**

A possible response to the Government's proposals is that landlords may be inclined to offer short-term fixed tenancies as a means of avoiding extended notice periods and Tenancy Tribunal hearings under a periodic tenancy. Setting a minimum length term for fixed agreements (for example two years) could address this and provide greater security for tenants. If tenancy agreements are fixed for longer periods, landlords might also accept a lower weekly rent for a property if they know that the rental income will be steady. On the flipside, this may deter people from making their homes available for rental where their intended absence is less than any minimum fixed term.

If landlords are able to rely on longer term fixed tenancies this is likely to make managing the property and satisfying their mortgage obligations more certain too.

### **Open term tenancies only**

An alternative option proposed by the Government is to end fixed-term tenancies and only allow periodic/open term tenancies. As with the proposed amendments to the termination provisions for periodic tenancies, this means landlords would only be allowed to terminate an agreement if the tenant is not meeting its obligations or for specified reasons permitted under the RTA.

This approach has the benefit of simplifying tenancy agreements and provides tenants with stability and increased security of tenure. However, landlords would lose the stability that fixed-term tenancies provide as under current notice periods tenants would

be able to end the agreement by providing 21 days' notice. If fixed-term tenancies are no longer an option, we suggest that the notice period for tenants to terminate should be increased to assist landlords in reducing vacancies at their properties.

## **Additional proposals and submissions**

Landlords, tenants and other interested parties are also being urged to have their say on:

- Whether there should be limitations on 'rent bidding' (ie where a tenant offers more than the advertised rent for a property in an attempt to secure it)
- Whether rent reviews should be limited to once a year
- Whether the general obligations that tenants and landlords have (for example rights of access, maintenance obligations, inspections etc) remain fit for purpose
- Better equipping tenants and landlords to reach agreements about pets and minor alterations to the home
- Whether further controls are needed for boarding houses to provide adequate protection for tenants
- Introducing new tools and processes into the compliance and enforcement system.

Striking the right balance between the rights and obligations of landlord and tenant will always be a challenging thing, and now is your chance to express your views on how this should be done. As set out above, submissions close on 21 October 2018, with any changes expected to come into force in 2020.

[Click here for a link to the Discussion Document.](#)

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