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Questions and answers about the proposed Reform of the Residential Tenancies Act 1986

Background to the RTA reform

The Residential Tenancies Act came into force over thirty years ago to govern a rental market with different characteristics to what we have today. More New Zealanders are living in rental accommodation, and for longer periods of time.

Reforming the RTA is an opportunity to consider whether the law that governs the rental market continues to be a fair and proportionate way to address problems that tenants and landlords may experience with non-stable tenure.

What evidence is there of the problem?

The proportion of households that are renting has increased from 23% in 1991 to 33% in 2017, while the rate of home ownership in New Zealand has dropped from a peak of 73% in 1991 to 63% of households in 2017, the lowest since 1951.

Since the 2001 Census, the largest falls in home ownership were for those in their 30s and 40s. In 2013, 43% of people aged 30–39 years owned their home – down from 55% in 2001. For those in their 40s, 61% owned their home in 2013, down from 71% in 2001. This suggests people are renting for a longer proportion of their lives.

Māori and Pacific people are more likely to rent. At the time of the 2013 Census, 57% of Māori and 67% of Pacific people were living in rental homes.

When will any changes come into force?

It is expected that any changes will come into force in 2020, however this will depend on Parliamentary timeframes.

Impact of changes

What could these changes mean for landlords and tenants?

Many of the proposals in the discussion document either refine or incrementally build on existing rights and obligations. Examples of more substantive proposals that we want to hear your views on include exploring whether:

- the composition of tenancy agreements should be changed

- the law should do more to help landlords and tenants reach agreement about tenants keeping pets
- rental bidding should be restricted.

How will changes improve the relationship between tenants and landlords?

The reform is looking at both sides of the relationship. In addition to specific proposals on topics such as security of tenure, general questions are asked about the responsibilities that tenants and landlords have and whether these need to be reconfigured to give each party greater confidence in the relationship.

How will changes help tenants?

The primary objective of the reform is to improve tenants' security and stability of tenure. It does this by considering the circumstances when tenancies can be ended and the range of tenancy agreements on offer. In addition, the reform will look at aspects of the law that may need revision to help tenants feel more at home, such as in relation to making modifications and keeping pets. The reform will consider how the settings governing the tenancy relationship can be improved for both parties.

How are landlords' interests protected?

While we want to ensure tenants who are meeting their obligations have choice and control over their housing options, it is important landlords are still able to terminate tenancies for justifiable reasons, such as a tenant breaching their obligations. How we strike this balance is one of the areas we are consulting on.

Will a landlord still be able to get rid of a tenant who isn't complying with their responsibilities?

Yes. A tenancy will still be able to be terminated if a tenant is breaching their tenancy agreement or the RTA. For example, if a landlord presents evidence that a tenant is 21 or more days behind in their rent and asks for the tenancy to be ended the Tenancy Tribunal must make an order to do so.

Tenancy agreements

What is the average length of a tenancy in New Zealand?

The most common length of a tenancy in New Zealand was about 12 months for the period 2010 – 2017. This is two months longer than median tenancy for the period 2002 – 2017, indicating that tenancies are getting longer at the margin.

How will the reform improve security of tenure?

A key objective of the reform is to give renters greater choice and control over their tenancy so that they can stay in their home for as long as they decide to, provided they are meeting their obligations.

The reform achieves this in a number of ways. Firstly, it proposes to remove the ability landlords have to end a tenancy at any time without having to give a reason. Landlords will instead only be able to end a tenancy for specific reasons and may be required to show evidence to support their decision to terminate.

The reform also considers whether types of tenancy agreements available, and the circumstances when they can be offered needs to change to provide responsible tenants with more say in how long their tenancy continues.

What changes are you proposing to landlords' notice periods?

Currently landlords can only give 42 days' notice in three specific circumstances:

- they have sold the property,
- they need it for a family member, or
- the property is usually for employees' use and an employee needs it.

If they are ending the tenancy for any other reason, they must give 90 days' notice. Making the notice period 90 days for all tenancy terminations will simplify the system and give tenants more time to find alternative accommodation.

Will the reform provide greater security for tenants when their rental home is sold?

Currently, tenants of fixed-term agreements are protected against the property being sold during the course of their tenancy. The reform considers how things may be made even more secure for people on fixed-term agreements by considering whether a right of renewal in the tenant's favour should apply.

Open ended tenancies (the current periodic agreement model) can be terminated if a landlord has sold the property. While it would be difficult to make a tenancy both indefinite and protected against sale, the reform does consider what can be done to prevent unnecessary 'churn' when a property is sold with a periodic agreement in place.

For example, it considers whether a test could be introduced that would see a new owner of a rental property on a periodic tenancy only able to terminate the tenancy if they want the property for a purpose that cannot reasonable be accommodated with the existing tenancy in place, e.g. if a new owner wanted to live in the property themselves or carry out substantive renovations.

What are the existing justifiable reasons for terminating a tenancy?

Existing justifiable reasons for terminating a tenancy include:

- The owner or their family member requires the property to live in
- The landlord activates an existing clause in the tenancy agreement which states that the tenancy will be terminated if the property is needed for an employee
- The property has been sold with a requirement by the new owner for vacant possession
- The tenant has breached the RTA or the tenancy agreement by
- interfering with the reasonable peace, comfort, or privacy of any other tenants or people in the neighbourhood
- not paying the rent
- causing or threatening to cause significant damage
- assaulting or threatening to assault certain people
- using the premises for unlawful activity.

The tenants has breached the RTA or the tenancy agreement in another way when the Tenancy Tribunal finds that:

- the breach cannot be remedied, and
- it would not be unfair to end the tenancy.

We want to know what landlords and tenants might consider justifiable reasons to terminate a tenancy and we encourage people to let us know their thoughts through the consultation process.

We are proposing reasons currently listed in the RTA, such as those listed above, remain and are seeking input on what other reasons should be included.

What evidence are you proposing a landlord would need to terminate a tenancy?

We are keen to hear what you think might be reasonable evidence. Evidence would need to be reasonably able to be produced, and in some cases may need to be of a standard that satisfies the Tenancy Tribunal.

In what situations are you proposing a landlord would need to give evidence?

We are keen to hear whether you think a landlord should be required to provide a tenant with evidence before they terminate a tenancy and what type of evidence could be sufficient. Alternatively, landlords could be asked to present evidence only if challenged by a tenant.

What changes are you proposing to tenants' notice periods?

We are seeking feedback on whether notice periods for tenants could increase. We are interested in feedback about why they might need to change and what could be a more appropriate period

Rent increases

Why are you considering allowing rent to be raised only once per year?

The goal of allowing rent to be raised only once per year is to provide tenants with more certainty around their costs. Raising rent every six months (which is currently permitted) can cause financial stress and uncertainty for some tenants.

Rental bidding

What is rental bidding?

Rental bidding is when a prospective tenant offers more than the advertised rent for a property, either because they are encouraged to or make their own decision to do so.

Rental bidding could potentially push up overall rental prices, particularly in areas of high demand, and lead to people who have the least ability to pay struggling to identify suitable rental properties that they can afford.

How are you proposing rental bidding could be controlled?

The discussion document seeks feedback on two options that could be progressed to address the practice of rental bidding:

- The first option is to prohibit landlords or property managers from asking tenants for rental bids
- The second option is to prohibit both the request and acceptance of rental bids.

Modifications

What modifications will be allowed under the proposed changes?

The law already stipulates that landlords must not withhold their consent to the tenant making reasonable modifications.

The reform tests whether this provision is working and considers how the process around determining what is, and is not, reasonable could be clarified. This includes seeking feedback on what specific modifications should, and should not, be allowed. The proposals do not seek to allow modifications that people would find to be unreasonable.

Pets

What changes are you proposing regarding keeping pets?

Responsible tenants who are meeting their end of the deal should be able to feel at home in their properties. Pets can be an important part of this and can improve the quality of people's lives by providing companionship.

We are considering if landlords should only be able to say no to pets where there is a good reason to do so, for example, when the tenant wants a dog but the property isn't fenced or other rules relating to the property mean that pets are not allowed. Landlords could decline a tenant's request to keep a pet where there are good reasons to do so. We're keen to hear your views about what these may be.

We are also considering if landlords should be able to collect a pet bond, or oblige tenants who have pets to have the carpet professionally cleaned at the end of the tenancy.

Under what circumstances are you proposing a landlord could decline a request to keep a pet?

We're keen to hear your thoughts on this, but some reasonable reasons could include:

- if a property is not suitable, e.g. not fenced for a dog
- if a pet could cause an unreasonable amount of damage, e.g. because the carpet is brand new

Can a landlord charge more if a tenant has a pet?

Landlords are free to set the rent for their property that they feel is reasonable. However, if a tenant considers that their rent substantially exceeds market rates they have the ability to apply to the Tenancy Tribunal for an order reducing the amount of rent for the property.

Boarding houses

What is the definition of a boarding house?

A boarding house is defined as a residential premises containing one or more boarding rooms and facilities for communal use by the tenants. It is occupied, or intended by the landlord to be occupied, by at least six tenants.

Why are you considering registering / licensing for boarding houses/operators?

Some of society's most vulnerable people live in boarding houses and may be less able to stand up for their rights. The Government wants to ensure that these premises are fit for purpose but to do so, it needs to better information about where boarding houses are.

Registration or licensing is a way to achieve this while also ensuring that the operators who routinely fall short of expectations can have their ability to run a boarding house removed.

How does the reform propose to improve compliance with the RTA?

This proposal aims to clarify the powers MBIE has to enforce compliance with the Residential Tenancies Act. It seeks to ensure the Act includes a modern, flexible suite of compliance tools. The reform will consider whether a wider range of compliance tools, such as improvement notices and infringements, would be useful and practical.

MBIE's current enforcement activities focus on serious breaches of the Act and on the public good aspect of complaints. This means MBIE's compliance team focuses on cases where people are being very badly treated or where a precedent could be set. Currently, MBIE does not have the ability to recover costs for compliance activities.

We're keen to hear your thoughts on whether current powers and tools are right and what other powers MBIE should have to manage compliance with the RTA quickly and efficiently for all those involved.

Are you proposing changes to the existing financial penalties for tenants and landlords who breach the RTA?

The RTA has an existing civil financial penalty regime in the form of exemplary damages. If a breach of the Act is serious enough to be an unlawful act, the Tenancy Tribunal has the ability to award 'exemplary damages' - a form of financial penalty that the person who breached the Act must pay to the affected party.

We're seeking feedback on whether the exemplary damage amounts are appropriate, if the correct ranges of breaches are within the exemplary damages regime, and if changing the name of exemplary damages to penalty would better clarify their purpose.

Are you proposing fines for tenants?

Tenants can already have penalties awarded against them at the Tenancy Tribunal in circumstances where they have breached their obligations. The reform also considers what the consequences should be for tenants who do not do their part. We expect any fines awarded against tenants would need to meet a public interest test.