



23 May 2018

Submission to:

Social Services and Community Committee

Subject:

Residential Tenancies (Prohibiting Letting Fees) Amendment Bill

Citizens Advice Bureaux New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to comment on the Residential Tenancies (Prohibiting Letting Fees) Amendment Bill (the Bill). Please contact us if you have any questions, or want any clarification about our submission.

Please note that we wish to appear before the Committee to speak to our submission.

Contact Person:

Sacha Green
National Advisor – Legal & Strategic
Citizens Advice Bureaux New Zealand

Phone: 04 471 2735

Email: sacha.green@cab.org.nz



Submission on the Residential Tenancies (Prohibiting Letting Fees) Amendment Bill

Citizens Advice Bureau New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to comment on the Residential Tenancies (Prohibiting Letting Fees) Amendment Bill (the Bill).

Executive summary

We support the amendments proposed by the Bill to prohibit the charging of letting fees or similar costs. We see this as a first step in a larger programme of necessary reform in the rental sector to redress the significant power imbalance between tenants and landlords.

We believe that the practice of charging tenants letting fees places an additional and unreasonable financial burden on tenants who are already navigating a difficult renting environment. The lack of affordable, quality rentals mean that tenants have few options and very little power to question or challenge the conditions placed on their tenancy or to raise issues or concerns when their rights are not being upheld.

Enquiries to CABs reflect that in some situations tenants are unaware of what letting fees are, what they are intended to cover and whether they are legal. Tenants are being required to pay letting fees in a range of circumstances that are questionable even under existing legislation, but also that reflect the unfair burden that letting fees add to the already significant challenges faced by a person trying to rent a home. Our client enquiries show us that tenants are being charged letting fees:

- prior to any tenancy being established
- for tenancies that are agreed to but don't eventuate
- by landlords directly (not letting agents)
- for renewal of a tenancy
- to exit a fixed term tenancy early or for new tenants moving in

In many of these situations the letting fee appears to be a pro forma charge, without any reference to costs actually incurred. Placing this additional financial burden on tenants who already have to front up with large bond payments and rent in advance is unfair and unreasonable.

Ultimately, we support the proposition set out in the explanatory note to the Bill, that the services that tenants are being required to pay for through letting fees are business costs for the landlord, that they benefit landlord, and that these expenses should be carried by the landlord.



We commend the intention of the Bill to ensure that other fees cannot be charged to tenants in place of a letting fee. We recommend however, that the Bill goes further and removes the right retained under section 44(5) of the principal Act for landlords to charge “reasonable expenses” incurred as a result of consenting to the tenant assigning, subletting or parting with possession of a tenancy, or in the alternative provide clarity about what a reasonable expense is. Our client enquiries reveal that where the tenant requests a change in the tenancy, through the transfer of rights, these situations are being used as yet another occasion to charge tenants for costs that should arguably be carried by the landlord, or to place an arbitrary charge on the tenant that bears no correlation with any actual expense.

We have supported our submission with examples of enquiries received from CAB clients. Identifying details have been removed and some details have been altered to ensure privacy is protected.

Background

About Citizens Advice Bureau

The aims of Citizens Advice Bureau (CAB) are:

1. To ensure that individuals do not suffer through ignorance of their rights and responsibilities or of the services available; or through an inability to express their needs effectively.

Me noho mataara kia kaua te tangata e mate i tōna kore mōhio ki ngā āhuetanga e āhei atu ana ia, ki ngā mahi rānei e tika ana kia mahia e ia, ki ngā ratonga rānei e āhei atu ana ia; i te kore rānei e āhei ana ki te whakaputa i ōna hiahia kia mārama mai ai te tangata.

2. To exert a responsible influence on the development of social policies and services, both locally and nationally.

Kia tino whai wāhi atu ki te auahatanga o ngā kaupapa ā-iwi me ngā ratonga ā-rohe, puta noa hoki i te motu.

From over 80 locations around Aotearoa New Zealand our 2300 trained CAB volunteers assist people by providing a free, impartial and confidential service of information, advice and advocacy. We work to empower individuals to resolve their problems and we use the insights we gain from our work with clients to advocate for socially just policies and services for all New Zealanders.

In the 2016/17 financial year, the CAB assisted with over half a million (525,525) client interactions across the range of issues that affect people in their daily lives, including relationship issues, tenancy rights, employment problems, immigration processes, and problems relating to faulty goods or poor service. Our aim is to help people know their rights and feel empowered to act on them.

Residential tenancy enquiries are among the most common received by CABs. Most of these enquiries are from tenants, but landlords also regularly seek assistance from the CAB.



In the past year CABs across New Zealand have responded to 14,878 enquiries from clients addressing a range of issues relating to renting or rental properties. Questions about letting fees are common amongst these enquiries.

CAB position on housing issues

Citizens Advice Bureau New Zealand regards good quality rental housing and security of tenure as cornerstones of a fair and well-balanced rental market. We acknowledge the opportunity this Bill provides to get a 'quick win' for tenants by removing this unfair additional cost from the long list of barriers in the way of renters being able to access quality rentals and to secure fair terms. We recognise this is only one step in a broader programme of proposed reform in the housing sector and we look forward to engaging in the upcoming consultation processes on the standards under the Healthy Homes Guarantees Act, and the more comprehensive review of the Residential Tenancies Act.

We believe the renting environment needs a complete overhaul to remedy the significant power imbalance that has become imbedded in the relationship between landlords and tenants. We hope that this programme of reform will lead to improved standards of housing for tenants and greater security of tenure. Ultimately this requires a significant shift from viewing properties primarily as income-generating assets for the landlord, to a model that reflects the inherent social responsibility that comes with being a housing provider.

These reforms also need to be framed in the context of New Zealand's international obligation to protect the right of people in New Zealand to enjoy adequate housing and our Government's commitment to work towards the United Nation's Sustainable Development Goal 11 which includes ensuring universal access to adequate, safe and affordable housing.

Support for the prohibition of letting fees

Clause 7 New section 17A inserted (Requiring letting fee prohibited)

After section 17, insert:

17A Requiring letting fee prohibited

- (1) No letting agent or other person may require a tenant to pay a letting fee.
- (2) Nothing in **subsection (1)** limits or affects section 44(5) (which entitles a landlord to recover reasonable expenses on consenting to the tenant's assigning, subletting, or parting with possession of the premises).
- (3) Any requirement to pay a letting fee in contravention of **subsection (1)** is an unlawful act.

We support the proposed amendments to the RTA to prohibit a letting agent or other person requiring a tenant to pay a letting fee. By paying this fee, tenants are bearing the costs associated with letting a rental property, where these costs reflect services that are ultimately for the landlord's benefit. We support the view that the costs associated with letting a property should be carried by the beneficiary of the service.



Letting fees are a significant upfront cost for tenants, on top of the many other financial barriers that tenants face when moving into a rental property. These include the bond (up to 4 weeks' rent), up to 2 weeks' rent in advance, and moving costs. We believe that prohibiting the charging of letting fees is one step in the direction of reducing the barriers people face in even getting their foot through the door of a rental property.

Analysis of enquiries to CABs reveals recurring themes and issues that arise for tenants in relation to letting fees. The situations of blatant unfairness reinforce the clear need for letting fees and other charges applied against tenants to be banned. We have described some of these issues and illustrated these with client enquiries examples below.

Tenants are unaware of letting fees / wonder if they are legal

Our client enquiries reflect that tenants already experience confusion about letting fees and can be unaware what letting fees cover and whether they should be charged the fee that is being described to them.

Client is renting a new flat through an agency and wanted to know whether the agency is legally able to charge her a letting fee of one week's rent.

Client and his partner are renting a room in a house under a sublease agreement. When they moved in to the flat they were asked by the leaseholder to pay rent up front, a bond and a letting fee. The client is from overseas and wondered if this was normal in New Zealand and whether they would get any of it back when they move out.

Client wants to know whether letting fees are legal. They are concerned about letting fees being charged that are more than one week's rent.

Client has signed a tenancy agreement and then found out that they had to pay a letting fee. This was in the agreement but he didn't spot this before signing. He wanted to know if this is legal.

Client is interested in renting a property. They have found out that as part of the move-in costs there is an additional \$100 for an advertising fee. The client wonders if this is allowed.

Client was asked by her landlord to pay a letting fee. She would like to know what a letting fee is and whether she needs to pay the fee.

Client wants to know if she is required to pay GST on the letting fee for her apartment. She has just received an invoice after being in the flat for a month and is surprised about this.

Tenants are being charged letting fees prior to any tenancy being established

Our enquiries highlight that people are regularly required to pay a letting fee before signing a tenancy agreement and then, if circumstances change and they decide not to proceed with the tenancy, they are not able to get the letting fee refunded.

Client submitted tenancy application to property manager. Her application was accepted and she paid a letting fee. She then decided she didn't want to sign the tenancy agreement for the property. The property manager advised that the fee won't be refunded and also that the client may be charged for additional costs related to cancelling. The client wants to know what her rights are.

Client wanted help with a dispute he was in with a letting agent. He had hoped to rent a property and the agent had drawn up a tenancy agreement and had charged the client a bond and letting fee. When the client said he would sometimes have care of his child and they would stay some of the time, the agent said this was not possible and so the client was not able to proceed with the tenancy. The agent told the client that the bond would be refunded, but not the letting fee. The client would also like the letting fee refunded.

Client had gone to an agent to explore options for renting an apartment. The agent asked her to pay a bond and letting fee before she had even agreed to rent one of the apartments. After a week she decided against renting any of them and asked for a refund of the bond and the letting fee. The agent refused to refund the letting fees. She wondered what her rights are.

Client paid a letting fee of \$650 last week. She did not sign the tenancy agreement and has since decided not to rent the property. The landlord has told her that she has to go through with renting the property. She wants advice on her legal rights.

Client submitted a tenancy application via a letting agent. He paid a letting fee. The landlord declined his application but the letting agent is refusing to refund the letting fee. Client wants to know what his rights are.

Client and her friends paid \$1200 to a letting agent as a deposit to hold a rental property. The letting agent then asked for an additional payment to cover a week's rent and 4 weeks' bond, to be paid within 24 hours. At this stage no tenancy agreement or other forms had been signed. The group were unable to get the large amount of money together within the 24 hour period so advised the letting agent that they would not be going ahead with the tenancy. The agent advised that they would not refund the \$1200. The client wants to know whether this is legal.

Client verbally agreed to a tenancy. The letting agent asked him to pay the bond and the one week letting fee, which he did. The person he was going to share the flat with has now pulled out which means he can't afford to take up the rental. The letting agent has advised that he will get his bond back but is still liable for the letting fee. He wants to know whether this is correct.

Tenants are being charged letting fees for tenancies that are agreed to but don't eventuate

We are also approached by clients who have signed a tenancy agreement but then change their mind about going ahead with the tenancy, sometimes because of significant changes in circumstances or because of the poor condition of the property, and find that they are unable to get letting fees refunded.

This 'change of mind' often occurs in a short timeframe after signing the tenancy agreement. This is an area where it might be appropriate to have a "cooling-off period" similar to that for a consumer credit contract, to allow the tenant to change their mind in the immediate period after signing the agreement. This is especially relevant given that it appears that in some situations the tenant may not even have the opportunity to view the property until after the agreement is already signed.

Client signed a fixed term tenancy agreement and then two days later changed her mind and wanted to cancel. She had only just had the chance to inspect the property and has discovered it won't be suitable because it is much smaller than it looked in the photos. It is also still two weeks from the scheduled move in date and she thinks the landlord will be able to find someone else pretty easily. The letting agent has told her she has to pay the \$300 advertising fee and pay rent until a new tenant is found. This is in addition to the letting fee of \$600 she has already paid. She knows she signed the contract but doesn't think this is fair. What can she do?

Client had taken up a tenancy but his relationship then came to an end and he terminated the tenancy only a few days after signing the agreement. The letting agent refunded his bond but not the letting fee. Client wanted to know if the agency could keep the \$500 letting fee.

Client paid a letting fee before moving in to a property. On moving in he discovered the property was dirty and there was a lot of animal fur on the carpet and furnishings. He managed to get the agent to agree to terminate the tenancy agreement subject to him finding a replacement tenant, which he was able to do. The client wants to know if he can claim back the letting fee because of the unsatisfactory state of the property.

Client signed a rental agreement with an agent without viewing the property. She relied on photos and promises made by the agent. She paid the bond and letting fee but when she got the keys and viewed the property it was in a disgraceful state. There was mould in a number of rooms. The client returned the keys and did not move in. She now wants to get her money back.

Tenants are being charged letting fees by landlords directly (not letting agents)

Under our current law, letting fees are not able to be charged by landlords directly. They are only able to be charged for services rendered by a solicitor or letting agent relating to the

grant or assignment of the tenancy. In general a private landlord who is renting out their own property or properties will not meet the definition of a letting agent. Despite this we see situations where clients are being charged letting fees directly by the landlord.

This is an example of the many situations where it is not the law that is letting tenants down, it is the lack of knowledge of legal rights and responsibilities, and /or the lack of effective mechanisms to enforce these rights without fear of retribution. This is something that we believe must be addressed as part of wider residential tenancy law reform, including adequate provision of support for organisations providing information, advice and education to tenants and landlords, and in particular, tenant advocacy services.

Client has lived in a caravan park for over 5 years. The owner of the park who is his landlord has asked him to pay a letting fee as part of a new tenancy agreement. He would like to know whether the landlord is allowed to charge a letting fee.

Clients have received a contract for a rental property they intend to rent which includes a letting fee. The letting agent is the landlord's father-in-law and lives at the same address. Can they do this?

Client wants to rent a house that she has found on Trade Me. The advertisement specifies a letting fee but there is no letting agency referred to, just a person's first name. The client is suspicious and wonders if it's legal for a landlord to charge a letting fee.

Tenants are being charged letting fees for renewal of tenancy

Similarly, the law as it stands does not allow for a letting fee to be charged to renew or extend a tenancy and yet, our client enquiries reflect that this regularly happens.

Client is renewing a lease next week, however the renting agency has said there will be a \$100 letting fee for this. The client wanted to know if this was legal, or what the laws are around letting fees when you are staying on at the same house.

Client has been in the same building for more than 10 years and her rent has just gone up by \$75 per week. She says she can cope with the rent increase but the tenancy is now being managed by a new property manager and they are charging her a letting fee. She wanted to know if they could legally do this.

Client wanted to know if a property manager is able to charge a letting fee to renew a lease if the existing lease was signed with the private landlord.

Client is a tenant in a house that has just been sold. The new owner is willing to continue to lease the property to her but is doing this through a property management company. The agent notified the tenant that the rent is being increased by \$90 effective immediately, and the tenant must pay 4 weeks bond and a \$450 letting fee. The client wants advice on what her rights are.

Tenants feel it is unfair that they are charged letting fees when the landlord then ends the tenancy for sale or family purposes

Clients can feel very hard done by when they enter a tenancy and pay all the up-front costs on the basis that they will have some security of tenure, and then find that the tenancy is ended because the landlord wishes to sell the property or to have the property used by themselves or their family members. This reflects both the unfairness of placing the burden of letting fees on tenants, but also the wider issues for tenants around insecurity of tenure under existing tenancy laws.

Client entered into a periodic residential tenancy 8 months ago on the basis that the landlord wanted to rent the property long term. Recently he has had to find alternative accommodation as he was advised that the landlord was planning to sell the property. There were also lots of issues about the condition of the property. The client would like to know if he can get the \$600 letting fee refunded as he feels like the letting agent had grossly over promised and under delivered in terms of both the property and her services.

Client rented a house advertised on Trade Me. The landlord charged a letting fee of \$500, four weeks' rent as a bond, and two weeks' rent in advance. The landlord has now given the tenant two months' notice that he wants to move back in. The client wants to know what he can do.

Client has been renting a house through an agent for about 10 weeks. The owner now wants to sell the house. The client is very disappointed and is concerned about how hard it is to find a house for rent. She hadn't even finished unpacking and setting up the house and now has to move again. She wants to know if she can get a refund of the letting fee given that she has only been able to stay in the property for a short time.

Client has been given a 90 day notice of termination of her tenancy after only having been in the property for 12 days. She paid a \$500 letting fee to the letting agency and wants to know if she can get it back or have it applied against another property seeing as she and her family are going to have to move again.

Tenants are being charged letting fees to exit a fixed term tenancy early or for new tenants moving in

We support the intention expressed in the explanatory notes to this Bill that effort is being taken to ensure that other fees cannot be charged to tenants in place of a letting fee. We are concerned however, that this may be undermined by continuing to allow the landlord to seek reimbursement from a tenant for 'expenses reasonably incurred as a result of a tenant assigning, subletting, or parting with possession of their interest in a tenancy'.

The proposed new section 17A(2) makes it clear that the prohibition of letting fees does not limit or affect the landlord's rights under section 44(5). Section 44(5) of the principal Act states:



On giving consent to any assignment, subletting, or parting with possession of the premises by the tenant, the landlord shall be entitled to recover from the tenant any expenses reasonably incurred by the landlord in respect of the proposed transaction.

We are concerned that it is not clear what reasonable expenses are and how this relates to the existing prohibition against charging key money¹, let alone how it stacks up against the intention of the Bill to ensure that costs associated with letting a property rest with the beneficiary of the service, and to reduce the upfront costs tenants face in renting a property.

We recommend that it is made clear what these reasonable expenses would be (possibly by giving examples) or that this entitlement is also removed from the legislation.

Assigning and subletting can only happen with the landlord's consent. In the context of negotiating the terms of any sublease or assignment of the tenancy there is scope to negotiate terms that address any hardships, ie, that the incumbent tenant finds a new tenant or that the incumbent tenant pays the rent until such time as a new tenant takes up the tenancy. To allow an open-ended opportunity to charge expenses "*reasonably incurred*" is in effect allowing the same behaviours currently demonstrated by letting agents to be continued by landlords.

Our enquiry analysis shows us that tenants leaving a fixed term tenancy early (and effectively assigning the tenancy to someone else) are regularly being asked to pay a 'letting fee' even when they are required to find new tenants. Similarly, tenants are regularly being charged a 'letting fee' when they ask a landlord to remove or add a tenant to the tenancy agreement. These are situations where it is not clear that the landlord is incurring any expense, and even if they are, it is not clear why this is not just another expense that should be carried by the landlord. If the Bill is proposing to stop letting agents seeking funds from tenants for services rendered (including for subletting and assignment), why should the landlord be able to charge for the same costs?

Client is sharing a house with others but now wants to move out. His name is on the tenancy agreement. He has been told that he has to pay a letting fee if he wants his name off the agreement.

Client and her friend have a fixed term one year lease. They have reached an agreement with the landlord that they can break the contract by paying a letting fee of \$450 and moving out of the premises but continuing to pay the rent of \$400 a week until the landlord finds new tenants. The landlord has told them that despite having over 30 interviews none of the prospective tenants have been suitable so far. It has now been 5 months since they moved out and the financial burden of continuing to pay rent on a property they aren't living in is becoming too much. The client wonders what they can do next.

¹ **key money** means any sum of money demanded by way of fine, premium, foregift, reimbursement of expenses, administration charges, or otherwise as consideration for the grant, continuance, extension, variation, or renewal of a tenancy agreement, or for consent to the surrender or disposition of the tenant's interest under a tenancy agreement or to a subletting by the tenant; but does not include any sum payable or paid by way of rent or bond.

Client has been charged a 'letting fee' of \$1000 three months into the tenancy as two new tenants are replacing two departing ones. The client wanted to know whether this fee was allowed.

Client and his friends moved into a large flat. All of them signed the fixed-term lease and contributed to payment of the letting fee. They have now found an additional flatmate (which the landlord is okay with) and want to add them to the lease. The landlord wants another letting fee to sign them up. The landlord is justifying this on the basis of having to meet the new tenant and fill in forms. Can the landlord do this?

Client wants to end a fixed term tenancy agreement early. She has lost her job and is struggling but has managed to keep the rent up-to-date. The landlord is asking her to pay a letting fee so that they can re-advertise. She wants to know if her landlord is allowed to do this.

Client has been a tenant along with 3 other people for about 5 years. One of the others has moved out but the client and her two friends are continuing the tenancy. The agency has now asked for a letting fee. The client doesn't feel this is right as no work was done for advertising or anything else – it was just a matter of taking one name off the contract. She wants to know if the agency can really charge this.

Client signed a fixed term agreement to rent a property and paid the letting fee but hasn't taken occupancy yet because the previous tenants are still in the property and won't vacate for another month. The client now wants to cancel the tenancy as he has to relocate to another area for family reasons. The agents have told him that he will be liable for a substantial charge for being released from the contract and that he will also have to pay for any rent incurred until they can find another tenant for the property. He is wondering about the legality of the additional charge as he thinks this is unreasonable.

Conclusion

We support the provisions set out in the Bill that remove the entitlement of letting agents and others to charge tenants letting fees. The clear statement that charging a letting fee is unlawful, and the ability to seek damages if such fees are charged, is a step in the right direction in terms of reducing some of the financial barriers faced by tenants renting a home and redressing the significant power imbalance between tenants and landlords.

We acknowledge the intent of the Bill to also ensure that tenants are not charged other fees in place of letting fees. On this basis we recommend that the Bill should go further and remove the right retained under section 44(5) of the principal Act for landlords to charge "reasonable expenses" incurred as a result of consenting to the tenant assigning, subletting or parting with possession of a tenancy, or in the alternative provide clarity about what a reasonable expense is so that tenants are not being charged letting fees or key money by stealth.



We also reinforce our clear position that the prohibition of letting fees must be supported by further reform that increases security of tenure for renters and allows for effective enforcement of tenant's rights without fear of retaliation.

Thank you for the opportunity to make this submission. Please feel welcome to contact us if you have any questions about our submission.