

Citizens Advice Bureau



Ngā Pou Whakawhirinaki o Aotearoa

October 2018

Submission to the Ministry of Business, Innovation & Employment on the:

**Reform of the Residential Tenancies Act 1986**

Citizens Advice Bureaux New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to input into the reform of the Residential Tenancies Act 1986. Please contact us if you have any questions, or want any clarification about our submission.

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# Submission on the Reform of the Residential Tenancies Act 1986

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## Introduction

Citizens Advice Bureau around Aotearoa New Zealand respond to over 14,000 enquiries related to renting issues each year. Common concerns raised by clients are the poor condition of their housing, lack of responsiveness by landlords to addressing maintenance issues, terminations of tenancy without proper notice, unfair charging of letting fees, unaffordable rent increases, and harsh terms and conditions relating to fixed term tenancies. We consider that good quality rental housing and security of tenure are cornerstones of a fair and well-balanced rental market.

We support the aims of this much needed reform of the Residential Tenancies Act 1986 to improve tenants' security and stability while protecting landlords' interests and to ensure that the law appropriately balances the rights and responsibilities of tenants and landlords. Our current rental environment is far from balanced with tenants regularly coming to our service with questions about their rights and identifying the challenges in giving effect to these.

With increasing numbers of people living in rental accommodation it is essential that the law is reformed to make life better for renters and fairer and more balanced for everyone.

We have provided some background information about our service and our work in the residential tenancy space. We have then provided responses to most of the areas in the full discussion document. Where possible we have supported our submissions with examples of enquiries received from CAB clients. Identifying details have been removed and some details have been altered to ensure privacy is protected.

## About Citizens Advice Bureau

The aims of the 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 kua te tangata e mate i tōna kore mōhio ki ngā āhuatanga 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 2500 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 2017/18 financial year, the CAB assisted with over half a million (508,274) 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.

## CAB tenancy statistics

All client enquiries to the CAB are categorised when they are entered into our client enquiry management system. High level statistics are provided below for the year 1 July 2017 to 30 June 2018 for the relevant residential tenancy categories.

### *Client enquiries 1 July 2017 – 30 June 2018*

|  |              |
|--|--------------|
| <b>Rental housing</b>                          | <b>14878</b> |
| Boarding establishments                        | 326          |
| Flatting                                       | 1409         |
| Private board                                  | 484          |
| Residential tenancy including disputes         | 10305        |
| Social housing (eg state houses) incl disputes | 2354         |

Following are the interactions that members of the public had with the CAB's tenancy related webpages for the year 1 July 2017 to 30 June 2018

### *CAB website page views 1 July 2017 – 30 June 2018*

|                                  |               |
|----------------------------------|---------------|
| <b>TOTAL Tenancy pages views</b> | <b>112690</b> |
| Boarding house tenancies         | 5,491         |
| Earthquake damage and tenancy    | 139           |

|   |        |
|---|--------|
| Ending a tenancy                                | 22,726 |
| General tenancy information                     | 8,777  |
| Other renting costs                             | 3,289  |
| Paying rent                                     | 3,928  |
| Property inspections                            | 3,522  |
| Rights and obligations on tenants and landlords | 33,569 |
| Tenancy Tribunal                                | 5,530  |
| Tenants and landlords issues                    | 11,638 |
| The bond  | 10,224 |

## 2. Modernising tenancy laws so tenants feel more at home

### 2.1. Improving tenant's choice and control over their housing

We support the removal of no cause terminations from periodic agreements. Lack of security of tenure is a significant issue raised by our clients. These are generally situations where tenants have been given notice by the landlord that a periodic tenancy is going to come to an end.

Client enquiries highlight the general stress people experience in having to move from their home, especially in circumstances where they had hoped for a longer term arrangement, and where they will now face the challenge of looking for appropriate rental accommodation in a housing market where there are very limited options available.

We believe the law should provide more security for tenants so that people are able to make a rental property their home, put down roots in their community and experience the beneficial impacts on their wellbeing that come from having a place of belonging.

We think there are many parallels that can be drawn from looking at the relationship between a tenant and a landlord and that of an employee and employer. In both cases we believe that the relationship should be governed by the following principles:

- The parties should act in good faith in their dealings with one another.
- There should be good reasons for any actions taken.
- Where there is a breakdown in relationship or a desire by one party to bring the relationship to an end, the processes should be fair and transparent.

Removal of no cause terminations is a fundamental step towards ensuring that the principles of natural justice govern the tenant – landlord relationship.

#### Client enquiries: 'no cause' terminations

Client was given 90 days' notice to leave by her landlord. She has been looking and hasn't found anything as yet and is concerned about what happens if the 90 days is reached and they still haven't found anything.

Client has been given the 90 days' notice to move out of her house. She asked if we could help her in any way. The client did not have a tenancy agreement with the current landlord and she was experiencing difficulties finding a new home.

Client has been given 90 days' notice to leave her flat. The flat is going to be redecorated. She doesn't want to leave and wonders what she can do.

Client has been given 90 days to vacate his current rental property. No reason has been given and the client is feeling very distressed about the situation.

Client is being required to vacate her tenancy. Based on what the landlord has said she thinks it's because she has been having a lot of visitors and also she did not declare that she was having a baby before moving in. She wants to know if the landlord can do this.

Client was issued with 90 days' notice to vacate the property. The agent has advised her that the landlord wants the property back. She did not sign a fixed term tenancy and was told she can stay as long as she likes. She is a mother of two and wants to know if the agent is correct in issuing her 90 days' notice. She said she kept the property tidy and her payment is up to date.

Client has been a tenant for about 5 years in a house that needs lots of maintenance work done. After she complained about it to the property manager, a week later she received a 90-day eviction notice. The client believes she is being evicted as a retaliatory measure and wants to take the landlord to the Tenancy Tribunal. The client is recovering from major surgery and the whole situation has been very devastating for her and her family. She has found somewhere else to live, but on principle wants to take the landlord to the Tribunal.

Client has been served a 90-day notice after complaining that mould had not been removed from his flat as requested when he moved in. Client has a disability and is struggling with the prospect of having to find somewhere else to live. He wants to know if the landlord is allowed to do this.

Client received 90 days' notice from the property manager to vacate the tenancy. She wanted to find out whether she could dispute the landlord's decision by going to the Tenancy Tribunal as she did not want to move out.

Client is searching for a place to move to with her family. She was given a 90-day notice by the landlord. She went to WINZ for help but was told to go look for a place to rent first. She is desperate for a place so she came in for assistance.

2.1.1. If 'no cause' terminations are removed and a tenant displays anti-social behaviour (to the point where the landlord wants to end the tenancy), should the landlord be required to issue a notice to the tenant to improve their behaviour, before they can apply to the Tenancy Tribunal to end the tenancy?

We support the idea that the landlord should be required to raise the issues of concern with the tenant as a first step. Doing so with a written notice would be useful for clarity and also as evidence of the steps that have been taken to address the issues of concern.

If we are operating in a framework that supports natural justice then the tenant should have the right to know what is being alleged and to have the opportunity to respond to this. It would be appropriate that this occurs in a way that reflects a standard dispute resolution process, with options for escalation if necessary, for example, the escalating mechanisms for addressing problems in the employment environment of informal actions, warnings, and disciplinary action. The best scenario is one where there is effective communication between the parties and where communication happens early before things get too serious.

2.1.2. Do you think the examples listed in the discussion document (paragraph 38) cover the kinds of behaviour that would interfere with the reasonable peace, comfort, or privacy of any other tenants or neighbours?

We think it is important to consider that what might be considered anti-social behaviour exists on a continuum, from annoying or minor socially unacceptable behaviours such as swearing and noisy behaviour, through to serious criminal acts such as physical assault or property offences. There is no legal definition of antisocial behaviour and the determination of what is antisocial is very subjective. Definitions of antisocial behaviour will vary to some degree across contexts and cultures depending on social norms and values.

While the behaviours listed as examples may be described as anti-social they are certainly not equal in terms of seriousness and so the response to these behaviours should also be varied in degree to reflect varying degrees of seriousness.

Our client enquiries reflect a range of behaviours that neighbours may find problematic, but it is clear that it is a range, and that the sensitivities of the affected party are a factor. Noise is a particular issue where there will be a huge variation in what neighbours find acceptable or not.

The Housing New Zealand Anti-Social Behaviour Guideline (A3618191) T-229 Version 4 provides a framework for responding to anti-social behaviours in a way that reflects that these behaviours may range from a low, to medium, to high level of severity. This guideline reflects the fact that responses should be reasonable and proportionate.

This is a situation where again the employment relationship may help our thinking about how issues of alleged bad behaviour can be addressed in a tenancy situation, ie:

- the provision of a written dispute resolution process in the tenancy agreement,
- clarity about how allegations of misconduct (or antisocial behaviour) will be dealt with,
- varying responses to misconduct / antisocial behaviour that reflect increasing seriousness.

We believe that termination of tenancy is appropriate only in cases of serious antisocial behaviour, such as criminal activity, threatened or actual intimidation or assault, and deliberate property damage of a serious nature. This would be similar to the ability to terminate an employment agreement due to serious misconduct, though only after an appropriate process had been followed.

We feel that issues that relate to noise and nuisance should be able to be dealt with in a different way given that these are issues impacting on neighbours generally, whether renters or home owners. There are existing avenues for dealing with these things – noise control / local councils, Police – that mean that there is more chance of a consistent and appropriate standard being applied in dealing with noise and nuisance complaints. Although it appears that work may be required to improve the effectiveness of these existing avenues for redress, we feel that losing your home is a grossly disproportionate price to pay for having the stereo up too loud.

We think it may be useful to explore the option of a mediation service for neighbourhood disputes. This could be part of the work of the Disputes Tribunal but there would need to be the option for using the service for issues of relationship breakdown / poor neighbourly relations, rather than just things that have a monetary value – possibly using aspects of the restorative justice model. This could also be a service that would benefit flatmates and co-tenants who currently struggle to find a way forward when there is a relationship breakdown in the tenancy. Similarly, it could be used for unit title owners experiencing conflict with body corporates or other owners. We receive many enquiries both from unit title owners unable to resolve conflict occurring in their housing situation and from co-tenants and flatmates who are trying to sort out issues and have been told that Tenancy Services cannot help them.

### **Client enquiries: 'anti-social behaviour'**

#### **Tenants whose tenancy has been terminated due to behaviour:**

Client got into an argument with landlord. Landlord issued 90 day notice. Client feels that the landlord did this in retaliation because of the argument. Client does not want to move out of the flat and wonders what she can do.

Client was referred to the CAB by Tenancy Services. He is on a periodic tenancy and because of noise complaints from neighbours the property manager has told him that if they receive one more complaint, a 90-day notice will be issued. Client discussed the issues involved, including his own mental health difficulties and the stress of this situation. He has talked to his partner and it seems that the issue is probably his partner playing loud music late at night when he's at work. He hasn't talked to the neighbours about the issue and is anxious about doing so. Client wants to know if this is really a possible reason for being kicked out.

#### **Neighbours raising concerns:**

Client is renting a property and the neighbouring property is also owned by the same landlord. The client is frustrated because the neighbours are constantly having parties, playing loud music at all hours and knocking on his door late at night. The client lives with his elderly parents and they are becoming very afraid and stressed with the current situation.

They have called noise control several times, but the neighbours have just been abusive towards them. They are wondering if the situation might give them grounds to end their fixed term tenancy early.

Client owns and lives in a two-story apartment that is joined to a similar one. The neighbouring apartment is rented out. The tenants in the neighbouring property are making a real nuisance of themselves with noise at all hours and the owner seems disinterested in doing anything about it. The client says that the tenants' behaviour is costing her money as she likes to rent out her spare rooms, but nobody will stay, due to the continual disturbances from next door. She rang Tenancy Services, but says that they had no suggestions. She wants to know what else she can do.

Client is living in a block of flats and is feeling harassed by another tenant to the extent she is feeling unsafe. It has been going on for some time. She contacted the property manager to complain about the other tenant's behaviour and was then issued with a 90 notice to leave the property. She feels that the landlord wants to evict her because she has complained and wants to know what her rights are.

Client lives in social housing and has a very difficult neighbour. He has complained many times about his and his guests' behaviour - including drunken noisy gatherings, and urinating and defaecating in public areas. He has called the Police a number of times. He has not had any success getting action from the social housing provider despite frequent requests and now wants to start the process of making a formal complaint.

Client wants to end fixed term tenancy due to construction work going on next door causing lots of noise and cracks and dust in the old villa she's renting. She has found a new house to rent and wants to end the tenancy asap. She would like some help to do this.

**Landlord raising concerns:**

Client is a landlord and has an elderly tenant who is being troubled by her neighbours. The neighbours property is owned by another landlord. The problem is loud noise from their stereo which they refuse to turn down. The client has been in touch with Tenancy Services who have said the tenant must be the one to lay a complaint. She doesn't want to go through that process. What can be done?

Client is a landlord and rents out her property. There are four co-tenants. The landlord would like to evict two of the tenants as they leave the house in a mess, one of them has a dog and they are just leaving the dog's poo in the garden. The client also described the tenants' behaviour as generally anti-social. The other two tenants have said they will leave if the landlord doesn't deal with the troublesome tenants. There is no written tenancy agreement and the client wants to know how she can go about ending the tenancy for the two problematic tenants.

Client is a landlord and wants to know his responsibilities under the law with regard to noise from his tenants. He has been contacted by the neighbour of his rental property who is threatening to take him to court regarding his noisy tenants. Client has already advised the neighbour to ring noise control but they won't. Client has spoken to the tenants who have

agreed to be more respectful to the neighbours, however the neighbours want him to give the tenants a 14-day notice which he is reluctant to do. What are his legal responsibilities?

2.1.3. What kinds of evidence could a landlord produce to prove a tenant was behaving in an anti-social way, if affected people (such as neighbours) did not want to speak out?

E.g. photographs, letters, emails, affidavits, audio recordings, video recordings etc.

We think that this again ties into the nature of the behaviour and what is a reasonable and proportionate response. The landlord should be able to have an informal conversation with their tenant(s) based on anonymous feedback, but if they wish to take action (issue a warning/14-day notice to remedy, or take disciplinary action/initiate a termination of tenancy) then the evidence required to back this up should be increasingly robust to reflect the increased severity of the action.

For the process to be fair and transparent and to support the principles of natural justice there needs to be an evidential basis for the claims of anti-social behaviour, so that the tenant has the opportunity to respond.

2.1.4 Landlords are currently required to give tenants 42 days' notice if they have sold the property with a requirement for vacant possession, want to move in, or need it for an employee or family member. What do you think the impact would be if this notice period was extended from 42 to 90 days?

We think it would be a good thing if the 42 day notice period was extended to 90 days and one consistent notice period applied for all reasons for a landlord to terminate the tenancy (with the exception of terminations that result from a serious breach of the tenancy agreement by the tenant). We frequently receive enquiries from clients who are confused about the amount of notice they have been given, ie, receiving 42 days but understanding it is supposed to be 90 days. A consistent timeframe would clear up this confusion (for both parties) and would also provide a more realistic timeframe for tenants to deal with the significant upheaval of packing up and looking for a new home.

### **Client enquiries: confusion about 42 days' notice of termination of tenancy**

Client phoned to ask whether her landlord is within his rights to give them 42 days' written notice to vacate, because the property has been sold. Her friends are suggesting she's entitled to 90 days' notice.

Client has been given 42 days' notice to quit her rental after living there for almost 10 years. She wants to know if 42 days is correct as people had told her that it should be 90 days.

Client is renting a property and has been given notice to quit. He wanted to know how much notice the landlord must give to end the tenancy. The client has a periodic tenancy

agreement and been given 42 days' notice. Client thought the landlord should have given him 90 days' notice. He also wanted to know how to get his bond returned.

Client has been told by her landlord that she and her partner need to relinquish their fixed term tenancy because landlord's son is moving into the flat. The landlord has given them 42 days' notice and they are questioning this timeframe as they thought it should have been 90 days. The fixed term contract still has about 5 months to run and the client was planning on renewing it then. She wonders if the landlord can do this.

Client has been given 42 days' notice on a periodic tenancy and she wanted to know if this was legal. The landlord has told her he wants the property for a relative.

Our client enquiries also reflect the significant additional stress the shorter 42 day timeframe places on tenants. When your landlord gives you a 42-day notice this gives just six weeks to pack up your home and find a new place, not to mention making all the necessary adjustments to other aspects of your life. The upheaval of moving house is substantial in any situation – children can be lost to agencies who are working with the family, their schooling is disrupted, and their health and wellbeing can suffer – but these stresses are even greater when only 42 days' notice of termination of the tenancy is provided.

It can be impossible in the current market to find another affordable rental within 90 days, let alone 42. In the space of 42 days you can go from being perfectly adequately housed to facing homelessness.

### **Client enquiries: stress caused by 42 days' notice of termination of tenancy**

Client's landlord has told him that the house is going on the market and if it sells the tenant will only have 42 days to move. The client is in his 70's and is feeling concerned about the timeframe for packing and moving. He is also concerned about finding another place he can afford.

Client has just been told they have to leave their rental in 42 days because it has suddenly been sold. The client says she has so many other commitments and expenses at the moment that this is a disaster. She wonders what she can do.

Clients were given 42 days' notice to vacate their rental and are really struggling to find another place. They have good references and have been good stable tenants but there are just so few decent rentals in their area. They wondered if we had any suggestions.

**2.1.5** When a rental property is sold, should the new owner only be able to require vacant possession if they want to use the property for a purpose that can't reasonably be accommodated with the existing tenants in place? E.g. to live in the property themselves, for

a family member to live in, to renovate or to convert to a commercial property. Please explain your answer.

Yes, we think this makes sense. As soon as a landlord contemplates selling this puts the tenant into a state of upheaval. It would be good for the tenant to have the assurance that when a sale is contemplated there may be a possibility of the tenancy continuing and that if this is not possible, they will still have at least 90 days after the sale goes through to make other arrangements.

### **Client enquiries: accommodating existing tenants after sale**

Client is in a rental unit, which is currently on the market. She has been given notice to vacate the unit, but has been told that if the property doesn't sell, she can stay on after the finish date. Client wants to know where she stands with regard to a new owner. Would they have to give her notice again, which would give her more time to move? Client does not have a written tenancy agreement.

Client has just been given two weeks' notice that his current landlord wants him and his wife to move out. They have lived in the property for 4 years. He and his wife are both superannuitants, they don't have family in the area and they are not confident with using computers so don't really know where to start. The landlord had told them that the house was on the market but the owner was unsure whether a buyer would want to live in the property or continue to rent it out. They knew they might have to leave but were not prepared for this to happen with only 2 weeks' notice.

2.1.6 Should a landlord be able to end a tenancy so they can advertise the property for sale with vacant possession? What impact do you think this would have on tenants?

No. We believe this is inconsistent with the other proposed reforms as it diminishes the tenant's security of tenure and may ultimately be unnecessary if the new owner intends to rent the property out. At a time where there is a shortage of adequate rental housing it also seems counterintuitive to give landlords permission to have homes sitting vacant.

### **Client enquiries: vacant possession for advertising**

Client's landlord has issued him with a 42 day notice because the landlord is putting the house on the market and wants it vacant for sale. The client told the landlord that he thought it was supposed to be at least 90 days but his landlord said no he only had to give 42 when selling a house. The client is stressed and wants to clarify his rights.

2.1.7 Do you think that landlords should give tenants evidence about why they are terminating a tenancy? If yes, what sort of evidence should that be?

Yes. This would be fair and consistent with natural justice. It would mean that the reasonableness of the termination can be determined and can be challenged where inappropriate.

Evidence could include appropriate documentation – letters, emails (proof of correspondence between landlord and family member or employee about accommodation); renovation plans, quotes for work on the property; proof that a sale has been completed and vacant possession is required.

In any event the requirement to put the reason for the tenancy ending into writing would also provide the tenant with proof of the landlord's stated reasons and so would be available as evidence if this was disputed.

2.1.8 Do you think using a false reason to terminate a tenancy should be considered an unlawful act and subject to penalties, such as those described in Section 5 (Enforcing Tenancy Laws)? If you answered yes, what kind of penalty do you think would be appropriate?

If there is evidence that the landlord has used a false reason to terminate the tenancy then this should be an unlawful act and the landlord should be subject to penalties. The quantum of the penalty should be comparable to that imposed for a retaliatory termination and should be significant enough to act as a meaningful deterrent from such behaviour. It should also be possible to disqualify people from being landlords where they repeatedly or wilfully breach the law.

It will be important to ensure that landlords and tenants are well-educated about the required grounds for a termination. Our clients describe situations where, even under the existing laws for giving a 42 day notice, landlords end the tenancy with less than the required notice, or in circumstances that don't comply with the law. A common situation is landlords giving 42 days' notice on the basis that they have decided to sell the property, rather than because the property has been sold with the condition of vacant possession. Other concerning situations are where tenants are told the property is required for family members and then see the property advertised to lease at a higher rental price.

### **Client enquiries: 42 days' notice being used unlawfully**

Client queried his landlord about a recent rent increase and has now been given 42 days' notice to vacate on the basis that the landlord is putting family into house. The client thinks the landlord is only saying that so he can re-let the property at a higher rent to a non-family member.

Client has been issued a 42 day notice to vacate and feels this is unjustified as the landlord is not letting the property to a family member or employee. The letting agent told the tenant the landlord is always doing this and told the client to come to us to get a form to make a complaint.

Client has been given a 42 day notice to vacate but it should be a 90 day notice as the agent for the landlord originally claimed the house had been sold then admitted it was going to be sold after they've done it up. The 42 days is up. She needs to urgently lodge an application with the Tenancy Tribunal.

2.1.9 If landlords are required to give 90 days' notice, should tenants be required to give more or less than 21 days' notice? If you would prefer more or less than 21 days' notice, what would be the ideal notice period?

We have not seen any evidence that a longer time period is required. Changes in circumstances for tenants can happen at any time and not always within the tenant's control. The landlord is operating a business and so should be ready to deal with changes in tenants' circumstances and any resulting gaps in the tenancy. Given there is a shortage in the supply of rental properties there does not appear to be any difficulty in finding new tenants.

2.1.10 If you are, or have been, a landlord or property manager, what is the longest length of time it has taken you to re-tenant a property once a tenant has served notice?

Not applicable.

2.1.11 If you are, or have been, a landlord, are there situations where you have used the 90 day 'no cause' termination provision that would not be covered by the grounds for termination in the above table? If so, what was the situation?

Not applicable.

2.1.12 What impact do you think removing 90 day 'no cause' terminations and only allowing terminations for the reasons in the table above would have?

We hope it would result in increased stability in tenancies. It would mean that there would be greater transparency and fairer processes. It would mean that the presumption is that people should be able to stay housed, to establish a home, to put down roots and be more connected in their community. The focus on sustaining the tenancy and having justifiable reasons for any termination of tenancy would also encourage greater professionalism from landlords and property managers, recognising the significant responsibilities they have as housing providers.

2.1.13 If you are a public housing provider, are there other grounds for terminating a public housing tenancy that should be considered in place of 'no cause' terminations? If you answered yes, what are the other grounds?

Although we are not a public housing provider, our client enquiries do provide relevant insights, revealing situations where public housing providers appear to terminating tenancies in circumstances that are problematic. There are situations where the tenancy is terminated because the tenant is deemed to be "unable to sustain the tenancy". Examples are where

the tenant is uncooperative with visits stated to be for the tenant's welfare (but carried out as property inspections), and issues around the amount of belongings the tenant is keeping in their property, or hoarding. Other problematic situations are where the leaseholder dies and so the tenancy is terminated but there are other family members living in the same property, or where there is a relationship breakdown and the lease is in the name of the party that stops living at the property.

For public housing there is also the issue of the tenant's ongoing eligibility for housing based on financial circumstances. If the tenant is deemed to no longer be eligible for public housing we think it is important to take an approach that recognises that a change in the tenant's circumstances can happen reasonably suddenly (receiving an inheritance, getting a new job, a second member of the family starting work, returning to work after having children, entering a relationship), but an increased income does not necessarily mean that the tenant and their family are able to quickly change their living situation. Paying a higher rent is likely to be preferable to being made homeless.

Given that public housing exists to provide housing options for those who might struggle in the private market, and recognising the shortage of housing generally, we believe that the emphasis for public housing providers should always be on keeping tenants housed.

### **Client enquiries: terminations of tenancy by public housing providers**

The client has been given a 90 day eviction notice by their social housing provider. The client has mental health issues and feels she has been treated unfairly. She has been having regular inspections of her property and some without notice. She was also blamed for a blocked drain which turned out to be a fault in the pipe probably from earthquake damage. She has complained about noisy tenants next door and would like to be transferred to a different flat. She wants help to apply to the Tenancy Tribunal to say the termination is retaliatory.

Client's aunt has just died and she wants to know whether her aunt's partner of five years would still be eligible to stay in the same house, even though he wasn't included in the tenancy agreement.

Client has been told by MSD that she needs to move into a smaller house because her two children are old enough to be independent and she has a 3-bedroom house. She says she needs her 18 year old son to look after her as she has health needs. She has a letter from WINZ stating that she needs to get a referral from her GP and fill in the Health Consent form. She would like some help with the process.

Client wants information about tenancy agreements with HNZ. Her father has been threatened with eviction after over 25 years living in the house with his wife who died just recently.

Client was upset that he has received a 90 day notice to vacate his social housing flat. He currently has a bedsit, but his wife has now come from his home country to join him and the

housing providers rules do not allow two people in a bedsit. He gave them several months' notice that his wife would be joining him, and applied for a one bedroom flat at that time. The landlord also says that the client has not provided all the necessary income information they require, although he disputes that.

Client, who has been in social housing long term, has been reviewed by MSD and has been informed that she is no longer eligible because of her now having full time employment and her income is above the threshold for social housing. She has her son, his wife and child living with her and is very upset about the situation. She wants to appeal the decision.

Client came to New Zealand several years ago as a refugee with her husband. A few months ago the client's husband left her. The client is living in their HNZ property by herself but the tenancy agreement was under her husband's name. She has been given notice to vacate the property and she is in fear of being made homeless. She is struggling to navigate the HNZ processes. The client would like to stay in the property as it's within walking distance of her English language classes and her friends. She doesn't have any family and is unable to drive.

#### 2.1.14 What are appropriate notice periods for additional grounds for termination that are specific to public housing? What is your rationale for the notice periods?

We see situations where clients are struggling to meet the 90 day timeframe when their tenancy has been terminated due to a change in circumstances. We think that more time should be afforded to public housing tenants who find themselves in these situations, and alternative options, such as paying increased rent, should also be considered as an alternative to ending the tenancy. This reflects the intention that "Public housing is provided for people most in need of housing for as long as they need it"<sup>1</sup>.

#### **Client enquiries: notice period for public housing tenants**

Client has been given notice by HNZ to vacate her property and move into a private rental. The process has been a complicated one. The family is expected to vacate by 4pm today and it is apparent that they will not have removed all their belongings by that time. She has been told the keys must be back by then and the locks will be changed. She wants help to get a bit more time so they can sort things out.

Client's mother was a Housing New Zealand (HNZ) tenant. He lived with her and cared for her. She passed away last month and HNZ has now issued a termination notice for the tenancy. Client would like to get an extra month so he can find new accommodation (he has also applied for social housing) and clear his mother's effects. He made a verbal request at HNZ office, but was declined. He wondered if it can be reviewed or appealed. The Housing Assessment officer at MSD referred him to us.

<sup>1</sup> <http://housing.msd.govt.nz/housing-options/social-housing/who-can-get-social-housing.html>, accessed 22 October 2018.

Client had a letter from HNZ to say that he is no longer eligible for accommodation and to find his own place. He is on National Superannuation. He is suffering severe stress and his counsellor advised him to see us.

2.1.15 Do you agree with our assumption that if 'no cause' terminations are removed from periodic agreements, landlords could be more likely to offer fixed-term agreements? Please explain your answer.

We think it is a reasonable assumption that landlords may use fixed-term tenancies as a way of retaining some control over their ability to bring a tenancy to an end without a reason.

We believe that fixed-term tenancies should only be allowed on the basis that there is a genuine reason for the fixed term, as is the case with a fixed-term employment agreement. This means both parties go into the relationship with an understanding of the need for the fixed term and the reasons why the agreement will come to an end on a particular date. This is not about setting a maximum or minimum term, but ensuring that the reasons justifying a fixed term are genuine.

Using the framework of a fixed-term employment agreement the fixed-term tenancy agreement would have to state:

- when or how the tenancy agreement will end
- the genuine reason for the fixed term.

If the fixed-term reasons and details are not included in the written tenancy agreement, the tenancy might be considered by law to be a periodic tenancy.

Using words from the MBIE online employment agreement builder as a basis, the tenancy agreement could include clauses along the lines of the following:

The tenancy will start on DD/MM/YYYY and end on DD/MM/YYYY. It will automatically end on this date without notice, unless the tenant or landlord ends it earlier in line with this agreement.

The tenant and landlord agree there is a genuine reason for the fixed term and for the tenancy to finish when the term ends. The reason for it being fixed term, and finishing at the end of the term, is ....

We also don't see any reason why the tenant shouldn't retain the right to give notice to exit the tenancy. The reason for the fixed term is because of the landlord's need to bring the tenancy to an end at a particular point in time. If the tenant needs to leave the tenancy earlier (as with a fixed-term employee) it seems reasonable that they give the usual 21-day period of notice to the landlord that they wish to exit the tenancy. The landlord would also have the right to end the tenancy sooner for justifiable reasons eg, an irresolvable breach of the tenancy agreement or serious antisocial behaviour.

In situations where there is a change in circumstances, tenants can face challenges negotiating with their landlord for an early release. Landlords may be reluctant to forego the benefits of the fixed term commitment and will often want to ensure that the tenant covers any expenses related to exiting the tenancy early, such as the rent continuing to be paid until a new tenant takes up the tenancy. We don't think there is any reason to treat the exiting tenant any differently to a tenant giving notice to end a periodic tenancy.

### **Client enquiries: exiting a fixed-term tenancy**

Client wants to end a fixed term tenancy due to hardship circumstances. She is four months through a one year contract but has become unwell and needs to move back down South to be closer to her family. She has contacted her landlord who is not happy to end the tenancy. She then contacted Tenancy Services to find out what she needs to do and they told her to ring us.

Client is in New Zealand on a work permit. She rents a property and is on a one year fixed term lease. She has been living in the property for six months and now her mother is critically ill back in her home country and she needs to return there. She has contacted the property manager who has told her that she will still be liable for the remaining six months' rental. This will be very difficult for the client to afford and she wants to know what her options are.

Client entered into a fixed term tenancy agreement 7 months ago and then had to return home overseas. Once the client had returned home she was not able to secure a visa to back to New Zealand which was unexpected and beyond her control. When the client informed the landlord that she cannot return, the landlord said she had to continue to pay rent until the end of the agreement. The client wonders if the landlord can require this.

Clients are on a fixed term tenancy. Their house has recently been burgled. They are now afraid to stay in the property and want to move out of the neighbourhood but the tenancy still has a year to run. They are worried about having to continue to pay for the property until the tenancy expires and want to know what their options are.

Client has a fixed term tenancy. She has been in the apartment for 2.5 years but now there are some issues which have meant she wants to be released from the agreement. The tenancy has 6 more months to run. The landlord has agreed that she can break the lease but is requiring her to pay the rent until a new tenant is found. The apartment needs work on its balcony and the client is worried this will deter new tenants. The landlord has also imposed a rent increase. The client has a new flat and can only afford to keep paying rent on the old apartment for another 3 weeks. She is very worried about having an ongoing obligation to pay rent beyond this date and wants to know if she needs to go to the Tenancy Tribunal to sort this out.

Client is here on a work visa together with his wife. He got made redundant 4 weeks ago and has been unsuccessful in finding a new job. He and his wife have now reached the point that they simply can't afford to pay their rent under their fixed term tenancy. They sent a notice to their landlord with a request to allow them to end their fixed term tenancy early due to their

current hardship. The landlord responded that they could leave earlier but only on the condition that they pay \$600 which is to cover expenses including the cost of advertising for new tenants, and that they get the carpet and soft furnishings commercially cleaned. The client wants to know if the landlord's demands are fair and / or lawful.

2.1.16 If you have been a landlord or a tenant in a fixed-term agreement, how long was the longest fixed-term? Why did you choose a fixed-term rather than a periodic tenancy?

Not applicable.

2.1.17 Do you think tenants should have the right to renew, extend or modify their fixed-term tenancy (option 1), if their landlord has not raised any concerns with their behaviour or if specific termination provisions do not apply at the time the tenancy was due to be renewed?

What effect do you think this would have on the relationship between landlords and tenants?

As above, we believe the basis for the fixed term tenancy should be that there is a genuine reason for setting a fixed term in the first place. As the end of the term approaches the parties should have an opportunity to review the tenancy agreement and look at options around renewal, extension, or changeover to a periodic tenancy if the reasons for the fixed term are no longer relevant.

For example:

- The needs of the landlord have changed – she was originally planning to move back into the rental on her return from travelling abroad but has now settled overseas and does not plan to return to live in New Zealand in the foreseeable future – switch to periodic tenancy.
- Work that was scheduled to be completed on the house in the summer after the tenancy ended was able to be done during a two week period when the tenants were away on a family holiday and so now the landlord does not need them to move out.

2.1.18 What do you think would be the impact of setting a minimum length (option 2) for fixed term agreements? What do you think would be a suitable length?

We do not think that a minimum length is the right way to look at this issue. It is more important that there is a genuine and justifiable reason for the fixed term.

2.1.19 What else could the Government do to make sure landlords feel comfortable offering periodic agreements, if they can only terminate for the reasons proposed?

Ensure that enforcement mechanisms are effective and that the Tenancy Tribunal is adequately resourced to provide timely access to a hearing. Ensure that tenants and landlords are able to access information and support to understand and act on their rights and responsibilities.

2.1.20 Do you think only allowing open-ended tenancies which the landlord can't end unless they require the property for another purpose or the tenant isn't meeting their obligations (option 3) is the best way for the Government to meet its objective to improve security and stability for tenants? Please explain your answer.

We are unsure whether this is preferable. There may be benefits in making sure the tenant goes into the tenancy with full information about the likely period the rental property will be available – again, based on the fact that the reasons for the fixed term are genuine and justifiable and that the tenant retains the standard right to end their tenancy with 21 days' notice, regardless of the fixed term.

2.1.21 Do you think the Government should further investigate removing fixed-term tenancies from the market? Please explain your answer.

We believe it is worth doing more investigation into this issue, particularly in terms of identifying any unforeseen consequences. We have only done a basic review of our enquiries relating to fixed-term tenancies, but we are aware that we have more data that could provide greater insight into the issues that arise with fixed-term tenancies.

2.1.22 If fixed-term tenancies were removed, what changes could be made to periodic agreements to balance security for tenants and landlords?

We believe the key changes that are needed are ensuring that processes are underpinned by the principles of natural justice, and being clear about the justifiable reasons for termination. The balance is currently tipped in the landlord's favour so the emphasis on ensuring fairness and transparency helps to bring the scales to a more balanced position.

## 2.2. Landlord and tenant responsibilities

2.2.1 Have you ever disagreed with your tenant or landlord about whether or not they are meeting their obligations? If yes, how could this have been avoided?

Not applicable.

2.2.2 Do you think tenants should have more responsibilities for the property that they rent? Please explain your answer. Are there other things a tenant should or should not be able to do? Please explain your answer.

We are unsure about the need for any additional responsibilities except in so far as we support the proposals to allow tenants to make some modifications to the rental property (refer to *Section 2.3 Modifications to rental properties*) and for pets to be allowed in appropriate circumstances (refer to *Section 2.4 Keeping pets in rental properties*).

Something that often comes up in relation to mould and dampness issues is the tendency for landlords to place blame on the tenant on the basis that they have not aired the property out sufficiently. While this may be a contributing factor in some situations, there are also often

many other issues beyond the tenant's control. We think it's important to avoid a situation where the tenant is burdened with responsibilities that are not possible to meet.

### **Client enquiries: potentially unrealistic tenant responsibilities**

Client is the main tenant in a large house. The lease is soon coming to an end and she is concerned about getting the bond back. It is a large sum – over \$5000. There is mould on the back wall of a closet that is at the back of the house backing into the hillside. The landlord acknowledged there was some mould in the house but nothing is in writing except that in the tenancy agreement it states that the tenants are responsible for any mould.

2.2.3 Do you think a tenant's responsibilities to keep a property 'reasonably clean and tidy' make it clear what sort of behaviour a landlord can expect? If not, how could this be made clearer to a tenant?

We feel this requirement is not clear. There are varying views about the standards of cleanliness required and tenants sometimes find themselves being told by landlords that they have too much stuff, or that their cleaning is not up to standard.

### **Client enquiries: standards of cleanliness**

Client has been issued a 14-day notice by his landlord. They had done a property inspection and want him to remove 50% of his possessions. He is a collector and has items in boxes in the house. He has nowhere else to store his collection and wonders if the landlord is allowed to demand this.

Client has recently terminated his tenancy after living in the property for a few years. There have been regular inspections during the tenancy. After the final inspection the landlord informed him that the house needed further cleaning – specifically the windows and oven. The property manager recommended a cleaning company so the client acted on this and did not get any other quotes. He was quoted \$250. After the cleaning was done the property manager said that the blinds needed cleaning at an additional cost of \$70. He paid this. The property manager then said the ceilings needed to be washed and that the windows were not properly cleaned so the client again had to pay more money. The client is unhappy with the final amount he has had to pay and with the fact that in recent inspections there had been no mention of these things needing attention.

Client is moving out of his rental property. He cleaned the house, but when asked to sign the bond form to release the bond, the landlord had deducted a sum to cover her hours as she felt the house was not cleaned enough. The tenant was not given the option to "re-clean" to address any concerns and wonders where he stands.

Client and his family have recently moved out of a rental property. They only lived there for a few months and when they moved out they thoroughly cleaned the property – inside and out. He asked the property manager to go through the property for a final inspection before

they moved out but the property manager didn't do this. Two weeks later he got a letter from the agent stating that he needs to pay for a professional cleaner to clean the house. He feels the house was clean and there was no damage when he left the property. What are his rights?

Tenants frequently come to us following the end of the tenancy with issues around the standard of cleanliness required by the landlord. The issue of landlords wanting carpets to be commercially cleaned is a common scenario. We also think there is a lack of clarity around 'fair wear and tear' and what is reasonable to expect at the end of a tenancy. We think that greater clarity is required to distinguish different types of damage, particularly the difference between fair wear and tear, accidental damage, careless damage, negligence, and intentional damage.

Tenancy Services website states that "Fair wear and tear refers to the gradual deterioration of things that are used regularly in a property when people live in it. A tenant is not responsible for normal fair wear and tear to the property or any chattels provided by the landlord when they use them normally."<sup>2</sup>

When it comes to fair wear and tear, the reality is that normal use can have a range of impacts on a property when we take into account the tenants themselves (number of tenants, household make-up, children, etc) and the length of time the tenants occupy a property. The lack of clarity about what is fair wear and tear versus other types of damage (on a continuum from accidental, to careless, to negligent, to intentional) means that tenants can be in a difficult position when their landlord seeks compensation for 'repairs' to the property.

- Is the presence of mould careless damage by the tenant, or is it about issues with the property itself and the landlord's failure to address fundamental issues around insulation and ventilation?
- Is some paint coming off with the removal of a 'command hook' careless, or is it accidental given all care may have been taken to avoid this outcome?
- Is having some marks on the paintwork and stains on the carpet careless, or after 5 years in a property, is it just the result of normal use?

#### **Client enquiries: "reasonably clean and tidy" and "fair wear and tear"**

Client's tenancy has ended. Landlord has raised issue of damage from tenant's removal of a 'command hook'. Landlord is refusing to pay back any of the bond (\$300) and wants an additional \$50 to cover the costs of redecorating the wall (quoted at \$350).

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<sup>2</sup> [https://www.tenancy.govt.nz/maintenance-and-inspections/repairs-and-damages/#id\\_386380-fair-wear-and-tear](https://www.tenancy.govt.nz/maintenance-and-inspections/repairs-and-damages/#id_386380-fair-wear-and-tear)

Client has moved out of a rental house after 5 years. The house is old. The client's children have left little holes in the walls and a few stains in the carpet. The landlord is saying the repairs will cost \$2000-\$3000, which is double the amount of the bond money. She thinks this is excessive for the nature of the damage and length of time they have been in the property and wonders what her rights are.

Client wanted some information as she is anticipating a dispute with her landlord. The client has been renting the same place for the last 3 years. Her landlord has started doing quarterly inspections; he says this is because of insurance requirements. With the last inspection the landlord noted damage which the client had thought was wear and tear.

Client has just vacated a tenancy after being there for 8 years. He spent several days cleaning, and has replaced cushion covers and repaired hinges on a loose cupboard door. The couch has a sun fade mark on it and there is a mark on the carpet, which has been cleaned and is barely visible. The landlord is asking for \$1000 payment to address damage by the tenant. The client has sent messages to the landlord saying he doesn't think this is fair but the landlord is not responding. He wonders what he can do.

**2.2.4 Should a tenant in a longer-term tenancy have additional responsibilities for the care and maintenance of the property? If you answered yes, at what point during a tenancy should these additional responsibilities be triggered, and what sort of responsibilities should a long-term tenant take on?**

We think that maintenance of the property ultimately benefits the landlord – it's about maintaining their asset and it's also about making sure the property continues to be fit for the purpose of providing housing. We're not sure what the rationale is for transferring additional responsibilities for care and maintenance of the property to the tenant if they stay in the tenancy for longer. This could create a disincentive against staying long term. We think the focus should be on providing reasonable opportunities for tenants to make a property their home, especially over the long term.

**2.2.5 What other changes to tenants' responsibilities might be needed to modernise the law so it can appropriately respond to changing trends in the housing and rental markets?**

We have not identified the need for any additional changes.

**2.2.6 Are there sufficient repercussions for tenants who don't meet their obligations? If not, what would you change?**

Yes. Given the existing situation is that tenants can lose their home with no reason provided, there is a long way to go to shift the balance to a more equitable relationship between tenants and landlords. Termination of the tenancy and existing financial penalties are already significant repercussions.

**2.2.7 Do you think landlord obligations are clear and well understood?**

No. Many of the enquiries we receive relate to tenants wanting help in situations where they believe their landlord is not meeting their obligations.

Clients regularly express concerns about the standard of housing they are living in. Issues include dampness, cold temperatures, lack of adequate heating and insulation, mould, infestations of cockroaches and other vermin. In some cases clients identify that they are experiencing health issues associated with the poor quality of their housing.

Clients are often seeking options for getting their landlord to take action and carry out necessary maintenance work. Many tenants are anxious or reluctant to take action because they fear losing their tenancy. Our enquiries indicate that landlords can be slow to take action or be unprepared to carry out work that they do not consider necessary. Part of the difficulty for tenants is the lack of clarity around minimum standards.

### **Client enquiries: landlords not meeting obligations regarding maintenance**

Client phoned with concerns about the state of a rental property his sister is currently living in. Many of the power sockets do not work, there is no hot water and the house is very draughty. The landlord has said that he isn't planning on doing any repairs as he intends to sell the property soon and will sell it as is. Client wants to know if the landlord is allowed to rent the property in this state.

Client has rented a house from a company on a 9 month fixed term tenancy. He now wants to cancel the contract as the house is uninhabitable. It has gaps in the walls and roof, is uninsulated, has large areas of mould, and has cockroaches and other vermin. He has documented all the problems and wants to know what his options are for getting out.

Client is living in an older house which is very cold and draughty. She has contacted the landlord about the mould and cold but the landlord told her that she was not keeping the windows dry enough so that's why the mould was there. The landlord says it's her fault and they will charge her for any damage to the wood. She is very concerned about this as she doesn't think it's fair to blame her.

Client and his family live in a substandard house. They have videos and photographs of repairs that are needed. The agent says she is powerless as the owner has only been willing to repair things which may be dangerous, eg, a faulty oven connection. The client wants to know what they can do. They have been renting this property for 12 years and this landlord took over as the owner 6 years ago.

Clients are having problems with their landlord. The landlord has not lodged the bond with Tenancy Services. The house is earthquake damaged and has cracks on the walls. There are rats moving about behind the walls and the shower is smelly. The heat pump is also not working properly and is just blowing out dust. They have asked the landlord numerous times to have things fixed.

Client lives in a flat with his family, including his elderly mother-in-law. The building is sinking, there is no insulation, several leaks, and large cracks in the walls. The carpet gets wet too. The landlord has been contacted many times but he is not listening and nothing is being done.

Another common area of client enquiry is from tenants raising concerns about their landlord not lodging the bond with Tenancy Services and difficulties being able to get the bond money refunded. Sometimes this relates to disputes about liability for damage to the property, but in other cases it can be a lack of cooperation from the landlord or the landlord applying penalties for other issues unrelated to the condition of the tenancy.

### **Client enquiries: landlords not meeting obligations regarding bond**

Client is having trouble getting bond refund from landlord. Client and her brother rented the house for 3 years without any issues. They ended the tenancy 3 months ago and have been trying to get a bond refund ever since. The landlord refused to give the client a tenancy agreement despite being requested to do so and also never lodged the bond with Tenancy Services. Landlord has offered a series of excuses for why the bond has not been refunded. Client wanted to know what to do.

Client paid a bond to her landlord for a tenancy at the beginning of the year. After five months the landlord forced her out of the tenancy. The client has now discovered that the landlord didn't lodge the bond and is refusing to pay it back.

Client has moved out of a rented property. He cleaned it properly on his departure, in keeping with the requirements of his tenancy agreement. In spite of this the landlady didn't want to pay him his bond back. His paperwork shows that she had received it but she didn't lodge it. As the reason for not paying bond back she stated that the client's girlfriend was spending a few days in his place but according to the tenancy agreement he signed, the tenancy was to be just for one person.

Client's tenancy has ended and she is trying to get back her bond money. She made enquiries and it seems her landlord did not deposit the bond money with Tenancy Services. The client wanted to know what course of action she should take to get her bond money back.

**2.2.8 Are there other things a landlord should be responsible for? If yes, please specify. Are there other things that a landlord should or should not be able to do? If yes, please specify.**

Yes. The landlord should have clear responsibilities around the maintenance of the home. We see this as integrally tied to the healthy homes standards that are also being consulted on as many of the most concerning maintenance issues relate to dampness, mould, heating and insulation.

**2.2.9 Do you think the current obligations make it clear what tenants can expect from landlords in terms of maintenance? If you answered no, how could this be made clearer?**

No. As above, we think the healthy homes standards are a key opportunity to ensure that maintenance obligations are clarified. Other areas where more guidance could be given is around the maintenance of walls and furnishings – how often walls are expected to be repainted, carpet replaced, etc.

2.2.10 What other changes to landlords' responsibilities might be needed to modernise the law so it can appropriately respond to changing trends in the housing and rental markets?

We believe that the existing frameworks provided in the employment law and consumer law contexts offer a good basis for framing the landlord's responsibilities and the principles that should underlie the landlord-tenant relationship.

- The property should be of an acceptable quality, be fit for purpose, and match its description, and the price the landlord charges should be reasonable.
- The parties should act in good faith in their dealings with one another, which includes:
  - not act in a misleading or deceptive way
  - being responsive and communicative
  - before making a decision, which may result in the tenant losing their tenancy, the landlord must give the affected tenant sufficient information to be able to understand the issue and then give them a proper opportunity to comment
  - acting honestly, openly, and without hidden motives
  - raising issues in a fair and timely way
  - working constructively and positively together
  - raise concerns or issues as soon as possible and respond to these quickly
  - keep an open mind, listen to each other and be prepared to change opinion about a particular situation or behaviour
  - treat each other with respect
- There should be good reasons for any actions taken.
- Where there is a breakdown in relationship or a desire by one party to bring the relationship to an end, the processes should be fair and transparent.

2.2.11 Are there sufficient repercussions for landlords who don't meet their obligations? If not, what would you change?

Our experience is that it is not a question of whether the repercussions are sufficient but more an issue of the protections available to tenants when they raise concerns. Only 10% of applications to the Tenancy Tribunal are made by tenants. Reducing barriers to tenants seeking to enforce their legal rights in the Tribunal will help to correct the existing power imbalance in the tenancy market. Anonymising the names of tenants in the reporting of Tribunal decisions would be one simple way to help minimise the concern tenants have about being blacklisted if they take matters to the Tenancy Tribunal. We have provided further thoughts about achieving meaningful enforcement in *Section 5. Enforcing tenancy laws*.

2.2.12 How do you think landlords and tenants should share the responsibility for maintaining heating equipment, ventilation methods, and any other improvements installed under the Healthy Homes standards?

Any improvements that relate to a landlord's responsibility to meet the healthy homes standards should be the responsibility of the landlord to maintain.

2.2.13 If a landlord makes improvements to a property to make it warmer or drier, should tenants be obligated to use those improvements? Please explain your answer.

This may be an area where "it depends". Tenants should be able to consider factors like the costs of running certain equipment and should also be able to determine for themselves what a comfortable temperature in their living spaces is. Given the purpose of such improvements is to make the home a healthier environment for the tenant it seems counter-intuitive to then create a rule based approach to the tenant's choices within their own home.

### **2.3. Modifications to rental properties**

We have not had sufficient time to identify client enquiries where there have been issues around modifications to property and so we are not in a position to provide detailed comment on this section.

We support the proposal that tenants should have a statutory right to make specified modifications after notifying their landlord that they intend to do so, rather than having to obtain the landlord's permission (option two). The types of alterations that the tenant should be allowed to make include hanging pictures, securing furniture in case of earthquakes, attaching shelves and hooks, installing baby gates or other child safety equipment, installing disability aids like hand rails, and gardening. In general, the type of impact from these modifications will be holes or surface damage to paint.

For these minor modifications we do not think the tenant should have to reverse changes at the end of the lease. It may be more useful to leave picture hooks on the wall for a new tenant than to expect a tenant to putty and paint over holes.

Tenants should be permitted to make specified minor alterations to the property (those listed above) themselves. For larger scale or more significant structural alterations it is reasonable that the work should be carried out by qualified tradespeople, unless the landlord gives written permission otherwise. For more significant modifications we think it is ultimately about the landlord and tenant reaching an agreement about what is reasonable, how the costs will be shared if appropriate, and whether there are any requirements to reverse the modifications at the end of the tenancy. This should be decided at the time the modification is agreed to and should be included as an appendix to the tenancy agreement.

### **2.4. Keeping pets in rental properties**

2.4.1 Should a landlord be able to refuse a tenant's request to keep a pet without giving a reason? Please explain.

No. Using good faith and fairness as a basis for the relationship, any decision made by the landlord should be based on good reasons that are made known to the tenant so that they can respond and explore solutions with the landlord.

2.4.2 If you are, or have been a tenant, what has been your experience seeking agreement to keep a pet in a rental property?

Following are some examples of client enquiries that reflect tenants' experiences of having pets in rental properties or seeking agreement to keep a pet in a rental property. Clients' experiences highlight the added difficulties they have in finding and keeping accommodation when they have pets.

#### **Client enquiries: tenants with pets, having difficulty finding accommodation**

Clients came in asking for help finding accommodation. They had accommodation lined up but it had fallen through. They have only a few weeks before they will have nowhere to live. They want to stay in the area as their children have just started at the local school. They've tried everything looking for accommodation but have had no luck. They have a dog which is an added complication in terms of finding a rental. They wondered if we had any other ideas for finding somewhere to live.

Client wanted to know whether the landlord could enforce a rule excluding animals on the property as they thought that surely a cat would be allowed.

Client had rented her place for 4 years and during that time there had been many issues with the house, particularly leaks. She had notified the landlord about the problems but no maintenance on the property had been done. She was worried if she went to the Tenancy Tribunal she would be evicted or her rent would be increased. She could not afford to pay more rent and liked the community where she lived. She had a dog which limited the places she could rent. She wondered if what she could do to get her landlord to deal with the leaks.

Client has been given 14 days' notice to leave his tenancy. The landlord says they are doing this to upgrade the property. Client has been a tenant for two and a half years. He has a disability and has a support dog so finding accommodation is proving difficult. He wants to know what his next step should be.

Client and his dog have to be out of their accommodation in a few days' time and they are finding it hard to find another flat. He wondered if we could help him.

#### **Client enquiries: tenants with pets, having difficulty in the tenancy**

Client moved into a flat a month ago. He has paid 2 weeks' bond, 2 weeks' rent in advance and is up-to-date on rent payments. Landlord agreed to tenant having a cat inside. Client has not received a written tenancy agreement or an acknowledgement of the bond

payment. The landlord entered the property recently without warning when the tenant was at work. Landlord has now given the client 3 weeks' notice, saying that the flat is not being looked after adequately and the cat is causing problems. Client contacted Tenancy Services and was referred to the CAB. He was so unhappy with the situation he plans to move out but wanted to know how he could make a formal complaint about the landlord.

Client had adopted a kitten after its owners left the neighbourhood. The client already had an adult cat. The kitten damaged a small section of the carpet, which the client has told the landlord they will get fixed. The client has now been served a notice saying she is in breach of her tenancy agreement for having two cats rather than one as in the tenancy agreement. She wanted some advice about what they could do.

Client has a fixed term one year tenancy agreement, which includes being able to have one cat and two dogs but the landlord is now saying they have to get rid of one of the dogs. The client wants to know if the landlord can require this.

Client has inherited his father's dog as his father has gone into care. His original tenancy agreement doesn't say anything about animals not being allowed. He has become very attached to the dog but now the new tenancy manager is questioning whether he is allowed to have a dog at the property. He wondered what his rights are.

Client discussed with her landlord that she would like to get a medium sized dog, similar to the dog owned by the neighbours (who are also tenants of the same landlord). The landlord agreed to them having a dog. After following up with the landlord, she has said the client can only have a small dog. The client reiterated to the landlord that she wanted to get a larger dog. The landlord has said that if the client does this then she will not renew the fixed term lease. The client wanted to know if the landlord could do this, seeing as she had previously agreed that the larger dog would be okay.

#### 2.4.3 If you are, or have been a landlord or property manager, what has been your experience allowing tenants to keep pets at your rental property?

Following are some examples of client enquiries that reflect landlords' experiences in dealing with tenants who have pets. These examples indicate that the areas of stress for landlords are the impact of pets in terms of noise and nuisance for neighbours, and issues around the damage pets may do to the landlord's property.

### **Client enquiries: landlords of tenants with pets**

Client is a landlord of a house with two flats, one upstairs and one downstairs. Tenants are arguing about various matters, including the downstairs tenant complaining that they are being disturbed by barking from the upstairs tenant's dog (the tenancy agreement allows the tenant to have a dog). Client has contacted Tenancy Services, but was told that they would not deal with this issue as it's between tenants. Client would like a mediator to try to resolve the problem between the tenants.

Client has a tenant in his rental property on a periodic tenancy agreement. He recently conducted a property inspection and while the tenant is keeping the house in very good order there are now two dogs on the property when the signed agreement stipulated only one. The tenant has said that the second dog belongs to his sister who can't take the dog back, but the dogs are now barking a lot and annoying the neighbours. It's some time since the client has had to end a tenancy and he wanted to know how much notice he was required to give the tenant.

Client is a landlord and has an issue with a tenant on a fixed term lease who is keeping a pet against the tenancy agreement. She would like some advice about what she can do.

Client is a landlord. The current tenants want to have chickens on the property and the client does not want this to happen. There is nothing in the tenancy agreement about pets. How should this situation be dealt with?

Client rents out his property. Under the tenancy agreement he agreed to let the tenants have a cat. The client has recently found that the cat had defecated on the floor creating a bad smell throughout the house. The client would like to know whether he has the right to terminate the tenancy.

**2.4.4 If you are, or have been a landlord or property manager, and you withheld permission for tenants to have pets, why did you do so?**

Not applicable.

**2.4.5 What might be reasonable grounds for a landlord to object to a tenant's request to keep a pet?**

We think it should be up to the parties to discuss the issues in good faith. When prospective tenants have pets this should not be able to be used as an automatic ground for refusing to grant a tenancy. Similarly, if existing tenants would like to have a pet at their rental property there should be a presumption that this is possible unless the landlord can provide good reasons why having a pet at the property would be unsuitable.

Reasonable grounds for objecting to a tenant's request to keep a pet would be if the request would be contrary to council by-laws, eg, roosters are unlikely to be able to be kept in urban areas.

2.4.6 Would it be more effective if tenants instead gave reasons why they should be able to keep pets in rental properties?

As above, we think that the starting point should be that tenants can keep pets but that the details of this should be worked out between the parties by discussing the situation in good faith, including being prepared to problem-solve any issues, eg, installation of a cat flap, fencing the property, working out the most appropriate position for a chicken coop.

2.4.7 Do some premises have specific attributes that mean they are inappropriate for some types of pet? If so, what?

There will be attributes of some premises that make them inappropriate for some types of pets, eg, an unfenced property is unlikely to be suitable for keeping a dog, or other free-ranging animal other than a cat, but we feel there should still be scope to discuss the issues and problem solve, as above.

2.4.8 What types of changes to the law could be made to compensate landlords for potential damage to rental properties if tenants keep pets?

We think that the existing bond money should be sufficient to deal with any pet-related maintenance costs. There shouldn't be an assumption that damage will be done, just as there shouldn't be an assumption that children will do damage, or that tenants with young children present a greater liability. If damage is done, it should be able to be dealt with in the same way as any other damage to property.

Enquiries from our clients indicate that landlords are regularly pursuing tenants for damage to premises when the damage is arguably the result of fair wear and tear, or is accidental but not careless. We hope that the reforms will bring greater clarity to the expectations around maintenance of properties, keeping the property reasonably clean and tidy, fair wear and tear, and what is reasonable to expect at the end of a tenancy.

### **Client enquiries: damage from pets**

Client is finishing up in a tenancy due to the property being sold. The final handover of keys is tomorrow. There is an issue with the client's dog who had messed on the carpet (which was in shabby condition when they took the tenancy). The client offered to pay a share of the costs of cleaning the carpet but the owners stated they would replace the carpet in the whole house. They have asked the tenants to pay a half share of the excess on their insurance which comes to \$600 which caller feels is a bit excessive for a small stain in one room.

2.4.9 Do you support the introduction of specific obligations in the RTA for tenants who keep pets in regards to their rental property and the peace and comfort of their neighbours?

We are unsure whether any additional obligations are needed for tenants who own pets. As above, we feel that issues that relate to noise and nuisance should be able to be dealt with using existing mechanisms – noise control / local councils, Police – that mean that there is more chance of a consistent and appropriate standard being applied in dealing with noise and nuisance complaints.

2.4.10 If you are a landlord, are there any other options not covered in this section that would make you feel more comfortable with tenants having pets? If yes, please explain.

Not applicable.

### 3. Setting and Increasing Rent

Issues raised by CAB clients that relate to rent include concerns about the quantum of rent increases, general issues of affordability, questions about the amount of notice provided for rent increases, and increases to rent in fixed term tenancies – either during the tenancy or on the basis that a new tenancy is being formed when the tenancy is renewed.

#### 3.1. Rental bidding

3.1.1 Have you been involved in rental bidding? If yes, what was your experience?

Not applicable.

3.1.2 Do you think rental bidding should be banned or controlled? Why or why not?

Yes, we believe that rents should be set at no more than the advertised amount and requesting or accepting rent bids should be illegal. With the current shortage of available housing and the desperation of people trying to secure housing, the practice of rent bidding just further exacerbates the market power of landlords at the expense of tenant.

3.1.3 If you think something should be done about rental bidding, do you have a preference between option one or option two, or another option? Please explain.

We support option two. We think that it's important that there is transparency for tenants in a tight rental market and that the advertised price for the rental property is both reasonable, and is the price that the successful applicant would pay. If landlords were still able to accept rent bids this would increase competition amongst tenants and mean that tenants with less disposable income will be more vulnerable.

## 3.2. Challenging rent increases at the Tenancy Tribunal

3.2.1 An application for a rent adjustment under a fixed-term tenancy agreement must be made to the Tenancy Tribunal within three months of the last rent review or from the commencement of the tenancy. Do you think three months is an appropriate amount of time to allow for this process? Why or why not?

For consistency, we think the timeframe for challenging the amount of rent charged in a fixed-term tenancy should be the same as for a periodic tenancy – ie, anytime within the tenancy.

### Client enquiries: challenging the amount of rent charged

Client has a fixed term tenancy agreement, which finishes in a few months' time. The landlord has just increased the rent by \$80 a week and the client can't afford this. He has checked market rentals for the area and thinks the rent increase is unreasonable. He has asked the landlord if he can finish the tenancy early. The landlord has agreed but has told the client that he will have to pay the increased rent until he finds another tenant. The client doesn't feel he can manage this and wants to know what he can do.

Client wanted some advice about a rent increase. Her rent was going to be increased by \$75 a week from the beginning of June. Her increase was going to bring the rent up to \$725 a week, well above the average market rental for the area. Also the house is very old and has issues with mould and the external stairs are in a state of disrepair. The landlord had not fixed any of the issues despite being reminded several times.

3.2.2 Do you think the RTA should include guidance on what constitutes 'substantially exceeding market rent'? If you answered yes, what do you think constitutes 'substantially exceeding market rent'?

Guidance on what constitutes 'substantially exceeding market rent' would be helpful. It would be useful to have a clear and transparent way of determining what the market rent is or should be for a particular property and to ensure that any increases to the rent continue to be consistent with a fair and reasonable price for other properties of a similar type, size and location.

## 3.3. How and when rents can be increased

3.3.1 If you are a tenant or a landlord, how often has the rent for your rental property increased? (e.g. six-monthly, yearly, every two years)?

Enquiries from CAB clients indicate that the regularity of rent increases varies but that six-monthly or annually are common. It also appears to be common for rents to be raised as a precursor to the property being put on the market for sale, with the indication being that this makes the property more attractive to potential buyers.

### **Client enquiries: rent increases**

Client's rent has been increased \$15 every six months for the past two years. She has just been advised of the next rent increase and Work and Income have told her that she is not eligible for an increase in accommodation supplement. She wondered if the owner has the right to keep increasing the rent. After she raised her concerns about the latest increase she received a 90 day notice of termination of her tenancy.

Client was calling on behalf of her elderly neighbour, who rented her unit at \$280 per week. She has a fixed term tenancy agreement, which runs for another 3 months. Her landlord has just told her that her rent is going up to \$300 per week next month. Can he do this?

Client phoned wanting to find out if it was legal for his landlord to raise the rent because the real estate agent, who is going to market the property for sale, suggested a higher rent would make it more marketable.

Client rents a 4-bedroom home. He has been in the property for 4 years. He has received a rent increase letter with only 20 days' notice. He wanted to know if the landlord was allowed to do this, as he thought that \$40 per week increase was high.

#### **3.3.2 Do you agree that rent increases should only be allowed once every twelve months?**

Yes.

#### **3.3.3 Should landlords be required to disclose how they will calculate future rent increases when a new tenancy is entered in to? Please explain.**

Yes. The basis for rents and rent increases should be transparent so that these can be anticipated and understood by the tenant.

## **4. Boarding Houses**

We have not had sufficient time to review our enquiries that relate to boarding houses and so are not in a position to provide comment on this section.

## **5. Enforcing tenancy laws**

We have responded to this section in free-text form, not using the question and answer format.

We are deeply concerned that the existing system is skewed in favour of landlords, not so much in terms of the available remedies, but because of the significant power imbalance that underlies the landlord – tenant relationship. We find it hard to make sense of the fact that only about 10% of applications to the Tenancy Tribunal are from tenants when the vast

majority of residential tenancy enquiries to our CABs are from tenants who are struggling with issues of non-compliance by landlords.

The system to sort out disputes must be fair, timely and well-resourced. It needs to recognise and address the fact that tenants are at a significant disadvantage. If they raise issues with their landlord they are currently at risk of a termination of tenancy without cause. Even with the proposed removal of this option, the tenant also faces potential difficulties in their relationship with their landlord and the chance that they will be blacklisted on online 'bad tenant' databases for seeking to assert their rights.

The existing enforcement system is funded almost entirely by tenants from the interest earned annually on lodged bonds (\$20.6 million in the 2016/17 financial year). It is reasonable to expect that tenants get from this investment a fair and responsive enforcement system. In addition, MBIE currently holds several million dollars of abandoned bonds that are ultimately returned to the Crown (currently \$9.8 million).

Our recommendations for creating a meaningful enforcement system are:

- We need enhanced mediation services for tenancy disputes. This should include an expanded brief that allows tenants and landlords to access a comprehensive dispute resolution service without needing to apply to the Tenancy Tribunal. This should also be available to co-tenants and flatmates who struggle to find an effective mechanism to resolve relationship breakdown issues and tenancy disputes.
- Reports of Tenancy Tribunal judgements should anonymise tenant details so that tenants are not deterred from standing up for their rights.
- Adequate funding is needed to support the effective provision of information and education for landlords and tenants. At the heart of many of the enquiries to the CAB is a lack of awareness of the law and of specific rights and responsibilities. Some clients face barriers accessing services and information. These barriers include language and literacy, computer access and digital literacy and confidence.
- Adequate funding is needed for tenant advocacy services so that tenants across New Zealand are able to access the support they need to understand and act on their rights. This is a key area of work for the CAB but more could be done with increased capacity. The same is true for other organisations struggling to meet the needs of tenants seeking assistance. This work could be funded with abandoned bonds as it seems entirely appropriate that this money that comes from tenants is reinvested in services that benefit tenants.
- The residential property management sector should be regulated. Property managers have a valuable service to offer, but the conduct of rogue operators is bringing the industry into disrepute. Tenants and property owners deserve to know they are dealing with qualified, licensed professionals who abide by sector standards.

- We think that there should be an increase in the possible sanctions for landlords who breach the law. The Tenancy Tribunal should be empowered to give fines large enough to serve as meaningful deterrents, and to disqualify landlords who repeatedly or wilfully breach the law.
- Quality standards for housing should be consistently monitored and enforced. This could be done through local authorities alongside their comparable duties for new-build housing (building consents), commercial property (building WOFs and earthquake-prone buildings) and other public health matters (food hygiene, sanitation). Rental properties should be required to meet compliance requirements in order to be tenanted.

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Thank you for the opportunity to provide input into the reform of the Residential Tenancies Act.