

**Submission to:**

Social Services Select Committee
27 January 2016

Subject:

Residential Tenancies Amendment Bill

We wish to appear before the Committee to speak to our submission.

Contact Person:

Lisbeth Gronbaek
Ph 04 3828759

Background

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

The purpose of our organisation is 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 matāra kia kua te tangata e mate i tāna 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 āna e āhei ki te whakaputu i āna hiahia kia mārama mai ai te tangata.
- 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.

We support the principle of partnership reflected in the Treaty of Waitangi. E tautoko ana Ngā Pou Whakawhirinaki, i te mātāpono nohotahi (hononga), e whakaatahia ana i roto i te Tiriti o Waitangi.

We work to empower individuals to resolve their problems and to strengthen communities. The person-to-person service provided by over 2,400 Citizens Advice Bureau (CAB) volunteers is unique in New Zealand. From 83 locations around New Zealand, the CAB provides individuals with a free, impartial and confidential service of information, advice, advocacy and referral. In the 2014/2015 financial year we had 530,000 interactions with



clients, including over 200,000 in-depth enquiries where we offered information, advice and support across the gamut of issues that affect people in their daily lives.

We use our experience with clients to seek socially just policies and services in Aotearoa New Zealand.

1.0 Increase in CAB enquiries relating to residential tenancies

- 1 During the five years to 30 June 2015, bureaux received over 55,000 in-depth enquiries relating to renting situations covered by the Residential Tenancies Act (RTA). Most of these enquiries were from tenants.
- 2 There has been a 40% increase in residential tenancy enquiries over the last five years, much higher than the 5% increase in enquiries overall for the same period. Last financial year, enquiries relating to renting were among the top three topics of CAB enquiry – our volunteers spent almost 4000 hours, spread over more than 12,000 enquiries, assisting clients to deal with their issues to do with renting, or rental properties.

2.0 Good quality housing and secure tenancies - cornerstones of a fair and well-balanced rental market

- 3 The growing number of enquiries to bureaux is not surprising, given that more and more New Zealanders are renting. As is pointed out in the Proposed Residential Tenancies Regulations discussion document,¹ around 50% of us live in rented accommodation.
- 4 That means that if conditions for renters improve, half the population will benefit. This makes it all the more important to have rental housing that is in good condition, and a renting culture that supports an even balance of rights and responsibilities between landlord and tenant.
- 5 Citizens Advice Bureau New Zealand regards good quality rental housing and security of tenure as cornerstones of a fair and well-balanced rental market. They are also essential to good public health. If we can't offer these to renters, we compromise the wellbeing of individuals and communities.
- 6 Inhabitants of housing that is cold and damp are more likely to suffer from ill-health,² and therefore less likely to be able to participate fully at school, at work or in the community. When people live in conditions that are injurious to health, the losses and the costs to society go beyond the immediate effect on the individual. At the same time, just as individuals suffer when homes are poorly maintained, so does our much-needed housing stock. We risk losing this valuable national resource (whether it be publicly or privately owned) if we allow it to deteriorate through exposure to dampness and mould.

¹ *Proposed Residential Tenancies Regulations for insulation and smoke alarms: discussion document.* p.7

² *Home Truths: confronting New Zealand's housing crisis.* Philippa Howden-Chapman, BWB Texts 2015 p.71ff

- 7 The insecurity of tenure experienced by renters in periodic tenancies also exacts a toll on individuals and communities. Knowing that you can be asked to leave with as little as 42 days' notice makes it hard to feel settled and less likely that you will want to connect to and contribute to the community in which you reside. Being issued with a 42 day notice only gives you six weeks to find a new place to live and to make the necessary adjustments to other aspects of life such as school or work. We see clients who are extremely distressed, and stressed, by the disruption and uncertainty this creates.
- 8 Adding to insecurity of tenure, and tipping the balance of power well away from the tenant, is the lack of affordable rental housing in some areas. This makes it less likely that landlords will strive to retain tenants and less likely that tenants will feel confident to take action against a landlord who is in breach of the RTA. Outside the scope of this bill, but also crucial to public health, is the overcrowding that results from a lack of affordable rental housing. CAB enquiries reveal families living in appallingly crowded conditions. This is not what we would expect to see in New Zealand.
- 9 For all these reasons, Citizens Advice Bureau New Zealand welcomes measures that will lead to healthier rental homes and to increased stability and security for tenants. We support the main thrust of the Bill, which is to make rental properties safer and warmer and to increase protection for tenants in certain areas. Our responses to specific provisions in the Bill, and related provisions in the Proposed Residential Tenancies Regulations discussion document, are contained in sections 3-6 below.
- 10 In the final section of our submission we propose the addition to the Bill of a substantive amendment to give greater security of tenure to renters. Based on what we are seeing in our enquiries, we argue for the removal from the Act of the provisions which currently permit a landlord to issue a 42-day notice of termination under certain circumstances.

3.0 Smoke alarms

- 11 We support the proposal to require landlords to install smoke alarms and ensure that these are operational. CAB enquiries reveal landlords who decline requests from tenants to install smoke alarms, as well as landlords who are slow to take action when tenants report that smoke alarms are not working:
 - *Client had just moved into a rental property. She asked the property manager about smoke alarms and was told that if she wanted alarms she would have to install them herself.*
 - *Client is renting a property and is concerned that there is no smoke alarm. Letting agent says that there is no obligation for the landlord to supply them.*
 - *Client is renting a property where the smoke alarms are not working. Landlord has been informed but has refused to replace the alarms.*
- 12 We are pleased that, under the provisions of the Bill, these behaviours would be considered to be unlawful acts.

- 13 We are supportive of the amendments to s.78 of the Act which would make it impossible for landlords to 'pay their way out' of meeting their obligations relating to smoke alarms and insulation, as well as their responsibilities under the Housing Improvement Regulations.

4.0 Insulation

- 14 We welcome the decision to regulate to ensure that more renters live in homes that have floor and ceiling insulation. As stated above, we are pleased that landlords will not be able to pay their way out of meeting their obligations relating to insulation, and that failure to meet these obligations would constitute an unlawful act.
- 15 We consider it essential for the new regulations to require (as is currently proposed in the discussion document, Key Question 5) that whenever insulation in a rental property is replaced or retrofitted it must comply with the latest Building Code.
- 16 However, insulation alone will not guarantee that a home is warm. Insulation only really adds value when you heat the house. We see tenants who cannot afford to turn on the heating in winter, tenants who live in properties where the heat source is malfunctioning and tenants in properties which have no heat source at all.
- *Client has rented a property that is damp and mouldy. She can only afford to pay \$20.00 per week for power.*
 - *Client is renting a house where the open fire is not working properly. The agent is not responding to the client's calls.*
 - *Client from the South Island is living in rented accommodation where there is no heating. The fireplace has been removed.*
- 17 Given the significant health benefits of living in warm and dry conditions, we suggest that serious consideration be given to requiring an efficient source of fixed heating to be installed in all rental accommodation.

4.1 Enforcement

- 18 It is not unusual for clients to come to us because they are struggling to get their landlord to listen to concerns about the condition of the property:
- *Client and his children are living in rented accommodation where the ceilings are leaking badly. They are sleeping in the lounge. Client has been in contact with the landlord who refuses to do anything about it.*
 - *Client was living in rented accommodation where the carpet is full of moth larvae and there is a cockroach infestation. Landlord was not responding to requests to take action.*
 - *Client is living in a rented property which has blocked drains, a faulty ventilation system and is cold and damp. Client's children are becoming ill, and client is finding it very stressful knowing that the house is an unhealthy place for children to live. Wants to know how to get the landlord to do the necessary maintenance.*

- *Client's landlord was refusing to respond to the tenant's concerns about the condition of the property. Problems included appliances not working, windows not able to be closed and an unsafe driveway.*

- 19 Enforcement will be critical if the new regulations are to benefit tenants of the approximately 180,000 residential rentals that are expected to require upgrades to ceiling and/or underfloor insulation.³ The current enforcement system relies on tenants having the confidence (and the time and energy) to take action when a property is poorly maintained. This means first complaining to the landlord, if this fails, issuing a notice to remedy and if this fails, complaining to the Tenancy Tribunal. We know that not all tenants are prepared to go this far.
- 20 Research shows that if we rely on self-enforcement and tenant notification there is a risk that only two thirds of residences will comply with the new standards, whereas under a system of universal inspections, compliance could be expected to be about 90%.⁴ Citizens Advice Bureau New Zealand believes that a warrant of fitness regime for rental housing is the best way to improve conditions for renters and reduce the social and health costs that result when people live in cold, damp and mouldy conditions.

4.2 Disclosure

- 21 We support the proposal that it be an unlawful act for a landlord not to provide accurate details in the tenancy agreement about whether/how well the property is insulated.
- 22 However, given the importance of this information to prospective tenants and the fact that it is not easy to check floor and ceiling during a routine viewing of a property, we wonder whether the threat of exemplary damages of \$500 is sufficient to discourage non-compliance. We recommend that consideration be given to increasing that amount.

5.0 Retaliatory terminations

- 23 We support the proposals to strengthen the retaliatory notice provisions in the Act, giving the tenant more time to apply to the Tenancy Tribunal and making it an unlawful act for a landlord to give retaliatory notice.
- 24 It is not uncommon for CAB volunteers to hear clients say they are afraid they will lose their tenancy if they make demands of their landlord or complain. If the new provisions are adopted, this may result in tenants feeling more confident about asserting their rights, but again we recommend that consideration be given to whether the maximum penalty (\$2000) is sufficient to act as a real deterrent.
- 25 We see cases where tenants who have complained to their landlord are suddenly served with a 42-day notice on the basis that the landlord or a family member wishes

³ *Proposed Residential Tenancies Regulations for insulation and smoke alarms: discussion document.* p.7

⁴ *Cost benefit analysis for a minimum standard for rental housing.* Prepared for MBIE by Gary Blick and Preston Davies in November 2014 p.29

to move into the property. It is impossible to know whether these are retaliatory terminations, but doing away with the 42-day notice option (as we propose in section 7 below) would ensure that this provision could not be used in retaliation.

6.0 Serious or persistent breaches of the RTA

- 26 We support the proposed new enforcement powers for the Chief Executive (CE) of the Ministry of Business, Innovation and Employment to investigate and take direct action, as if the CE were the tenant, in the following situations:
- where the CE considers that the condition of the premises poses a **significant** risk to health or safety
 - where the landlord is considered by the CE to have committed a **serious** breach of the RTA or has breached the Act persistently
 - where the CE considers that the actions of the landlord have undermined public confidence in the administration of the RTA
 - for any other grounds that the CE considers appropriate.
- 27 Bureaux see a wide range of breaches of the Act by landlords:
- No written signed tenancy agreement
 - Failure to give receipts
 - Failure to lodge bond
 - Interference with privacy of tenants
 - Illegal notice period
 - Increasing rent without warning
 - Charging the tenant for maintenance that is the landlord's responsibility
 - Unable to be contacted by tenant
 - Not giving notice in writing
 - Failure to maintain premises in a reasonable state of repair
 - Contracting to evade the provisions of the act
- 28 We are hopeful that new s.124 will improve the lot of tenants who are currently putting up with the breaches listed above because they feel powerless to do otherwise. Under the proposed wording this depends almost entirely on the definition of the terms 'significant' and 'serious'. We recommend that these two terms be removed, giving the CE the freedom to take action against health risks and breaches as he/she sees fit.
- 29 The Regulatory Impact Statement⁵ points out that the powers already vested in the CE to act *on behalf of* a tenant are rarely used because tenants fear retribution. The new powers would enable the CE to take action as a tenant and without the tenant's consent. However, this does not eliminate the risk that the landlord could take retaliatory action against the tenant. How will the tenant be protected if an investigation takes place without their consent?

⁵ *Regulatory Impact Statement: Smoke alarms and insulation in residential rental properties*, June 2015 Paragraph 66

7.0 Further amendment to increase security of tenure

- 30 While recognising that this Bill contains measures that help create a better balance of rights and responsibilities between landlord and tenant, we are recommending that it go further, with a provision to specifically increase security of tenure for renters. Our client enquiries reveal insecurity of tenure to be a significant issue and we see the Bill as an opportunity to make a small change to begin to address this.
- 31 The change we are proposing is the simple removal of the option for a landlord to give a tenant 42 days' notice under certain circumstances. This would make 90 days the minimum period of notice required to be given by a landlord to terminate a tenancy by notice under section 51 of the Act. Currently s.51 reads as follows:

51 Termination by notice

(1) Subject to sections 52, 53, 53A, 59, and 59A, the minimum period of notice required to be given by a landlord to terminate a tenancy shall be as follows:

(a) where the owner of the premises requires the premises as the principal place of residence for the owner or any member of that owner's family, 42 days:

(b) where the landlord customarily uses the premises, or has acquired the premises, for occupation by employees of the landlord, that fact being clearly stated in the tenancy agreement, and the premises are required for occupation by such an employee, 42 days:

(c) where the owner is required, under an unconditional agreement for the sale of the premises, to give the purchaser vacant possession, 42 days:

(d) in any other case, 90 days.

- 32 We are proposing that s.51 be amended to read:

51 Termination by notice

(1) Subject to sections 52, 53, 53A, 59, and 59A, the minimum period of notice required to be given by a landlord to terminate a tenancy shall be 90 days

- 33 This observation from a bureau sums up the main reasons we are suggesting the removal of the 42-day notice period:
- *Security of tenure for people renting is problematic. People can be given 6 weeks' notice, and within a few months in a new place this can be repeated. The consequences of repeated moves can be serious for children. They can be lost to agencies who are working with the family, their schooling is disrupted, and their health and wellbeing can suffer.*

- 34 Being issued with a 42-day notice only gives you six weeks to find a new place to live and to make the necessary adjustments to other aspects of life such as school or work. This can be distressing and disruptive:

- *Client and her partner have just been given 42 days' notice. Client's partner is seriously ill and undergoing treatment. This would make moving extremely difficult and stressful.*
 - *Elderly client has been given a 90-day notice to quit her tenancy but has been told by her landlord that if the house is sold unconditionally she will only have 42 days to move. She wants to know if this is allowed.*
 - *Client has been informed that the landlord wishes to move back in to the property they have been renting for under a year. Client had been hoping to stay there for much longer and is very upset.*
 - *Client has received notice to leave her rental property within 42 days as it had suddenly been sold. She was not aware that it had been on the market and considered this to be very unfair. She had many other commitments and expenses to meet and would now also have to move.*
- 35 Where the tenancy is new, 42 days' notice puts the tenant in a prolonged state of insecurity and flux.
- *Client has been in a rental property for 5 weeks, but has been given 42 days' notice because the owners want to move into the property. She was very upset and wanted to know if this was correct.*
 - *Client has rented a house for about 4 weeks now and has been given 42 days' notice. He wonders if this is right.*
- 36 Conversely, where people have been in a tenancy for years, 42 days is not long to uproot and move:
- *Client has lived in the same property for almost ten years. Now has to leave as the landlord wishes to let it to family.*
 - *Clients have been renting the same place for a number of years and have made many small improvements to the property. They have now been informed that they will have to move as the property is being sold.*
- 37 To prevent both these situations from occurring, consideration could be given to introducing a minimum right of tenure, and increasing the amount of notice needed the longer a tenant has lived in the property.
- 38 Moreover, in the current market it can be impossible to find another affordable rental within 90 days, let alone 42. This means that people who were perfectly adequately housed before the notice was issued can suddenly find themselves worrying that they may be facing homelessness:
- *Family has been given 42 days' notice to vacate property and are struggling to find another place despite that fact that they have good references and have been stable tenants for over 5 years. Agents are saying there is a shortage of good rentals in their area at present.*



- *Client has been given 42 days' notice by their landlord as family wanted to move into house. He is worried that he may not be able to afford the bond for a new rental property.*
- *Client is enquiring on behalf of an elderly friend who has been given notice that her tenancy will end in 42 days. She is wondering where her friend will find a new home at an affordable rent.*

Citizens Advice Bureau New Zealand is arguing for the ever-increasing number of New Zealand renters to experience more security, less disruption and more certainty. The amendment we are proposing to the Residential Tenancies Act is a small step in this direction, a step which we hope the Committee will consider taking.

Thank you for this opportunity to comment. Please contact me if you have any questions, or want any clarification about our submission.

Yours sincerely

Lisbeth Gronbaek
Policy Advisor