

Unlawful residential premises:

The Residential Tenancies Act 1986 (RTA) has been amended by the Residential Tenancies Amendment Act 2019

Section 77(2)(a) of the RTA gives the Tribunal the jurisdiction to determine if any premises are, “residential premises”.

Section 2(1) of the RTA defines residential premises as: “Means any premises used or intended to be used for occupation by any person as a place of residence.”

Section 78A deals with Orders of the Tribunal relating to **unlawful residential premises**.

An unlawful residential premises means residential premises that are used for occupation for a person as a place of residence but that:

- Cannot be lawfully occupied for residential purposes by that person; and
- Where the landlord’s failure to comply with their obligations of s36 or 45(1)(c) or s66H(2)(c) or 66I(1)(c) and has caused that person’s occupation to be unlawful or contributed to an unlawful occupation.

Section 36 refers to legal impediments to occupation. This section states that the Landlord shall take all reasonable steps to ensure that at the commencement of the tenancy there is no legal impediment to the occupation of the premises for residential purposes. Section 45(1)(c) states that the Landlord shall comply with all requirements in respect of buildings, health and safety under any enactment that applies to the premises.

So what does this all mean? Every matter will turn on its facts but generally, unlawful premises are premises that cannot be used lawfully for residential purposes. This could mean that a converted garage or an unconsented granny flat, a warehouse or a commercial building fall into the category of premises that cannot be used lawfully for residential purposes.

So what happens with unconsented or unpermitted portions of properties such as an added bedroom or a conservatory? If those additions have not been consented or had some sort of retrospective process to prove that they are fit and safe for human habitation from the local authority, then the property is likely to be in breach of the Residential Tenancies Act 1986. The Act enables the Tenancy Tribunal to have jurisdiction to hear such cases.

It is really important to liaise with owners to ensure that the property meets the requirements of the RTA for residential purposes and that any work that is unconsented must be dealt with. An unconsented granny flat that attracts rent is likely to cause issues and there are cases where the rent paid to the landlord has been awarded back to the tenants.

See: <https://forms.justice.govt.nz/search/Documents/TTV2/127371435.pdf>