

Practice Guidelines – Overview/Summary – Residential Tenancies Amendment Act 2020

These practice guidelines have been prepared as an overview to the changes to the Residential Tenancies Act 1986 by the Residential Tenancies Amendment Act 2020 (<http://legislation.govt.nz/bill/government/2020/0218/latest/LMS294929.html>). The changes were given Royal Assent on **11 August 2020** and there is a transition time for most of the changes of **6 months** for everyone to become familiar and be able to implement the changes in the management of property (effective date is **11 February 2021**). There are two changes that would come into effect **12 months** after **11 August 2020** and these relate to termination of tenancies for family violence and physical assault of the landlord (effective date **11 August 2021**). The reason for this is that regulations need to be made. The implementation of these two aspects may come in earlier if Government decides they should.

This is a guideline of the changes to help you understand them. It is important to have a high level overview of what the law changes will mean in your property management practice.

Important - Tenancy Agreements:

For any fixed term tenancies that commenced **before 11 February 2021** (i.e. 10 February 2021 and before), these fixed term tenancies **will continue under the old RTA requirements**. It is critically important when dealing with an issue, or needing to give notice for any reason, that the first question must be “what type of tenancy is this – is it periodic or is it a fixed term?” Once this is established, the second question is – when did this agreement commence? If the answer is “fixed term and before 11 February 2021”, then the old RTA rules apply. If the answer is “fixed term and after 11 February 2021” then the new rules apply. If the answer is “is periodic and either before or after 11 February 2021”, then the new rules apply. Fundamentally, any periodic tenancies move over to the new rules, and any fixed terms that have commenced before 11 February 2021 will operate under the old rules until they transition at their expiry.

Tenancy Agreements (s13A):

Tenancy agreements must include all specified information. Landlords who do not comply commit an unlawful act and exemplary damages may apply.

Advertising (s22F and s22G):

- A landlord must state the rent when advertising a property. If a landlord does not state the rent, it is an unlawful act.
- A landlord must not invite or encourage bids for rent. This means that a landlord cannot encourage more rent than the advertised amount.
- If a landlord does encourage bids for rent, the landlord commits an unlawful act.

Rent Increases (s24)

- The rent must not be increased within **12 months** after the date of the commencement of the tenancy; and
- The rent must not be increased within **12 months** after the date on which the last increase took effect.

Consent for tenant's fixtures (s42A and s42B):

- A landlord must not unreasonably withhold consent for a fixture, renovation, alteration or addition.
- A landlord may impose reasonable conditions in the granting of consent.
- The tenant must make a request for consent in writing and the landlord must respond in writing within 21 days after receiving the written request from the tenant.
- In responding to the tenant, the landlord must state whether they consider the fixture, renovation, alteration or addition to be a minor change.

If the landlord considers that the changes are more than minor, then the landlord can extend the time for consideration to the tenant's request but must respond within a reasonable timeframe.

A landlord commits an unlawful act if they fail to respond without a reasonable excuse.

A minor change is defined *as any fixture, renovation, alteration or addition of or to the premises*

- that presents no more than a low risk of material damage to the premises, and
- that would allow the premises to be returned easily and substantially to the same condition, and
- does not pose a risk to health and safety (including during work to install, remove or undo the minor change) that cannot reasonably practicably be eliminated or minimised; and
- does not compromise the structural integrity, weather-tightness or character of any building; and
- would not have an unreasonable negative effect on any person's enjoyment or use of any property outside the premises; and
- does not require regulatory consent (eg a building consent); and
- does not breach any obligations or restriction relevant to the premises (e.g any bylaw, planning or body corporate rule or covenant).

A landlord commits an unlawful act if the landlord withholds consent for a minor change.

The tenant must return the premises on or before the expiry of the tenancy to a condition that is substantially the same as the condition that the premises were in before the minor change.

The landlord and tenant can agree to a different arrangement than making good the change.

If the tenant fails to make good (outside of any agreed alternative) then the tenant commits an unlawful act.

Assignment of tenancy (s43A, s43B and s43C):

A tenancy agreement that contains a provision that prohibits a tenant from assigning the tenancy has no effect.

A tenant may at any time during the tenancy, assign the tenancy with the prior written consent of the landlord and in accordance with reasonable conditions set out by the landlord.

A tenant commits an unlawful act if the tenant assigns a tenancy without the landlord's written consent.

In making a written request to the landlord, the tenant must include the contact details for the proposed assignee (new tenant) and the landlord must respond in writing to the request in a reasonable timeframe. If the landlord does not respond and does not have a reasonable excuse for not responding, the landlord commits an unlawful act.

A landlord cannot withhold consent to the assignment unreasonably. Instead of accepting the assignment, the landlord can accept a surrender of the tenancy (that is, the landlord can accept that the tenancy comes to an end).

If an assignment takes place, then the outgoing tenant has no further responsibility to the tenancy except by way of any liability that was already incurred by the tenant to the landlord for anything that was done or omitted to be done before the assignment took place.

Recovery of expenses incurred by the landlord (s44A):

A landlord who consents to an assignment, subletting or parting with possession or termination of a tenancy is entitled to recover the outgoing expenses reasonably incurred by the landlord in respect of that assignment, subletting, parting of possession or termination as long as the expenses provided are itemised. It is an unlawful act if a landlord tries to recover expenses without first providing an itemised account of those expenses.

Fibre installation (s45B):

A landlord must permit and facilitate the installation of fibre connect in certain circumstances being:

- Where there is no fibre at the premises; and
- It is possible to install fibre to the premises; and
- The tenant has requested the installation of fibre at the premises; and
- The fibre can be installed at no cost to the landlord.

The landlord is not required to facilitate the installation of fibre where:

- Installing fibre would materially compromise the weather-tightness or character of any building; or
- The installation would compromise the structural integrity of the building; or
- Would breach a bylaw, planning or body corporate rule or covenant; or
- The landlord is to carry out extensive alterations, refurbishments, repairs or redevelopment of the premises and material steps have been taken within 90 days after the date the landlord received the request from the tenant for the installation of fibre and that granting permission would impede that work; or
- The landlord has applied to Tribunal and the Tribunal has determined that the landlord should not be required to install fibre to the premises.

The landlord must take all reasonable steps to facilitate the installation of fibre within a reasonable timeframe. If the tenant has made a request, then the landlord has **21 days** to respond after receiving the request.

A landlord commits an unlawful act (unless there is a reasonable excuse) if they fail to comply with the tenant's request.

Termination of Tenancy (s51):

In a periodic tenancy:

- By giving at least **63 days' notice** (previously 42 days) where the owner requires the premises within 90 days of the date of termination as the principal place of residence for at least a period of 90 days for the owner or a member of the owner's family; or
- The landlord customarily uses the premises or has acquired the premises for occupation by employees of the landlord or by contractors under contracts for services with the landlord and this has been clearly stated in the tenancy agreement; or
- The landlord (Ministry of Education) customarily uses the premises or has acquired the premises for occupation by employees of a school board of trustees or by contractors under contract by a school board of trustees and this has been clearly stated in the tenancy agreement.
- A landlord may terminate a periodic tenancy by giving **90 days' notice** (previously 42 days) if the premises are due to be put on the market within 90 days after the termination date for the purpose of sale or other disposition; or
- The owner is required, under an unconditional agreement for the sale of the premises, to give the purchaser vacant possession; or
- The landlord is not the owner of the premises and the landlord's interest in the premises is due to end; and
- The landlord or owner has acquired the premises to facilitate the use of nearby land for a business activity; and

- This has been clearly stated in the tenancy agreement; and
- The premises are required to be vacant of residential tenants to facilitate that use; or
- The premises are to be converted into commercial premises for at least 90 days by the landlord or owner; or
- Extensive alterations, refurbishments, repairs, or redevelopment of the premises are to be carried out by the landlord or owner; and
- It would not be reasonably practicable for the tenant to remain in occupation while the work is undertaken; and
- The work is to begin, or material steps towards it are taken, within 90 days after the termination date; or
- The premises are to be demolished and for the demolition to begin, or material steps towards it are to be taken, within 90 days after the termination date.

Material step is defined as applying for regulatory consent, seeking engineering or other professional advice and taking any other significant step.

Tenant’s right to terminate:

By giving at least **28 days’ notice** (previously 21 days).

Termination of Tenancy (s55A and s55B):

Antisocial behaviour:

Definition – harassment or any other act or omission (whether intentional or not) if the act or omission reasonably causes alarm, distress, or nuisance that is more than minor.

A landlord may apply to the Tribunal for an Order terminating the tenancy on the grounds of anti-social behaviour. The Tribunal must make that Order on the basis that it is satisfied:

- That on three (3) separate occasions within a 90 day period, the tenant, or person in the premises with the tenant’s permission (other than the landlord or person acting on the landlord’s behalf or with the landlord’s authority), engaged in anti-social behaviour in connection with the tenancy.
- On each occasion that the landlord gave the tenant written notice, the landlord must describe clearly which specific behaviour was considered to be anti-social and if known to the landlord, who engaged in such behaviour.
- The landlord must also advise the tenant the date, approximate time and location of the behaviour; and
- The landlord must state how many other notices (if any) the landlord has given to the tenant in connection with the same tenancy within the same 90 day period; and
- Advise the tenant of their right to make an application to the Tenancy Tribunal if they wish to challenge the notice.

The landlord can apply to the Tribunal within 28 days after they landlord provided the third notice.

The Tribunal must not make an Order if it is satisfied that:

- In making such an Order, it would be unfair on the tenant because of the circumstances in which the behaviour occurred or the notice was given; or
- The landlord was motivated by any complaint by the tenant.

The Tribunal must not consider the impact that ending the tenancy would have on the tenant.

The Tribunal can consider whether the tenant took all reasonable steps in permitting another person to be on the premises that the tenant tried to prevent the person entering the premises and tried to remove them from the premises.

The landlord in making the Tribunal application must prove that anti-social behaviour occurred and that they have met the requirements in making the application. The tenant can challenge the landlord's application based on facts and form.

A landlord may make an application to the Tribunal requesting termination based on the ground of hardship (that it would be unreasonable to require the landlord to continue with the tenancy). In this particular circumstance, the Tribunal can consider the impact that ending the tenancy would have on the tenant.

All Orders must have a specified date for termination.

Termination for non-payment of rent, damage or assault (s55):

In the case of periodic tenancies:

- On three separate occasions and within a 90 day period, the rent has been at least five (5) working days in arrears; and
- The landlord has given the tenant written notice advising the tenant of the arrears, the date for which the rent was due, the amount or amounts of overdue rent and the tenant's right to make an application to the Tennacy Tribunal to challenge the notice; and
- Each notice states how many other notices (if any) the landlord has issued in the same 90 day period; and
- The landlord's application to the Tribunal was made within 28 days after the landlord gave the third notice.

Withdrawal of tenant experiencing family/domestic violence (s56B):

Tenants who are experiencing family violence can withdraw from a tenancy by giving two days' notice. The tenant will need to provide evidence of the family violence.

Fixed term tenancy to become periodic (s60A):

- A fixed term tenancy becomes a periodic unless contrary notice is given.
- A fixed term tenancy does not continue if before the expiry, the parties renew or extend the existing tenancy agreement; or
- Before the expiry, the parties agree not to continue with the tenancy; or
- At least 28 days before the expiry, the tenant gives the landlord written notice of the tenant's intention not to continue with the tenancy; or
- Before the expiry a party gives notice that terminates on or before the expiry or that would do if the tenancy were already periodic.

No termination without grounds (s60AA):

A landlord commits an unlawful act where they purport to give notice to terminate or purport to apply to the Tenancy Tribunal for an Order terminating a tenancy knowing that they are not entitled to do.

Tenancy Tribunal Jurisdiction (s77):

The Tribunal can hear cases up to \$100,000 (previously \$50,000).

Suppression Orders (s95A):

The Tribunal may, on the application of any party to the proceedings or of its own accord and having regard to the interests of the parties and to the public interest order that all or part of the evidence or the name of any identifying particulars of any witness or party not be published .

In considering the request, the Tribunal may make an Order subject to conditions it thinks appropriate.

If a party has wholly or substantially succeeded in the proceedings applies for an Order that their name or identifying particulars not be published, the Tribunal must make the Order unless it considers it is in the public interest or justified because of the party's conduct or any other circumstance of the case.

Tribunal may make precuniary penalty Orders (s109B):

In making a penalty order where an unlawful act was committed, the Tribunal will consider whether the landlord has more than 6 tenancies or is a landlord in a boarding house and the landlord intentionally committed an unlawful act in respect to landlord responsibilities (s45 or s66()), retaliatory notice of termination (s54(3)), acting to terminate without grounds (60AA), contravening or evading the Act (137(2)).

The Tribunal will consider the nature and extent of the unlawful act, the nature and extent of any loss or damage suffered by any person because of the unlawful act, any gains made or losses

avoided by the landlord in the unlawful act and the circumstances in which the unlawful act took place.

The maximum penalty that the Tribunal can apply is \$50,000. No landlord is liable to more than one pecuniary penalty order for the same conduct.

New unlawful acts for tenants:

Tenant failing to reinstate premises at end of the tenancy following minor change - \$1,500.

Tenant assigning tenancy without the landlord's written consent - \$750.

Failing to comply with improvement notice - \$3,000.

Breaching an enforceable undertaking - \$1,000

New unlawful act for tenants from their existing RTA obligations:

Successor landlord or tenant failing to give notice - \$750.

Tenant failing to notify change of name or address - \$750.

New unlawful acts for landlords:

Landlord failing to state amount of rent when offering a tenancy - \$1,500.

Landlord inviting or encouraging bids for rent - \$1,500.

Landlord requiring rent for more than 2 weeks in advance or before rent already paid expires - \$1,500.

Landlord failing to respond to written request seeking consent for fixtures etc - \$1,500.

Landlord failing to consent to request of a minor change - \$1,500.

Landlord failing to respond to written request for consent for assignment of tenancy - \$1,500.

Landlord failing to itemise expenses incurred on assignment, subletting, parting with possession, or termination by consent - \$750.

Landlord failing to provide healthy homes information (including boarding houses)- \$750.

Landlord failing to take all reasonable steps to facilitate installation of fibre connection or respond to request - \$1,500.

Landlord acting to terminate tenancy without grounds - \$6,500.

Landlord failing to comply with an improvement notice - \$3,500.

Landlord breaching an enforceable undertaking - \$1,000.

Landlord disclosing notice of withdrawal or accompanying qualifying evidence of family violence - \$3,000.

New unlawful acts for landlords from their existing RTA obligations:

Landlord failing to ensure tenancy agreement is in writing, signed and provided to the tenant - \$750.

Landlord failing to ensure tenancy agreement includes certain information specified in section 13A(1) - \$750.

Successor landlord or tenant failing to give notice - \$750.

Landlord failing to notify change of name or address - \$750.

Landlord failing to give notice that premises are on the market - \$1,800.

Landlord (including boarding houses) failing to notify tenant of results of contamination test (for boarding houses relating to the room and to facilities) - \$1,000.

Infringement Notices (Schedule 1B):

There are no infringement notices for tenants.

There are a number of infringement notices for landlords and the amount of the infringement depends on the number of tenancies (fewer than 6 or greater than 6 tenancies (this includes landlords of boarding houses)).

There are maximum fines that apply (Column 3 – 6 or more tenancies including landlords who own boarding houses and Column 4 for 5 or fewer tenancies including landlords who own boarding houses).

Columns 5 and 6 are the infringement fees (Column 5 is for 6 or more tenancies and includes landlords who own boarding houses and Column 6 is for 5 or less tenancies (including landlords with boarding houses)).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Section	Description of offence	Fine(\$)	Fine(\$)	Fee(\$)	Fee(\$)
13(4)(b)	Failing to ensure tenancy agreement in writing, signed, and provided to tenant	2,000	1,000	1,000	500
13A(1G)	Failing to comply with section 13A(1A), (1CA), (1CB), or (2)	2,000	1,000	1,000	500
15(3)	Failing to give notice as successor	2,000	1,000	1,000	500
16(2A)	Failing to notify change of name or address	2,000	1,000	1,000	500
16A(6)(b)	Failing to appoint agent when outside New Zealand for longer than 21 consecutive days	3,000	1,500	1,000	500
17(5)	Requiring key money	3,000	1,500	1,000	500

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Section	Description of offence	Fine(\$)	Fine(\$)	Fee(\$)	Fee(\$)
17A(4)	Requiring letting fee	3,000	1,500	1,000	500
18(4)(b)	Requiring bond greater than amount permitted	3,000	1,500	1,000	500
18A(2)(b)	Requiring unauthorised form of security	3,000	1,500	1,000	500
19(3)	Breaching duties on receipt of bond	3,000	1,500	1,000	500
22F(3)(b)	Failing to state amount of rent in advertisement or offer	2,000	1,000	1,000	500
23(4)(b)	Requiring rent more than 2 weeks in advance or before rent already paid expires	3,000	1,500	1,000	500
29(6)	Failing to give receipt for rent	2,000	1,000	1,000	500
30(2)(b)	Failing to keep records	2,000	1,000	1,000	500
44A(3)(b)	Failing to itemise expenses incurred on assignment, subletting, parting with possession, or termination by consent	2,000	1,000	1,000	500
45(1AD)(b)	Failing to provide healthy homes information	2,000	1,000	1,000	500
47(4)	Failing to inform prospective tenants that premises on the market	3,000	1,500	1,000	500
48(4A)	Failing to notify tenant of results of test for contaminants	2,000	1,000	1,000	500
66I(7)	Failing to provide healthy homes information	2,000	1,000	1,000	500
66J(2B)(b)	Failing to inform prospective tenants that boarding house premises on the market	3,000	1,500	1,000	500
66J(4)(b)	Failing to notify tenant of results of test for contaminants (relating to boarding house facilities)	2,000	1,000	1,000	500
66T(1A)	Failing to notify tenant of results of test for contaminants (relating to boarding room)	2,000	1,000	1,000	500
123A(5)(b)	Failing to produce documents to chief executive	3,000	1,500	1,000	500