

Residential Tenancies Amendment Bill – Q&A's

General

1. Why is the government making changes to the Residential Tenancies Act 1986?

This Bill aims to make homes warmer, drier and safer for the 450,000 New Zealand households who live in rental accommodation. Currently the Residential Tenancies Act (RTA) requires landlords to keep their properties in a reasonable state of cleanliness and repair. Landlords must also comply with the specific standards in the Housing Improvement Regulations which detail minimum standards like ventilation and the provision of cooking facilities. However, these standards are outdated and do not go far enough to protect the health and safety of those who live in rental accommodation.

In 2013, the Government trialed a rental housing Warrant of Fitness for Housing New Zealand Corporation (HNZC) properties. Following this trial the Government refined the standards to focus on smoke alarms and insulation.

The key objectives of the proposed minimum requirements are to:

- reduce fire-related fatalities and injuries in residential rental properties
- make residential rental properties warmer, drier and easier to heat

2. What are the new requirements that I am going to have to comply with?

In order to give landlords, tenants and industry professionals sufficient time to understand and comply with the new requirements before they come into effect, the Ministry of Business, Innovation and Employment has placed some documents on its website that provide details of the proposed new regulations.

The link to the policy decisions that informed the development of the regulations can be found at: <http://www.mbie.govt.nz/info-services/housing-property/tenancy/proposed-residential-tenancies-regulations-for-insulation-and-smoke-alarms>

Enforcement

3. What are the new powers given to the chief executive of Ministry of Business, Innovation and Employment?

The key changes are:

- Where serious breaches of the Residential Tenancies Act (RTA) are alleged the chief executive of the Ministry of Business, Innovation, and Employment (MBIE) can investigate and, if necessary, take direct action against landlords. The chief executive can take action in cases where:
 - the condition of the premises poses a significant risk to health and safety; or
 - the landlord has committed a serious breach of the RTA; or
 - the landlord has persistently breached the RTA.

- Failing to inform the Tribunal or the chief executive of the provisions if requested of the tenancy agreement is an existing offence. The Bill increases the penalty to \$2,000.
- The chief executive will have the ability to publicly report on cases of note about those who are, or have been, landlords.
- The Bill will also allow the Tenancy Tribunal to permit persons authorised by the chief executive to inspect a premises in relation to a possible breach of the tenancy agreement or the Act in certain circumstances. An inspection could include making photos or videos of smoke alarms, underfloor and ceiling insulation, mould and also taking samples of things for analysis.

4. What are the other increased penalty amounts for?

The RTA will now have higher maximum payments for two unlawful acts in order to help address the natural power imbalance between tenants and landlords:

- the maximum amount payable by a landlord to a tenant in the form of exemplary damages, for failing to comply with regulations about smoke alarms or insulation has been increased from \$3,000 to \$4,000 to encourage landlords to comply with these important and potentially life-saving requirements.
- the maximum amount payable by a landlord to a tenant in the form of exemplary damages, for issuing a retaliatory notice to tenants who ask landlords to comply with their legal obligations, has been raised from \$2,000 to \$4,000 to provide a stronger deterrent.

5. What are the different responsibilities of landlords and tenants in enforcing and complying with the changes?

Landlords must meet the requirements for smoke alarms and insulation. Where a tenant considers that a property doesn't meet the insulation or smoke alarm standards (or existing requirements under the Housing Improvement Regulations) they will be able to use existing processes to take their concerns to the Tenancy Tribunal. If the Tenancy Tribunal agrees, then it can make a 'work order', requiring the landlord to make specified improvements.

Landlords will be responsible for correctly installing smoke alarms and making sure that they are working when the tenant moves in.

Tenants will be responsible for changing smoke alarm batteries during their tenancy, and are already required to reporting defective smoke alarms to the landlord under the RTA.

6. How will strengthened retaliatory provisions work?

The Government recognises that some tenants may be reluctant to bring complaints to the Tenancy Tribunal for fear of eviction, despite the RTA prohibiting retaliatory notices. Retaliatory notice refers to when a landlord gives a tenant notice to leave the property in retaliation for the tenant exercising their rights.

Currently, the Tenancy Tribunal can set aside a retaliatory notice where it considers it has been wholly or partly motivated by the tenant exercising their rights. However, the tenant only has 14 days to make an application for this and MBIE has found that tenants often pursue this option too late. To reduce barriers to tenants exercising their rights, the Government is strengthening

retaliatory notice provisions and extending the application period from 14 to 28 days. The Bill will also make it an unlawful act for a landlord to give a retaliatory notice, with a maximum penalty of \$4,000. This changes the current powers of the Tenancy Tribunal, which can currently only declare retaliatory notices to be of no effect.

Improvements to tenancy abandonment process

7. What are the details of the tenancy abandonment changes?

Under the current law, once a tenant has abandoned the property, it can take a landlord up to six weeks to confirm the property has been abandoned and get a Tribunal hearing to give them possession of the property.

To address this issue three key changes have been made:

a. To allow landlords 24 hours' notice of entry on suspicion of abandonment

Currently, landlords can only inspect a property monthly, after giving 48 hours' notice of inspection. Under the new changes, where rent is at least 14 days overdue, a landlord would be allowed to enter a rental property 24 hours after giving notice to confirm a reasonable suspicion that a property is abandoned, regardless of whether the landlord has already inspected the property within the last four weeks.

The landlord must have reasonable grounds to support their application to the Tribunal for suspecting abandonment, and for example could include:

- tenant not responding to usual forms of communication;
- landlord's view of property from the street indicates house is empty and tenant has abandoned; or
- neighbours do not know where tenant is and can provide evidence tenants have left.

b. That abuse of this inspection power is to be an unlawful act

Abuse of this power by a landlord will constitute a breach of tenant privacy with a fine of up to \$2,000 if they use force or the threat of force to enter. If they enter without proper permission in respect of rent being in arrears and a reasonable suspicion, then this is an unlawful act and the penalty could be up to \$1,000.

c. The creation of a new statutory requirement for abandonment (possession) applications to be heard within 10 working days

The proposed changes to the RTA are that abandonment (possession) applications be heard by the Tenancy Tribunal without a hearing within ten working days of receipt, where reasonably practicable and subject to the following conditions:

- the landlord has provided contact details provided by the tenant in the tenancy agreement, or subsequently, to allow expedited service of notice of a hearing; and
- the application is uncontested by the tenant.

Insulation

8. What are a landlord's obligations in respect to insulation?

The Bill creates regulation making powers to prescribe the location, quantity, and other technical requirements for insulation.

Social housing landlords (for tenancies that receive an income-related rent subsidy) must install ceiling and floor insulation by the commencement date for the Bill. Landlords of all other residential rental properties must install the required ceiling and underfloor insulation by 1 July 2019, and meet the regulatory requirements. Failure to comply with these requirements is an unlawful act, for which landlords can be liable for a financial penalty.

Landlords will be required to disclose the extent of insulation in their properties as part of the tenancy agreement from 1 July 2016. Failure to provide this information, or providing false or misleading information, will become unlawful acts. However, for buildings where the insulation details are unknown and the landlord has made all reasonable efforts to obtain the required information, they are able to make a statement to this effect.

Landlords must continue to comply with the existing requirements contained in the Housing Improvement Regulations, such as providing cooking facilities and adequate ventilation.

9. Will anyone be inspecting my properties? What if landlords have not complied?

No official will individually inspect all properties.

However, tenants have the right to inspect their rental accommodation to ensure it complies. If tenants believe that landlords have not complied with the requirements, they need to first approach their landlord. If the issue is still not resolved they may take the case to the Tenancy Tribunal, where a work order may be made.

The Government recognises that some tenants may be reluctant to complain for fear of eviction, despite the RTA prohibiting retaliatory notices. Where serious breaches of the RTA are alleged, the chief executive may, if satisfied it is in the public interest to do so, investigate and, if necessary, take action against the landlord (such as taking the landlord to the Tenancy Tribunal).

10. How much will it cost and is it tax deductible?

Cost

The average cost of retrofitting both ceiling and floor insulation is approximately \$3,400. Landlords are responsible for the costs of insulating their homes. They may increase rent to compensate for compliance costs. However, rent increases are subject to safeguards. If a landlord increases rent they must comply with current requirements under the Residential Tenancies Act, such as the requirements to give clear notice and 60 days before imposing the rent increases.

Tax deductibility

We recommend that this issue be discussed with your tax advisor, but broadly, for properties that had no existing insulation, the installation of insulation is considered a capital improvement so is not

tax deductible. However, if a property had existing insulation which is just getting replaced or repaired, the costs are tax deductible as they are considered repairs and maintenance.

11. Are there any exemptions for insulation requirements?

Yes, there will be three exemptions:

- a. *Properties where it's impractical to retrofit due to limitations in the property's physical design* – for example, because of limited under-floor space. (In these cases, retrofitting of insulation may be technically possible, but would involve unreasonable measures such as installing a false ceiling or taking up the floor.) It is estimated that approximately 100,000 properties will not be able to be practically insulated.
- b. *Properties which are sold and immediately rented back to the former owner-occupier for a period of up to 12 months.* This includes properties acquired by the NZ Transport Agency for roading projects, or by private developers.
- c. *Properties where, within 12 months from the start of a tenancy, the landlord intends to demolish the property or substantially rebuild parts of the property.* If requested, the landlord will need to provide evidence that they have applied for the relevant resource consent or building consent for redevelopment work.

12. Can landlords install insulation themselves?

Landlords are able to install their insulation themselves. However, if landlords install the insulation incorrectly they may face insurance and liability consequences for failure to install in accordance with the minimum requirements, so it would be easier to employ a professional to do it. The government would therefore encourage landlords to consider hiring professional installers, as they reduce health/safety and quality assurance risks, and can often buy insulation bulk and pass these savings onto clients, reducing costs for landlords.

Smoke Alarms

13. What does the Bill change in respect of smoke alarms?

The Bill creates regulation making powers to prescribe the type, location, numbers, and other technical requirements for smoke alarms. The landlord will be responsible for ensuring that the smoke alarms are operational at the beginning of each new tenancy. The tenant will be responsible for changing batteries during their tenancy, and are already required to reporting defective smoke alarms to the landlord under the RTA.

Smoke alarms must be installed in all residential rental properties by 1 July 2016. Failure by landlords to comply with the regulations will be an unlawful act, and the landlord may be liable for a financial penalty of up to \$4,000.

14. Can landlords install the smoke alarms themselves?

Yes, providing the installation meets the required regulatory standards and the landlord believes they can install the smoke alarms safely.