



Cabinet Social Wellbeing Committee

Minute of Decision

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Reform of the Residential Tenancies Act 1986: Improving Fairness in the Act

Portfolio Associate Housing (Public Housing)

On 25 September 2019, the Cabinet Social Wellbeing Committee:

- 1 **noted** that in July 2018, the government initiated a reform of the Residential Tenancies Act 1986 (the Act) centred around the primary objective of improving tenants' security of tenure while maintaining adequate protection of landlords' interests, and:
 - 1.1 agreed to the release of the discussion document *Reform of the Residential Tenancies Act 1986: Discussion Document*;
 - 1.2 noted that the Minister of Housing and Urban Development would report-back in 2019 with recommended changes to the Act;

[SWC-18-MIN-0080]
- 2 **noted** that public consultation on the reform of the Act ran for seven weeks between August and October 2018 and that submissions representing the viewpoints of 4,787 viewpoints were received;
- 3 **noted** that, due to the size and complexity of the reform of the Act programme, the first stage of the reform will focus on the aspects concerning the general rental market first, and changes to the boarding house provisions of the Act will progress on a longer-term basis;
- 4 **noted** that further papers on the reform of the Act will follow seeking agreement to matters such as the processes and obligations that should apply for keeping pets in, and adding minor fittings to, rental properties, the general responsibilities parties have, and the way rent is set and how frequently it can be increased, among other matters;

Changes to improve tenant's security of tenure

Termination Provisions

- 5 **noted** that the current provisions of the Act may be having a negative impact on security of tenure;
- 6 **noted** that negative impacts of insecure tenure can manifest in a range of adverse social outcomes, unintended costs for tenants, and generally compromise the integrity of the law by disincentivising tenants to exercise their legal rights;

- 7 **noted** that section 51(1)(d) of the Act enables landlords to end a periodic tenancy “in any other case” (with no cause);
- 8 **noted** that submissions show that landlords consider that the ability to end a periodic tenancy with no cause is an essential property management tool in a range of circumstances, including when tenants display antisocial behaviour and in instances where rent is frequently in arrears, but not at the threshold that would compel the Tenancy Tribunal to terminate the tenancy;
- 9 **noted** that officials do not consider it possible to fully mitigate landlord concerns if the ability to end a periodic tenancy with no cause is removed, as this will always be more enabling for landlords than a system that constrains when tenancies may be terminated;
- 10 **noted** that the Associate Minister of Housing (Public Housing) (the Associate Minister) is sympathetic to the landlord view, but considers that the security of tenure benefits that will arise from removing the ability to end a periodic tenancy with no cause must take precedence over the costs that could fall to landlords in some situations and that mitigations the Associate Minister proposes will address landlord concerns to some extent;
- 11 **agreed** to remove the ability for landlords to end a periodic tenancy with no cause with the effect that periodic tenancies that are ended without the involvement of the Tenancy Tribunal would be ended for legally specified reasons only;
- 12 **noted** that additional reasons will need to be specified in the Act to provide for periodic tenancies to be ended for legitimate reasons in substitution for the removal of the ability to end a periodic tenancy with no cause;
- 13 **agreed** that new specified reasons for terminating a periodic tenancy be included in the Act that provide for tenancies to end in the following circumstances:
- 13.1 the owner intends to make the property available for sale within 90 days of the tenant ceasing to occupy it;
 - 13.2 where the property has been acquired in support of a business use (where that business is not the provision of residential rental accommodation) and termination is required for the purposes of the business (and this was foreshadowed in the tenancy agreement);
 - 13.3 the landlord intends to carry out extensive alterations, refurbishment, repairs, or redevelopment of the premises and it would not be reasonably practicable for the tenant to continue to live there while the work was being undertaken;
 - 13.4 the landlord wants to change the use of the premises (e.g. from residential to commercial);
 - 13.5 the premises are to be demolished; or
 - 13.6 the landlord is not the owner of the premises and the landlord’s interest in the property ends;
- 14 **agreed** that, consistent with other termination provisions that apply to periodic tenancies in the Act, landlords should be able to issue notice in the circumstances described in paragraph 13 above without the involvement of the Tenancy Tribunal, unless challenged by the tenant;

- 15 **noted** that public housing providers are also bound by the Act but have differing business needs to private landlords arising from requirements to transfer tenants from one property to the other to order to sustain, rather than end, the tenancy;
- 16 **agreed** to the following additional circumstances for terminating a periodic tenancy that would only apply to public housing:
- 16.1 the tenant is no longer eligible for public housing or the premises ceases to be funded as a public housing place and/or the community housing provider is no longer registered as a community housing provider; or
- 16.2 the tenant needs to be transferred to a different public housing property that is considered to better match their needs, the public housing provider's business requirements, or the needs of the community;
- 17 **agreed** to the following new processes that will allow a periodic tenancy to be terminated by the Tenancy Tribunal in the following circumstances:
- 17.1 where a tenant has been at least five working days late with their rent payment on three separate occasions within any 90-day period, and application to the Tribunal is made with 28 days of the third notice being issued;
- 17.2 where three notices for individual acts of antisocial behaviour have been issued reasonably and fairly by the landlord within any 90-day period and application to the Tribunal is made with 28 days of the third notice being issued;
- 17.3 for any other reason where the Tribunal considers on balance that the landlord's application to end the tenancy is legitimate and fair, taking into account the impact on the tenant;
- 18 **agreed** that the antisocial behaviour referred to in paragraph 17 above should broadly cover situations where repeated acts by a tenant in the context of their tenancy cause harassment, alarm or distress to a third party, but that legislation should be non-exhaustive so that the specific behaviours and acts in scope of this can evolve over time;
- 19 **agreed** that where the Tenancy Tribunal terminates a periodic tenancy for the grounds set out in paragraph 17, the Tenancy Tribunal will determine the notice period;
- 20 **agreed** that the existing ground enabling a periodic tenancy to be terminated so that an owner or member of their family can be moved in is amended, so that this ground can only be exercised in circumstances where the owner or family member intends to use the property as their principal place of residence for a minimum of 90 days;
- 21 **agreed** that the intentional misuse of termination provisions be established as a new unlawful act and subject to the maximum penalties set out in Schedule B and Schedule C of Appendix 1, attached to the submission under SWC-19-SUB-0142;

Notice Periods

- 22 **noted** that the Act currently allows periodic tenancies to be terminated with 42 days' notice in certain situations without the Tenancy Tribunal's involvement, and that the Associate Minister considers this is problematic when tenants are unable to find suitable alternative accommodation within this timeframe;

- 23 **agreed** to increase the amount of notice that landlords would need to give when terminating a periodic tenancy from 42 to 63 days on the following grounds currently specified in the Act:
- 23.1 the owner or their family member requires the premises to live in; and
- 23.2 the property is needed for an employee and this was foreshadowed in the tenancy agreement;
- 24 **agreed** to increase the amount of notice that landlords would need to give when terminating a periodic tenancy from 42 to 90 days on the following ground currently specified in the Act: the property has been sold with a requirement by the new owner for vacant possession;
- 25 **noted** that the increase in notice in paragraphs 23 and 24 does not affect the current termination provisions in the case of the death of the sole tenant, the destruction of the premises, or in relation to service tenancies;
- 26 **agreed** that the amount of notice that landlords would need to give when terminating a periodic tenancy for the new grounds set out in paragraphs 13 and 16 be 90 days;
- 27 **noted** that, while this proposal is expected to provide tenants with greater security of tenure, it may have implications for settlement processes, and increase the likelihood of landlords being exposed to periods of lost rent;
- 28 **agreed** that tenants should be required to give 28 days' written notice instead of 21 days' written notice, when ending a periodic tenancy;

Tenancy Agreements

- 29 **noted** that the existing arrangements for fixed-term agreements may be having a negative impact on security of tenure as:
- 29.1 tenants can be moved on from a property solely because the fixed term has expired, and the tenant can be notified that the tenancy will not be continuing with as little as 21 days' notice; and
- 29.2 some tenants may find themselves locked into a cycle where their fixed-term tenancies end during peak times of the year when it is more difficult to find alternative accommodation;
- 30 **agreed** that at the end of the term of a fixed-term tenancy:
- 30.1 both parties can agree to end the tenancy;
- 30.2 both parties can agree to extend or renew the fixed-term;
- 30.3 the tenant can give at least 28 days' notice before the end of the fixed term that they wish to vacate the premises when the fixed term ends; or
- 30.4 the landlord can give notice for the current and additional reasons specified in the Act in relation to periodic tenancies, with the notice period of at least 63 or 90 days before the end of the fixed term, in accordance with the notice period for that termination ground; or
- 30.5 the fixed-term tenancy will automatically become a periodic tenancy;
- 31 **agreed** that the decisions in the paragraphs above will not apply to boarding house

tenancies, as the circumstances surrounding these tenancies are different to standard tenancy arrangements;

Changes to Strengthen Enforcement and Improve Compliance

- 32 **noted** that tighter conditions in the private rental market make it increasingly unlikely that tenants will raise issues about their rental property with landlords, which reduces the effectiveness of the self-resolution framework that underpins the law, and increases the risk of non-compliance;
- 33 **noted** that the introduction of new requirements, such as the Healthy Homes Standards, which adds additional compliance costs for some landlords, will further exacerbate the growing risk of non-compliance in rentals not meeting minimum standards, particularly for those living in poorer quality housing;
- 34 **noted** that benefits for security of tenure and the other matters expected to be delivered through the reform of the Act will be limited unless enough incentives exist for landlords to comply with the law;

New tools for the Regulator

- 35 **noted** that while the Ministry of Business, Innovation and Employment as the Regulator was given an increased authorisation under the Act to address serious non-compliance in July 2016, the Regulator does not have a proportionate range of tools to deal with lower-level breaches and to take action before those breaches escalate;
- 36 **agreed** to establish an infringement regime that would enable the Chief Executive (or delegate) of the department acting as the Regulator for the tenancy market to issue infringements notices for strict liability offences;
- 37 **agreed** that the infringement regime outlined in paragraph 36 will apply to the strict liability offences outlined in Schedule A of Appendix 1, attached to the submission under SWC-19-SUB-0142, which includes some new unlawful acts, with higher penalties applicable to landlords with six or more tenancies;
- 38 **agreed** that revenue generated from the issuance of infringements will be paid to the Crown;
- 39 **agreed** to provide the department acting as the Regulator for the tenancy market with the power to enter into Enforceable Undertakings, negotiated agreements with a landlord or tenant to address minor or technical breaches, with the breach of the agreement being an unlawful act;
- 40 **agreed** to provide the department acting as the Regulator for the tenancy market with the power to issue Improvement Notices to direct a landlord or tenant to take specific actions, in a specified timeframe, to remedy a breach or avoid a likely breach, with failure to comply with the notice being an unlawful act;

- 41 **agreed** to amend the Act to establish the breach of the following requirements as new unlawful acts with the corresponding maximum penalty set out in Schedule B of the submission under SWC-19-SUB-0142:
- 41.1 failure to have a written tenancy agreement and/or provide a copy to the tenant, without reasonable excuse (sections 13(1) and 13(2));
 - 41.2 failure to notify details specified in 15(1) (a) and (b) when a landlord's or tenant's interest passes to another person, without reasonable excuse (section 15(1));
 - 41.3 failure to notify a change of name and contact address to the other party of the tenancy, without reasonable excuse (section 16(1));
 - 41.4 landlord failing to give notice to tenant or prospective tenant that premises are on the market (sections [47\(1\)](#) and [\(2\)](#));
 - 41.5 landlord failing to advise tenant of any contamination test results within 7 days of receipt (if landlord used right of entry for testing) (section 48(3B), to be brought into force at the same time as section 48(3B));

Increasing civil penalties

- 42 **noted** that the penalties applicable to breaches of the Act have not been reviewed since 2006 and, if adjusted for inflation in rental costs, are 60 percent too low in real terms;
- 43 **agreed** to the increases to exemplary damage penalties available in the Tenancy Tribunal as outlined in Schedule B of Appendix 1, attached to the submission under SWC-19-SUB-0142;
- 44 **agreed** to the introduction of a new civil pecuniary penalty awardable by the Tenancy Tribunal and payable to the Crown that would apply to the serious breaches as outlined in Schedule C of Appendix 1, attached to the submission under SWC-19-SUB-0142;
- 45 **agreed** that the legislation set out criteria to assist the Tenancy Tribunal in determining whether a breach of one of the provisions in Schedule C of Appendix 1 warrants the higher civil pecuniary penalty, based on the current criteria in the Act in relation to exemplary damages, and appropriate provisions from other pecuniary penalty regimes;
- 46 **agreed** that the legislation will rationalise the current exemplary damages provisions where the application is made by the Regulator with the new civil pecuniary penalties;
- 47 **agreed** that civil pecuniary penalties only apply to landlords with six or more tenancies;

New and increased criminal penalties

- 48 **noted** that the Act contains a small number of criminal offences and associated fines that are too low to deter offending;
- 49 **agreed** to increase the maximum fines for criminal offences under the Act as outlined in Schedule D of Appendix 1, attached to the submission under SWC-19-SUB-0142;
- 50 **agreed** to a new criminal offence for breaching a Tenancy Tribunal work order, where the ongoing breach creates a continued risk to the health, safety, security and habitability of the buildings or property or inhabitants with a maximum fine of \$3,600;

How the penalties fit together

- 51 **agreed** that an infringement fee or fine, a civil pecuniary penalty or exemplary damages cannot be imposed in respect of the same breach of the Act;
- 52 **noted** that a tenant may seek compensatory damages, whether or not an infringement fee or fine, a civil pecuniary penalty, or exemplary damages has already been imposed in respect of the same breach of the Act;

Administrative matters

- 53 **agreed** to broaden the general functions and powers of the chief executive of the department acting as Regulator under the Act to include monitoring and assessing compliance of landlords with that Act;
- 54 **agreed** that landlords be required to retain an expanded range of documents, including rent and bond records, and other documents required to demonstrate compliance with their general responsibilities and obligations under the Act, such as building records or documentation under the Safety at Work Act 2015, and that this will include documents that predate a landlord's current tenancy at the property;
- 55 **authorised** the Associate Minister to decide on the specific documents that will be required in the context of paragraph 54 above;
- 56 **agreed** that the specific documents that landlords must retain will be clearly listed in the Act or regulations so that landlords are aware of these new obligations;
- 57 **agreed** that landlords be required to provide the expanded range of documents established by paragraph 54 above to the Regulator if requested for the purpose of ascertaining a landlord's compliance with the Act;
- 58 **agreed** to increase the jurisdiction limit of the Tenancy Tribunal from \$50,000 to \$100,000 to reflect the increase in rental costs (and associated compensation and damages awards) and proposed penalties;
- 59 **agreed** that the Regulator can apply for exemplary damages and civil pecuniary penalties to the Tenancy Tribunal no later than 12 months after the date on which the Regulator becomes aware of the matter;
- 60 **agreed** that the Regulator should have the ability to consolidate multiple applications for breaches by a single party into a single application for the Tenancy Tribunal;
- 61 **noted** that landlords with six or more tenancies are subject to higher penalties as outlined in paragraphs 37 and 47;
- 62 **agreed** that the Act is amended to prevent landlords from structuring their legal affairs to appear to have fewer than six tenancies in order to avoid this threshold;

Financial Implications

- 63 s 9(2)(f)(iv)

64 [REDACTED] s 9(2)(f)(iv)

Next Steps

- 65 **noted** that the Residential Tenancies Reform Bill [REDACTED] s 9(2)(f)(iv) and that this Bill will incorporate both the decisions in the paper under SWC-19-SUB-0142, and in a further paper to be submitted later in 2019;
- 66 **authorised** the Associate Minister to issue drafting instructions to the Parliamentary Counsel Office to draft legislation giving effect to the decisions above;
- 67 **authorised** the Associate Minister to make minor policy decisions on issues arising throughout the drafting process;
- 68 **noted** that the Associate Minister intends to introduce legislation to Parliament by March 2020;
- 69 **agreed** that the summary of submissions for the public consultation be published on the Ministry of Housing and Urban Development's website at the time that the government's decisions on the reform are publicly announced.

Jenny Vickers
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Kelvin Davis
Hon Grant Robertson
Hon Dr Megan Woods
Hon Carmel Sepuloni (Chair)
Hon Dr David Clark
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Kris Faafoi
Hon Tracey Martin
Hon Willie Jackson
Hon Julie Anne Genter

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