



# Briefing

<b>Covid-19: Residential Tenancies Act amendments</b>			
<b>Date:</b>	24 March 2020	<b>Security level:</b>	In Confidence
<b>Priority:</b>	Urgent	<b>Report number:</b>	BRF19/20030594

Action sought		
	Action sought	Deadline
Dr Megan Woods <b>Minister of Housing</b>	Agree to include Residential Tenancies Act amendments in omnibus Covid-19 response legislation, to implement a freeze on rent increases and additional protections for tenants from tenancy terminations	For Cabinet Business Committee meeting Tuesday, 24 March 2020
Rt Hon Jacinda Ardern <b>Prime Minister</b>		

Contact for discussion				
Name	Position	Telephone		1 <sup>st</sup> contact
Brad Ward	Deputy Chief Executive, Place-based Policies and Programmes		s 9(2)(a)	
Claire Leadbetter	Manager Tenures and Housing Quality			✓

<b>Other agencies consulted</b>
Limited consultation with Ministry of Justice, Tenancy Tribunal, Parliamentary Counsel Office, MBIE Tenancy Services

### Minister's office to complete

<ul style="list-style-type: none"><li><input type="checkbox"/> Noted</li><li><input type="checkbox"/> Seen</li><li><input type="checkbox"/> Approved</li><li><input type="checkbox"/> Needs change</li><li><input type="checkbox"/> Not seen by Minister</li><li><input type="checkbox"/> Overtaken by events</li><li><input type="checkbox"/> Declined</li><li><input type="checkbox"/> Referred to (specify)</li></ul> <hr/>	<b>Comments</b>
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**Date returned to MHUD:**

# Briefing

## Covid-19: Residential Tenancies Act amendments

**For:** Minister of Housing, Prime Minister

**Date:** 24 March 2020

**Security level:** In Confidence

**Priority:** Urgent

**Report number:** BRF19/20030594

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### Purpose

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1. Yesterday in response to Covid-19, the Prime Minister announced a freeze on residential rent increases, and increased protection for tenants from having tenancies terminated. This briefing seeks agreement to policy and implementation details, to be included in a proposed omnibus Covid-19 response Bill which will amend the Residential Tenancies Act 1986 (the RTA).

2.

s 9(2)(f)(iv)

### Executive summary

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3. The purpose of these RTA measures is to sustain tenancies to the greatest extent possible and to protect tenants from becoming homeless at this time. This will help ensure that:
  - for public health reasons families and individuals are able to self-isolate, and to stay home and maintain physical distancing
  - in the short term, families and individuals who are tenants do not lose their home due to a drop in income related to job losses through Covid-19.
4. Sustaining tenants in their current homes will help prevent further pressure on our welfare system at this time. s 9(2)(f)(iv)
5. At the same time, it is not acceptable for tenants to abuse the current situation by refusing to pay rent when they have the capacity to do so, causing significant property damage, or significant anti-social behaviour. The measures proposed try to balance protection of the interests of tenants, landlords, and the wider community.
6. We understand that Ministers intend the measures to take effect immediately for a time period of six months. The Parliamentary Counsel Office and Ministry of Justice recommend that:
  - the measures take effect from 1:30 PM on 23 March 2020 (i.e. from the time of the Prime Minister's announcement)
  - the rent increase freeze apply for six months,
  - changes to termination provisions apply for an initial period of three months, with one further three month extension possible by Order in Council. The rationale for the shorter period is that this is a significant change to current landlord property rights.

Note there is an error in paragraph 6. The Parliamentary Counsel Office and Ministry of Justice did not make the recommendation noted under the first bullet point of para 6.

### *Rent increase freeze*

7. Under the proposed measures, increases in rent will be prohibited under any circumstances, for the period of the legislative amendments. This will also apply to boarding house tenancies. The RTA already prohibits landlords from charging any additional fees in lieu of rent increases.
8. Clear communications messages will be important so that the freeze is not interpreted as tenants not being required to pay any rent during this period.

### *Tenancy terminations (except for boarding house tenancies)*

9. Officials propose that to achieve Ministers' objectives, a landlord will only be able to apply to the Tenancy Tribunal to have a tenancy terminated for the following specific reasons:
  - **anti-social behaviour** (not included in current RTA provisions; proposed to be defined as per the RTA Amendment Bill but only requiring one instance of anti-social behaviour rather than three and the landlord need not give notice, but must simply apply to the Tribunal. Anti-social behaviour is defined as: harassment; or any intentional act, if the act reasonably causes significant alarm, distress, or nuisance.
  - **substantial property damage** (unchanged from current RTA provisions, s 55(1)(b))
  - **assault or threat of assault** (unchanged from current RTA provisions, s 55(1)(c))
  - the property is **uninhabitable** (unchanged from current RTA provisions, s 59A)
  - **death of a tenant**, where the tenant is the sole occupant of the property (unchanged from current RTA provisions, s 50(a))
  - **abandonment of a tenancy**, unchanged from current RTA provisions, s 61.
10. In addition, where a tenant is in **rent arrears**, officials propose two options for Ministers to consider:
  - Option 1: Agree that rent arrears is not a ground for termination of tenancy during the relevant time period, despite hardship that may result for the landlord, or
  - Option 2: agree that where a tenant is in rent arrears of more than 42 days (increased from 21 days under the current provisions), a landlord may apply to the Tenancy Tribunal for termination, and the Tribunal can: i) take into account whether the tenant is making reasonable endeavours to pay rent, and ii) balance the interests of the tenant and landlord in deciding whether termination is justified.
11. The same rent arrears options apply to boarding house tenancies.
12. To mitigate any unintended consequences from making legislative amendments at pace, officials also propose that the Tenancy Tribunal has discretion to consider any exceptional circumstances that may apply with regard to a landlord application to terminate a tenancy. The Tenancy Tribunal will have the power to determine the appropriate notice that tenants will receive in the circumstances.
13. Where a tenant has symptoms of Covid-19, or is confirmed as positive, this is not grounds for a landlord to terminate a tenancy. Note that a tenant is not required to notify their landlord if they test positive for Covid-19, unless the landlord needs to undertake urgent repairs at the property while the tenant is self-isolating. While this is not a legislative requirement, communications messages will provide clear guidance on this.

### *Tenancy termination: boarding house tenancies*

14. Boarding houses require different treatment because tenants share communal spaces where there may be a higher risk of exposure to Covid-19. The populations living in boarding houses also tend to be more vulnerable.
15. Officials propose a temporary freeze on terminations in boarding houses as for other tenancies, but with exemptions to cover situations where other occupants may be put in danger (for example, a tenant has threatened other tenants or caused significant damage, or

breached self isolation requirements.) In these situations we propose a mandatory **28 day notice period** (the maximum current notice period under the RTA).

16. Where a boarding house tenant has symptoms of or tests positive for Covid-19, this is not in itself grounds for terminating a tenancy. However, other residents are likely to be required to self-isolate under Ministry of Health guidelines. (Health officials may temporarily move a boarding house tenant to other accommodation to self-isolate, if available. Officials are working to urgently increase the availability of such accommodation for vulnerable groups).

#### *Other issues*

17. Officials propose that breaching rent increase provisions or tenancy termination provisions constitutes an unlawful act, with exemplary damages of \$6,500 payable in each case.
18. To avoid tenants in fixed-term tenancies being disadvantaged, officials seek agreement that the duration of these measures, fixed-term tenancies automatically convert to periodic tenancies, unless otherwise agreed with their landlord. This allows security of tenure and a safe place for the tenant to stay during a public health emergency. For clarity, this means that current fixed term tenancies will become subject to the same protections as periodic tenancies.
19. The RTA applies to public housing tenancies as well as the private rental market so the termination measures will also apply to Kāinga Ora and Community Housing Providers.

### **Recommended actions**

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20. It is recommended that you:
1. **Agree** that the rent increase freeze and tenancy termination measures below be included in omnibus Covid-19 legislation currently being drafted *Agree / Disagree*
  2. **Agree** that these measures take effect from 1:30pm on Monday, 23 March 2020 *Agree / Disagree*
  3. **Agree** that the rent freeze apply for a period of six months *Agree / Disagree*
  4. **Agree** that changes to tenancy termination measures apply for three months, with one further extension of up to three months possible by Order in Council *Agree / Disagree*
  5. **Note** that some landlords may have already increased rents or terminated tenancies prior to 1:30pm 23 March 2020, and these increases or terminations will remain valid providing that the landlord followed current RTA rules and processes *Agree / Disagree*
  6. **Agree** that to provide certainty for tenants in fixed term tenancies at this time, for the duration of these measures, fixed term tenancies automatically convert to periodic tenancies unless otherwise agreed between the landlord and tenant *Agree / Disagree*

#### **Rent increase freeze**

7. **Agree** that rent increases for all residential tenancies are prohibited under any circumstances, for the time period in recommendation 3 above, *Agree / Disagree*

## Termination of tenancies (except boarding house tenancies)

8. **Agree** that for the time period in recommendation 4 above, a landlord may only terminate a tenancy for the specific reasons below: *Agree / Disagree*
- 8.1 **significant anti-social behaviour** (not captured under current RTA provisions; proposed modified definition from the RTA Amendment Bill)
  - 8.2 **substantial property damage**, unchanged from current RTA provisions
  - 8.3 the property is **uninhabitable**, unchanged from current RTA provisions
  - 8.4 **death of a tenant**, where the tenant is the sole occupant of the property, unchanged from current RTA provisions
  - 8.5 **abandonment of a tenancy**, unchanged from current RTA provisions
9. In addition to recommendation 8, where a tenant is in **rent arrears**:
- EITHER*
- 9.1 Agree that this is not a ground for termination of tenancy during the relevant time period, despite hardship that may result for the landlord
- OR*
- 9.2 agree that where a tenant is in rent arrears of more than 42 days, a landlord may apply to the Tenancy Tribunal for termination, and the Tribunal can:
- i) take into account whether the tenant is making reasonable endeavours to pay rent, and
  - ii) balance the interests of the tenant and landlord in deciding whether termination is justified
- Agree / Disagree*
10. **Note** that where a landlord cannot terminate a tenancy, a tenant is nonetheless liable for rent arrears or damage beyond fair wear and tear during the relevant period *Noted*
11. **Agree** that the following reasons are not grounds for a landlord applying to the Tenancy Tribunal to terminate a tenancy during this time period:
- 11.1 a tenant has symptoms of Covid-19, or is confirmed to have Covid-19
  - 11.2 a landlord wishes to sell the rental property
  - 11.3 a landlord wishes to move into the property themselves, or for family members to move into the property
- Agree / Disagree*
12. **Agree** that the Tenancy Tribunal has discretion to consider any exceptional circumstances that may apply with regard to a landlord application to terminate a tenancy and that the Tribunal have the power to determine the appropriate notice that tenants will receive in the circumstances *Agree / Disagree*
13. **Agree** that tenants' obligations in relation to terminating a tenancy remain unchanged *Agree / Disagree*

14. **Agree** to include an override provision in the omnibus legislation that during the relevant period the Tenancy Tribunal may in its discretion hear proceedings seeking termination of a tenancy on the papers rather than requiring parties to attend

*Agree / Disagree*

#### **Termination of boarding house tenancies**

15. **Agree** that the landlord can only terminate a boarding house tenancy during the relevant period if the tenant has:
- 15.1 **rent arrears** (consistent with provision for other tenancies, recommendation 9.1 or 9.2 above)
  - 15.2 caused, or threatened to cause, **serious damage** to the premises (unchanged from section 66U(1)(a); or
  - 15.3 endangered, or threatened to **endanger, people or property** (unchanged from section 66U(1)(a), including for example breaching self isolation requirements; or
  - 15.4 caused, or threatened to cause, **serious disruption to other tenants** (unchanged from section 66U(1)(a); or
  - 15.5 the tenant is **using the premises for an illegal purpose**; or
  - 15.6 the landlord believes, having complied with section 66X, that the tenant has **abandoned the room**.

*Agree / Disagree*

16. **Agree** that where one of these termination grounds applies, the landlord must give 28 days notice (aligned with the current maximum under the RTA)

*Agree / Disagree*

#### **Unlawful acts**

17. **Agree** that increasing rent during the relevant period is an unlawful act, with exemplary damages payable up to \$6,500
18. **Agree** that purporting to terminate a tenancy during the relevant period on any grounds except those expressly permitted is an unlawful act with exemplary damages payable up to \$6,500

*Agree / Disagree*

*Agree / Disagree*

#### **Communications and Regulatory Impact Assessment**

19. **Note** that officials will work with ministerial offices to provide communications messages for the RTA amendments
20. **Note** that officials will work with MBIE Tenancy Services to provide clear guidance for landlords and tenants
21. **Note** that due to the urgent nature of the legislative amendments proposed, officials have not undertaken any consultation with tenant or landlord stakeholder groups
22. **Note** that due to the urgent nature of the legislative amendments proposed, officials have not undertaken a Regulatory Impact Assessment
23. **Note** that there may be some financial impacts for the Tenancy Tribunal. Officials will report back on financial implications and potential funding needs over coming weeks.

*Noted*

*Noted*

*Noted*

*Noted*

*Noted*



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Brad Ward  
**Deputy Chief Executive, Place-based  
Policies and Programmes**

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Hon Dr Megan Woods  
**Minister of Housing**

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Rt Hon Jacinda Ardern  
**Prime Minister**

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## Background

21. Yesterday in response to Covid-19, the Prime Minister announced a freeze on residential rent increases, and protection for tenants from having tenancies terminated.
22. The purpose of these Residential Tenancies Act (RTA) measures is to the greatest extent possible to sustain tenancies and protect tenants from becoming homeless at this time. This will help ensure that:
  - for public health reasons families and individuals are able to self-isolate, and to stay home and maintain physical distancing
  - in the short term, families and individuals who are tenants do not lose their home due to a drop in income related to job losses through Covid-19.
23. Sustaining tenants in their current homes will help prevent further pressure on our welfare system at this time. s 9(2)(f)(iv)
24. At the same time, it is not acceptable for tenants to abuse the current situation by refusing to pay rent when they have the capacity to do so, causing significant property damage, or significant anti-social behaviour. The measures proposed try to balance protection of the interests of tenants, landlords, and the wider community.

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## Application of proposed Residential Tenancies Act amendments

25. We understand that Ministers intend the measures to take effect immediately. The Parliamentary Counsel Office and Ministry of Justice recommend that:
  - the measures take effect from 1:30 PM on 23 March 2020 (i.e. from the time of the Prime Minister's announcement)
  - the rent freeze apply for six months
  - changes to termination provisions apply for an initial period of three months, with further three month extensions possible by Order in Council. The rationale for the shorter period is that this is a significant change to current landlord property rights.

Note there is an error in paragraph 25. The Parliamentary Counsel Office and Ministry of Justice did not make the recommendation noted under the first bullet point of para 25.

26. Any rent increase notified prior to 1:30 PM 23 March 2020 and any terminations which have taken effect prior to 23 March 2020 will be valid if the landlord has followed the notice and process rules currently in the RTA.
27. To avoid tenants in fixed-term tenancies being disadvantaged, officials seek agreement that the duration of these measures, fixed-term tenancies automatically convert to periodic tenancies, unless otherwise agreed with their landlord. This allows security of tenure and a safe place for the tenant to stay during a public health emergency. For clarity, this means that current fixed-term tenancies will become subject to the same protections as periodic tenancies.
28. The amendments will not change tenants' obligations in relation to terminating a tenancy, i.e. tenants will still be able to give 21 days' notice to end a periodic tenancy (or 48 hours for a boarding house tenancies).
29. The RTA applies to public housing tenancies as well as the private rental market so the termination measures will also apply to Kāinga Ora and Community Housing Providers.

### Rent increase freeze

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30. Under the proposed measures, there will be a rent increase freeze for all tenancies under any circumstances, for the period of the legislative amendments. The RTA already prohibits landlords from charging any additional fees in lieu of rent increases.
31. The prohibition on rent increases will also apply to boarding house tenancies.
32. Clear communications messages will be important to ensure that the rent increase freeze is not interpreted as tenants not needing to pay any rent during this period.

### Termination of tenancies (except boarding house tenancies)

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33. Officials propose that to achieve Ministers' objectives, a landlord will only be able to apply to the Tenancy Tribunal to have a tenancy terminated for specific reasons:
  - **significant anti-social behaviour** (not included in current RTA provisions). Instances of anti-social behaviour may be higher than usual among some tenant groups who are spending more time than usual at home due to Covid-19 restrictions. We propose modifying the definition included in the RTA Amendment Bill but only requiring one instance of anti-social behaviour rather than three and the landlord need not give notice, but must simply apply to the Tribunal. We propose defining anti-social behaviour as: harassment; or any intentional act, if the act reasonably causes significant alarm, distress, or nuisance. An alternative would be to rely on police intervention, but anti-social behaviour is unlikely to be high priority for stretched police resources at this time.
  - **substantial property damage** (unchanged from current RTA provisions, s 55(1)(b))
  - **assault** or threat of assault (unchanged from current RTA provisions, s 55(1)(c))
  - the property is **uninhabitable** (unchanged from current RTA provisions), for example after a fire
  - **death of a tenant**, where the tenant is the sole occupant of the property (unchanged from current RTA provisions, s 50(a))
  - **abandonment of a tenancy**, unchanged from current RTA provisions.
34. In addition, where a tenant is in **rent arrears**, officials propose two options for Ministers to consider:
  - Option 1: Agree that rent arrears is not a ground for termination of tenancy during the relevant time period, despite hardship that may result for the landlord, or
  - Option 2: agree that where a tenant is in rent arrears of more than 42 days (increased from 21 days under the current provisions), a landlord may apply to the Tenancy Tribunal for termination, and the Tribunal can:



- a. take into account whether the tenant is making reasonable endeavours to pay rent, and
  - b. balance the interests of the tenant and landlord in deciding whether termination is justified.
35. The same rent arrears options apply to boarding house tenancies.
36. Option 1 comes with significant impacts on landlords. Landlords may:
  - have difficulty meeting their mortgage payments
  - have reduced ability to pay for their own needs, if they are relying on the rental income.
37. We note that the inability to pay rent may not always be due to Covid-19 related income loss. There is also a potential for misuse, if tenants are able to pay rent, but choose not to. To mitigate this, we are proposing the tenant continue to be liable for the rent arrears. The rent will continue to be due, and the landlord could seek payment through the Tribunal.
38. s 9(2)(g)(i)
39. To mitigate any unintended consequences, officials also propose that the Tenancy Tribunal has discretion to consider any exceptional circumstances that may apply with regard to a landlord application to terminate a tenancy. The Tenancy Tribunal will have the power to determine the appropriate notice that tenants will receive in the circumstances.

## Boarding house tenancies: termination of tenancies

40. In a boarding house, tenants have their own boarding house tenancy agreement with their landlord to rent single rooms or a sleeping area within a room they share with other tenants. They also share any facilities, eg the kitchen or bathroom. A boarding house is occupied, or intended to be occupied, by at least six tenants, but may be much larger.
41. There are some key features of boarding houses that mean they require different treatment:
  - Termination provisions for boarding house tenancies are currently different from other tenancies. Notice periods are shorter.
  - Tenants share communal spaces where there may be a higher risk of exposure to Covid-19.
  - The populations living in boarding houses tend to be more vulnerable.
42. To align with the general approach taken above, we propose a temporary three month freeze on terminations in boarding houses (with further three month extensions possible by Order in Council) but with exemptions to cover situations where other occupants may be put in danger.

Current termination grounds	Changes proposed
<p>The landlord of a boarding house may terminate a boarding house tenancy</p> <p><b><i>Immediately, if the tenant has</i></b></p> <p>(i) caused, or threatened to cause, serious damage to the premises; or</p> <p>(ii) endangered, or threatened to endanger, people or property; or</p>	<p>Amend so that the landlord can <b><i>only</i></b> terminate if the tenant has:</p> <ul style="list-style-type: none"> <li>• rent arrears (consistent with the options presented for other tenancies)</li> <li>• caused, or threatened to cause, serious damage to the premises; or</li> </ul>

<p>(iii) caused, or threatened to cause, serious disruption to other tenants; or</p> <p><b><i>On 48 hours' notice, if</i></b></p> <p>(i) the landlord has, by written notice to the tenant, required the tenant to pay any rent in arrears within a stated period of not less than 10 days, commencing on the day the notice is given, and the tenant fails to pay the rent in arrears within the stated period; or</p> <p>(ii) the tenant is using the premises for an illegal purpose; or</p> <p>(iii) the landlord believes, having complied with <a href="#">section 66X</a>, that the tenant has abandoned the room; or</p> <p><b><i>On 14 days' notice, if the tenancy is also a service tenancy</i></b></p> <p><b><i>On 28 days' notice, if no reason is given.</i></b></p>	<ul style="list-style-type: none"> <li>• endangered, or threatened to endanger, people or property; or</li> <li>• caused, or threatened to cause, serious disruption to other tenants; or</li> <li>• the tenant is using the premises for an illegal purpose; or</li> <li>• the landlord believes, having complied with <a href="#">section 66X</a>, that the tenant has abandoned the room.</li> </ul> <p><b><i>We propose that all of these grounds require 28 days notice to align with the maximum notice in the current provisions.</i></b></p> <p>We consider that shorter notice periods would create significant challenges for tenants in the current environment. This notice period also minimises potential flow on impacts to emergency housing which will already be under pressure.</p> <p>If tenants are posing a serious threat to other tenants or the landlord then this should become a police matter.</p>
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## Unlawful acts

43. There is an existing framework for civil penalties in the Act ('exemplary damages' for unlawful acts). Officials propose that increasing rent within the relevant timeframe or purporting to terminate a tenancy without grounds are treated as unlawful acts with the Tenancy Tribunal able to order exemplary damages of up to \$6,500 in each case.
44. The purpose of exemplary damages is to:
  - deter landlords from breaching the Act
  - allow tenants to seek payment (exemplary damages) from the landlord due to the landlord's breach.
45. The proposed level of \$6,500 compares to current maximum exemplary damages of \$4,000 for unlawful discrimination. However, the maximum exemplary damages for unlawful acts such as misuse of termination provisions and unlawful discrimination proposed in the Residential Tenancies Amendment Bill is \$6,500. Officials consider this level is appropriate under the circumstances.

## Risks

46. The Property Investors Federation has called for landlords to be lenient and take into account tenant circumstances during Covid-19. Nevertheless, some landlords may consider that the proposed measures unduly affect their ability to manage their property, particularly in relation to not being able to sell their property without a sitting tenant, or have family move into the property.

47. Some landlords may also experience financial hardship as a result of tenants' rent arrears. We understand that mortgage relief is among options being considered more broadly.

48.

s 9(2)(f)(iv)

49. There may be some financial impacts for the Tenancy Tribunal to manage through this event. Officials will report back on financial implications and potential funding needs over coming weeks.

## **Consultation and Regulatory Impact Assessment**

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50. Due to the urgent nature of the legislative amendments, no consultation has been undertaken with landlord or tenant groups. Officials have also not undertaken a Regulatory Impact Assessment.

## **Next steps**

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51. Officials will provide drafting instructions to Parliamentary Counsel Office for inclusion in an omnibus Covid-19 Bill. Officials will also work with ministerial offices on communications messages, and with MBIE Tenancy Services on guidance for landlords and tenants.