



COVID-19 Ministerial Group

Minute of Decision

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Residential Tenancies Act 1986: Proposed Amendments in Response to COVID-19 Outbreaks

Portfolio Housing

On 7 September 2021, following discussions with officials and Ministers, the COVID-19 Ministerial Group [CAB-21-MIN-0353]:

Background

- 1 **noted** that the temporary COVID-19 changes to the Residential Tenancies Act (RTA) made in 2020 to restrict tenancy terminations, freeze rent increases and enable the Tenancy Tribunal to operate flexibly were time-limited, and have now expired;
- 2 **noted** that on 14 December 2020, in relation to the paper *Economic Response to Future Resurgences of COVID-19*, Cabinet:
 - 2.1 noted that further design work and new legislation will be required to reinstate a freeze on residential rent increases and restrictions on tenancy terminations; and
 - 2.2 agreed (if New Zealand went back into Alert Level 4) that a freeze on residential rent increases and restrictions on tenancy terminations be reinstated, subject to the passage of the required legislation and approval by Cabinet at the time of an escalation to Alert Level 4;

[CAB-20-MIN-0521]
- 3 **rescinded** the decision referred to in paragraph 2.2 above, and instead agree to the policy decisions in the paragraphs set out below;

Need for further RTA amendments in case of current and future COVID-19 outbreaks

- 4 s 9(2)(h) [REDACTED]
- 5 **noted** that legislative changes to the RTA are needed if the Auckland region remains in Alert Level 4 beyond the next few weeks, or if other regions are escalated back up to Alert Level 4, to provide clarity and certainty for the tenancy sector and mitigate disruption for landlords and tenants, and that are proportionate to achieve public health objectives;

RTA COVID-19 orders

- 6 **agreed** that the RTA be amended to provide:
- 6.1 for a set of tenancy termination restrictions and provisions (as detailed in paragraphs 7–12 below), which will apply if a Ministerial order (an RTA COVID-19 order) is made by the Minister responsible for the administration of the RTA;
 - 6.2 that the Minister may make an order in relation to all of New Zealand, or an area of New Zealand, if satisfied that:
 - 6.2.1 an order under section 11 of the COVID-19 Public Health Response Act 2020 (COVID Order) is, or will be, made containing measures that generally restrict people from moving house in that area (subject to any specified exceptions in that order, for example, if moving is required by court order or to use a temporary or emergency home); and
 - 6.2.2 the order is necessary or desirable to align with or support those stay-at-home measures;
 - 6.3 that before making an order, the Minister must consult with the Prime Minister and Minister responsible for administration of the COVID-19 Public Health Response Act 2020, and may consult any other Minister that the Minister thinks fit;
 - 6.4 that the Minister may extend or amend an RTA COVID-19 order in accordance with the criteria in paragraph 6.2 above;
 - 6.5 that the Minister must revoke an order if the criteria in paragraph 6.2 above no longer applied;
 - 6.6 that the order must be in writing, state the area to which it applies and when it comes into force, and be published in the Gazette and on a publicly accessible government website as soon as practicable;

Termination restrictions

- 7 **agreed** to amend the RTA to include the termination provisions set out in clauses 4 and 5 of (now expired) Schedule 5 of the RTA, except as modified by the proposals outlined in the paper under CMG-21-SUB-0017;
- 8 **agreed** that the COVID-19 tenancy restrictions would not restrict a tenant's ability to terminate tenancies, but would:
- 8.1 preserve tenancies even where termination notices had been served by landlords but they have not yet taken effect, including by agreement between the parties;
 - 8.2 allow tenants to revoke termination notices or Tenancy Tribunal orders they had obtained, if they had not yet taken effect; and
 - 8.3 continue fixed-term tenancies that otherwise would have expired and convert them to periodic tenancies upon their expiry;
- 9 **agreed** that landlords will only be able to serve termination notices when an RTA COVID-19 order is in limited circumstances (for example, on the death of a sole tenant or in boarding house tenancies for certain reasons), and will only be able to apply to the Tribunal for terminations in the limited specified circumstances;

Termination notice periods

- 10 **agreed** to amend the RTA to provide that:
- 10.1 for tenancies which can be terminated under section 51 ('Termination by notice') or section 53B(1)(b)(iii) ('Special provisions for notice terminating social housing tenancies') of the RTA, termination notices will take effect once termination restrictions are lifted, on the later of:
 - 10.1.1 the date originally provided for in the notice; or
 - 10.1.2 28 days after the restrictions end;
 - 10.2 for fixed term tenancies which would have otherwise expired, landlords must give at least 28 days' notice of termination to a tenant once the termination restrictions are lifted;
 - 10.3 a tenant may, by written notice to the landlord, elect to end the tenancy on the date originally provided for in the notice (if it falls after the restrictions are lifted);
 - 10.4 for other tenancies which have shorter notice periods and different termination provisions (including service tenancies), landlords will have to re-serve termination notices once restrictions were lifted, unless a tenant gives notice to the landlord if they wish to end the tenancy on the date originally provided for in the notice (if it falls after the restrictions are lifted);

Tenancy Tribunal termination orders

- 11 **agreed** to amend the RTA to provide that where a Tenancy Tribunal termination order is obtained by landlords prior to an RTA COVID-19 order coming into force for a tenancy for which a tenant is still residing in the property:
- 11.1 RTA COVID-19 orders do not override the termination order if the order was previously obtained by landlords during the time the relevant area was at Alert Level 4;
 - 11.2 in other circumstances, the termination would be suspended until 15 days after the termination restrictions end;

Other issues

- 12 **agreed** that a landlord knowingly breaching tenancy termination provisions commits an unlawful act, with exemplary damages of up to \$6,500 in each case;
- 13 **agreed** that where vacant possession of a premises cannot be delivered to an incoming tenant as a consequence of the effect of the termination restrictions, tenants and landlords would be exempt from obligations owed to each other, and landlords would need to let the incoming tenant know the premises are no longer available;
- 14 **noted** that the RTA applies to public housing tenancies as well as the private rental market, so that the termination restrictions will also apply to Kāinga Ora and Community Housing Providers;

Commencement and expiry

- 15 **agreed** that the COVID-19 RTA amendments will take effect on the date of announcement and will expire three years after commencement, subject to further advice from officials;

Enable the Tenancy Tribunal to hear applications on the papers for twelve months

- 16 **agreed** that the RTA be amended to conduct proceedings as it sees fit, including on the papers, for twelve months from commencement of the bill, to help address the backlog of cases which the Tenancy Tribunal will need to clear after the current Alert Levels are lifted;

Next steps

- 17 **invited** the Associate Minister of Housing (Public Housing) to issue drafting instructions to the Parliamentary Counsel Office (PCO) to give effect to the above paragraphs;
- 18 **authorised** the Associate Minister of Housing (Public Housing) to make decisions, consistent with the above paragraphs, on any issues which arise during the drafting process without reference to Cabinet;
- 19 **noted** that the Leader of the House is considering the preferred legislative vehicle for these changes (a standalone RTA amendment bill or a COVID-19 omnibus bill) and whether they can be accorded urgency.

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