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Minister of Housing

Cc Board Chair, Vui Mark Gosche

Kāinga Ora Approach to Sustaining Tenancies

Purpose

1. This briefing responds to your request for information on the Kāinga Ora sustaining tenancies policy specifically around disruptive behaviour. While this briefing provides a high-level overview of this approach, a more detailed overview briefing of how Kāinga Ora approaches and responds to disruptive behaviour is available at your request.
2. The Kāinga Ora approach to sustaining tenancies was based on the concepts in a 2016 Cabinet paper¹, recognising that there is a broader social cost incurred when a tenancy is ended and the household has nowhere else to live. In addition to the immediate increase in cost to government when a tenant moves from an Income Related Rent Subsidy (IRRS) and into Emergency Housing, research shows that a lack of housing stability also has flow-on effects on both time and cost pressures on the health system, education and employment outcomes, policing and the justice sector.

Background

3. The 2017/18 Letter of Expectations also noted the redesign of the tenancy management activities in line with this approach and encouraged Housing New Zealand Corporation to continue this workstream and report back on development.
4. In 2019, the sustaining tenancies approach was specifically included in the Kāinga Ora – Homes and Communities Act 2019 (the Act) as an operating principle to support tenants to sustain their tenancies, and in successive letters of expectation.

Legal framework

5. In summary, the Kāinga Ora - Homes and Communities Act 2019 sets out the objectives, functions and operating principles of Kāinga Ora. The organisation is required to act in a manner consistent with these operating principles and the Board must ensure Kāinga Ora acts in a manner consistent with the operating principles in the Kāinga Ora Act (s11(1)(a)).
6. The Residential Tenancies Act 1986 (RTA) sets out the obligations for both tenants and landlords, including in relation to disruptive behaviour. The RTA provides the legal framework for managing disruptive behaviour and gives Kāinga Ora, and other landlords, the legal tools and the institutional mechanisms for making decisions on tenancies. The RTA also has special provisions relating to terminating social housing tenancies (section 53B), which can be used for two very specific reasons:
 - a. Kāinga Ora has been notified by MSD that the tenant is no longer eligible for social housing.

¹ CAB-16-MIN-0341 refers

- b. Kāinga Ora requires the tenants to transfer to different Kāinga Ora housing, the transfer is necessary/desirable, and the housing is appropriate for the tenant's housing needs as most recently assessed.
7. There are evidential thresholds for these provisions and a process that must be followed to ensure that the legislative criteria are met. The ultimate decision maker is the Tenancy Tribunal adjudicator who decides whether the evidence is sufficient and whether a tenancy can be ended.

Policy

8. Kāinga Ora has a suite of operational policies in place to implement this approach and respond to the current operating context, within the bounds of the legal framework.
9. In 2022, Kāinga Ora introduced a new operating model to better support tenants to manage their tenancies successfully and live well in their home. The new operating model introduced a clearer and more robust referral system to support the integration of health and social services to assist the household to successfully manage the tenancy, where needed. The success of these referrals is dependent on the capacity and availability of other agencies and service providers to effectively support Kāinga Ora tenants with their specific needs.
10. Over time, this new operating model is expected to result in a reduction in disruptive behaviour, an increase in successful tenancies, and improved outcomes for tenants with reduced long-term costs to government.
11. To help manage complex tenancy issues, Kāinga Ora has established an internal Review Group. The group also helps ensure there is a consistent national approach and that issues can be addressed in timely manner.
12. Under the current legislative functions, Kāinga Ora is restricted to providing appropriate housing to tenants and does not extend to the provision of social/wellbeing services. If it was intended that Kāinga Ora should provide targeted support directly to tenants, legislative change may be required.

Options to strengthen our approach

13. The tools available to Kāinga Ora, including through the RTA are outlined below. The threshold at which these are used is determined by Kāinga Ora.
- a. Agreed relocation – where a tenant is willing to work with Kāinga Ora to move to a new home, this can be done without the need for any RTA tools to be used.
 - b. s53b Notices (required relocation - Kāinga Ora can use Section 53B of the RTA to end a tenancy and transfer the tenant to another Kāinga Ora home. Kāinga Ora must provide at least 90 days' notice to the tenant.
 - c. s55a notices – where behaviour meets the definition in the RTA, a notice can be issued to address the behaviour and provide an opportunity for change. If there is another specific and separate incidence, Kāinga Ora can issue another notice. When three notices are issued within a 90-day period, Kāinga Ora can apply to the Tenancy Tribunal to end the tenancy.
 - d. s55 tenancy termination - where disruptive behaviour places neighbours, the community or Kāinga Ora staff at significant risk, an application can be made to the Tenancy Tribunal to seek termination of the tenancy.
14. Later this month the Kāinga Ora Board will be discussing options to strengthen our approach to disruptive behaviour. In particular, this will look at how we categorise behaviour and the use of tools we use to respond to it.

Options for changes to the sustaining tenancies approach

15. If it was agreed that changes are required, a Minister can influence operational policy settings of a Crown agent through use of formal tools under the Crown Entities Act 2004. This includes a formal direction (but not in relation to individuals) or accountability documents such as the SPE, and by setting clear expectations for the Board through a Letter of Expectations. Kāinga Ora would still be required to adhere to all relevant legislation, unless legislative changes were also made.



Nick Maling

General Manager, National Services