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Office of the Minister of Housing

Cabinet Legislation Committee

Residential Tenancies Amendment Bill: Approval for Introduction

Proposal

- 1 I seek approval for the introduction of the Residential Tenancies Amendment Bill (the Bill) to Parliament in the week commencing 13 May 2024. The Bill reflects policy decisions:
 - 1.1 agreed by Cabinet on 11 March 2024 [ECO-24-MIN-0016 and ECO-24-MIN-0017 refers]; and
 - 1.2 made by me on technical issues and transitional provisions, as authorised by Cabinet [ECO-24-MIN-0016 and ECO-24-MIN-0017 refers].

Relation to government priorities

- 2 The changes proposed by this Bill deliver on commitments made in the Coalition Agreement between the National Party and ACT to:
 - 2.1 reintroduce 90-day 'no cause' terminations for periodic tenancies;
 - 2.2 reintroduce 21-day notices for tenants wishing to move and 42-day notices when landlords have sold a property; and
 - 2.3 introduce pet bonds.
- 3 The proposed changes in the Bill also align with National's Housing Plan, which commits to make sensible changes to tenancy laws to incentivise landlords into the market. Property owners report that many of the regulatory changes made in the last five years reduced their willingness to rent their property to others, which has reduced rental supply and increased pressure on rents. Addressing these concerns will encourage landlords back to the market.
- 4 These changes sit alongside other work to increase rental supply, such as the reintroduction of interest deductibility for residential investment properties and work to change the Overseas Investment Act 2005 to enable build-to-rent properties.

Policy

- 5 The changes proposed in the Bill will make amendments to the Residential Tenancies Act 1986. These are set out below.

Changes to termination provisions

- 6 The Bill will reintroduce some of the abilities landlords had prior to tenancy law changes in 2020 to end tenancies when they need. These include the ability to:
- 6.1 end a periodic tenancy by providing 90 days' notice without a specific ground;
 - 6.2 end a periodic tenancy with 42 days' in some cases, for example, if the house is subject to an unconditional agreement for sale with vacant possession; and
 - 6.3 give notice to end a fixed-term tenancy at the end of the term without requiring a specific reason.
- 7 The Bill will also support tenants by returning their notice period for periodic tenancies from 28 to 21 days.
- 8 Some termination grounds for periodic tenancies introduced in 2020 will be repealed, as they will no longer be required alongside the reintroduction of 90-day no cause notices. However, some termination grounds will be retained, as they can be useful to manage tenant behaviour or provide flexibility to end tenancies in different situations.

Pet provisions

- 9 The pet-related Bill amendments aim to make it easier for tenants to keep pets in rental properties, balancing the interests of landlords and tenants. The amendments do this by:
- 9.1 addressing landlords' concerns about the risk of pet damage by allowing them to require a pet bond up to a maximum of two weeks' rent; and
 - 9.2 by making tenants liable for all pet damage beyond fair wear and tear.
- 10 The Bill also clarifies the rights and obligations of landlords and tenants regarding keeping pets in rental properties by introducing pet consent rules. Accordingly, the Bill proposes that tenants must make a written request to their landlord if they wish to keep a pet. A landlord must respond in writing within 21 days and can only refuse consent on reasonable grounds, for example, if the premises are not suitable for the pet because of size or unique features. Landlords may also attach reasonable conditions to their consent.
- 11 The Bill excludes disability assist dogs as pets, so no consent is needed by tenants for these dogs and landlords cannot charge a pet bond for them. The pet consent provisions do not apply to boarding house tenants. This means


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landlords will be able to continue to prohibit pets in boarding houses with no reasons given. However, they will be able to charge tenants a pet bond if they do permit pets.

Other amendments, including minor and technical changes

- 12 The Bill will also clarify that landlords may prohibit smoking indoors, and proposes a range of minor and technical changes to support efficiency and clarity in the Residential Tenancies Act 1986, such as:
- 12.1 enabling online lodgement of tenancy bonds;
 - 12.2 extending the ability to withdraw from a tenancy due to family violence to situations where a tenant's dependent is subject to family violence;
 - 12.3 providing for text messages and other modern forms of communication between landlords and tenants; and
 - 12.4 enabling the Tenancy Tribunal to make some decisions on the papers, where appropriate.¹

Potentially contentious aspects of the Bill

- 13 The proposed changes to termination provisions are likely to be contentious, and concerns are likely to be raised about the impact on tenants' security of tenure.
- 14 However, on balance I believe these are sensible changes that will encourage landlords to offer their properties for rent, where they may currently be discouraged from doing so. Encouraging landlords back to the market is crucial for increasing rental supply and ensuring renters have sufficient choice and housing available to them. Increased rental supply may also reduce pressure on rent prices, improving affordability for tenants.
- 15 The proposal that landlords may only refuse a tenant's request to keep a pet on reasonable grounds may raise concerns from landlords. Landlords may prefer the ability to refuse requests without requiring a reason. I consider the proposed pet consent approach is fairer and clearer for all parties than the current situation – particularly when the pet bond and damage liability changes are taken into account.
- 16 People on lower incomes who are more likely to rent and are more affected by cost-of-living issues may struggle to afford pet bonds. s 9(2)(f)(iv)
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¹ Making a decision “on the papers” means making a decision based on written materials filed by parties, without verbal evidence and hearings. This proposal would not allow decisions to be made on the papers where the application involves the termination of a tenancy or where access to the premises is sought.

Impact analysis

- 17 Two Regulatory Impact Statements (RISs) were prepared in accordance with Treasury requirements. These were submitted at the time that Cabinet approval was sought for the policy relating to the Bill [ECO-24-SUB-0016 and ECO-24-SUB-0017 refers]. The quality assurance panel at the Ministry of Housing and Urban Development reviewed the RISs and confirmed that they meet RIS requirements.

Compliance

- 18 The Bill complies with:
- 18.1 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 18.2 the disclosure statement requirements - a disclosure statement has been prepared and is attached to this paper;
 - 18.3 the principles and guidelines set out in the Privacy Act 2020;
 - 18.4 relevant international standards and obligations;
 - 18.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 19 In relation to compliance with the principles of the Treaty of Waitangi, any impacts resulting from these changes are likely to disproportionately affect Māori, as Māori are more likely to live in rented accommodation. The proposals may benefit some tenants through improved access to the rental market and potential increase in supply at the margins. Evidence suggests that the termination related proposals could also negatively impact on actual and perceived security of tenure for many tenants compared to the status quo.

Consultation

- 20 The following agencies have been consulted: Ministry of Business, Innovation and Employment, the Ministry of Social Development, Kāinga Ora – Homes and Communities, the Treasury, Te Puni Kōkiri, the Ministry of Health, the Ministry of Education, the Ministry of Justice, Parliamentary Counsel Office, Te Puna Aonui, Whaikaha – Ministry of Disabled People, the Office for Seniors, the Office of the Privacy Commissioner, and the Ministry for Pacific Peoples. The Principal Tenancy Adjudicator was also consulted. The Department of Prime Minister and Cabinet was informed.
- 21 Public consultation was not undertaken on proposals due to limited timeframes. Stakeholder opinions on terminations and pets in rental properties are well established following public consultation on reforms of the Residential Tenancies Act 1986 in 2018, through submissions on the Residential Tenancies Amendment Bill in 2020, and from engagement with stakeholders since then.

- 22 The Government's coalition parties have been consulted on the proposed Bill.

Binding on the Crown

- 23 The Residential Tenancies Act 1986 is binding on the Crown.

Allocation of decision-making power

- 24 The Bill does not change the allocation of decision making powers between the Executive and the Courts.
- 25 The Bill includes the following new unlawful acts, for each of which the maximum amount of exemplary damages is set at \$1,500:
- 25.1 A landlord requiring a pet bond greater than the amount permitted or from a tenant who is not keeping, or does not intend to keep, a pet.
 - 25.2 A landlord including a prohibition on a tenant keeping a pet in the tenancy agreement without providing reasonable grounds in the agreement for the prohibition.
 - 25.3 A landlord failing, without reasonable excuse, to provide written notice in response to a tenant's request for consent to keep a pet within 21 days of receiving the request.
 - 25.4 A landlord refusing consent for a tenant to keep a pet without reasonable grounds.
- 26 The Bill creates the following new infringement offences:
- 26.1 Requiring a pet bond greater than the amount permitted or from a tenant who is not keeping, or does not intend to keep, a pet.
- 27 The following fees and fines will apply in relation to the new infringement offences:
- 27.1 Maximum fine for landlords who have six or more tenancies, and boarding house landlords: \$3,000.
 - 27.2 Maximum fine for all other landlords: \$1,500.
 - 27.3 Fee for landlords who have six or more tenancies, and boarding house landlords: \$1,000.
 - 27.4 Fee for all other landlords: \$500.
- 28 The RTA already provides that it is an unlawful act and infringement offence for a landlord to breach their duties on receipt of bond. The pet bond will be treated the same way. Breaching duties on receipt of pet bond will fall under the existing unlawful act and infringement offence.

- 29 The Tenancy Tribunal will be required to adjudicate on disputes relating to keeping pets in rental properties, including determining whether:
- 29.1 a landlord's refusal grounds or conditions attached to pet keeping are reasonable; and
- 29.2 pet damage is beyond fair wear and tear for the purposes of determining damage liability claims.
- 30 The Bill will give the Tenancy Tribunal the ability to hear matters on the papers, instead of requiring a hearing. The Bill also provides the jurisdictional limit for the Tenancy Tribunal is \$100,000 per tenancy for consolidated applications by the Regulator (instead of \$100,000 per application).

Associated regulations

- 31 The Bill includes a consequential amendment to the Residential Tenancies (Termination for Physical Assault by Tenant and Withdrawal Following Family Violence) Regulations 2022. This will ensure the amendment to allow a tenant to leave a tenancy if their dependent is subject to family violence may be utilised.

Commencement of legislation

- 32 Provisions in the Bill are proposed to be commenced by Order in Council, with a backstop date of 24 months after the Bill has passed.
- 33 A specific commencement date, or commencement the day after Royal assent is not appropriate for the proposed changes, as consideration needs to be given to how long stakeholders need to prepare. Operational functionality, including the IT infrastructure needed for the pet bond tool, will need to be developed and implemented.
- 34 I anticipate commencement will take place before the 24-month backstop and will direct officials to provide advice on appropriate commencement dates for the respective provisions in the Bill during the select committee process.
- 35 I anticipate that the Ministry of Business, Innovation and Employment will develop the pet bond IT system and have it ready for implementing sooner than two years. However, the longer backstop date will allow for additional time in case of unexpected delays or unforeseen issues.

Parliamentary stages

- 36 It is my intention that the Bill will be introduced in the week commencing 13 May 2024, in order to be passed by December 2024, subject to select committee workload and the availability of House time.
- 37 I propose that the Bill be referred to the Social Services and Community Committee.

Financial implications

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Proactive Release

- 42 In line with Cabinet Office Circular CO (23) 4 – Proactive release of Cabinet Material: Updated Requirements, I intend to proactively release this Cabinet paper on the Ministry of Housing and Urban Development's website, subject to any redactions that may be warranted under the Official Information Act 1982, within 30 business days of Cabinet's decision.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that I have sought priority for the Residential Tenancies Amendment Bill (the Bill) in the 2024 Legislation Programme and will propose the Bill is accorded a category 2 priority on the 2024 Legislation Programme (category 2 – must be passed by the end of 2024);
- 2 note that the Bill aims to improve the private rental market by incentivising landlords into the market, making it easier and less risky to have pets in rental properties, and making a range of minor changes to support clarity and efficiency in the law;

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- 3 note the Bill reflects policy decisions agreed by Cabinet on 11 March and decisions made by me on technical issues and transitional provisions, as authorised by Cabinet [ECO-24-MIN-0016 and ECO-24-MIN-0017 refers];
- 4 approve the Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 5 agree that the Bill be introduced in the week commencing 13 May 2024;
- 6 authorise Parliamentary Counsel Office, in the period between the approval of the Bill for introduction and its introduction, to make minor or technical changes to the Bill;
- 7 agree that the Government propose that the Bill be:
 - 7.1 referred to the Social Services and Community Committee for consideration;
 - 7.2 enacted by December 2024, subject to Select Committee workload and the availability of House time.

Authorised for lodgement

Hon Chris Bishop

Minister of Housing

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