



Residential Tenancies Act 1986



*Are you thinking of or have you recently purchased a property that you intend to rent out? In this article, **Annette Edwards**, a solicitor with the Hamilton Lawlink firm of Harkness Henry & Co, outlines some of the requirements of the Residential Tenancies Act.*

Investment in residential rental property has proved popular over recent years. Most private landlords self-manage their rental properties. It is important for any prospective and existing landlord to be aware of the requirements of the Residential Tenancies Act.

The Residential Tenancies Act sets out the rights and obligations of landlords and tenants of residential properties. The Act covers matters such as what tenancies are covered by the Act, tenancy agreements, bonds and rent, the obligations of both the landlord and tenant, and the termination of tenancies. The Act also establishes the Tenancy Tribunal to determine disputes arising between landlords and tenants, and establishes a fund in which bonds payable by a tenant are held.

The Department of Building and Housing administers the Act and provides services to landlords and tenants through Tenancy Services. Tenancy Services has 22 dispute resolution offices throughout New Zealand that provide information and advice, dispute resolution and mediation for landlords and tenants. The Tenancy Services Centre processes tenancy bonds and provides advice via two 0800

numbers. More information is available at www.dbh.govt.nz. Tenancy agreements, bond lodgement and change of landlord forms can be downloaded from the website.

WHAT RESIDENTIAL TENANCIES ARE COVERED BY THE ACT

The Act applies to every tenancy for residential purposes unless it is specifically excluded by the Act. Residential premises is defined in the Act as "any premises used or intended for occupation by any person as a place of residence". The Act does not apply to:

- premises that are let for a fixed-term tenancy of at least five years and the tenancy agreement **expressly** provides that the Act will not apply;
- where the premises are let for the tenant's holiday purposes;
- where the tenant is the purchaser of the premises under an agreement for sale and purchase with the landlord as vendor, and the agreement is not revocable at will by the vendor;
- where the premises continue to be used, during the tenancy, principally as a place of residence by the landlord or by any member of the landlord's family.

The Act provides that, where a tenancy is excluded by the Act, the parties to a tenancy can agree in writing that all or any of the provisions of the Act may apply.

TENANCY AGREEMENTS

The Act provides that every tenancy agreement is to be in writing and signed by both the landlord and the tenant. The landlord must, before the tenancy commences, provide the tenant with a copy of the tenancy agreement. However, the Act also states that no tenancy agreement, or variation of a tenancy agreement, will be unenforceable on the grounds that it is not in writing.

The Act sets out the minimum requirements for the contents of a tenancy agreement:

- the full name and address of the landlord and tenant;
- the address of the premises;
- the date of the tenancy agreement;
- the commencement date of the tenancy;
- the landlord's and tenant's address for service;
- whether the tenant is under the age of 18;
- the amount of any bond;
- the rent payable;
- the frequency of rent payments;
- the place or bank account number where the rent is to be paid;
- a statement (if applicable) that the tenant is to pay any fee or other charge for services rendered by any solicitor or real estate agent relating to the tenancy;
- a statement (if applicable) that the tenant shall pay for any metered water provided to the premises;
- a list of any chattels provided by the landlord;
- if the tenancy is a fixed-term tenancy, the date on which the tenancy will terminate.

Section 11 of the Act provides that any agreement or provision in a tenancy agreement that is contrary to the provisions of the Act will not have any effect. Section 11(3) of the Act states that "*Any purported waiver by a tenant of any right or power conferred upon tenants by this Act shall be of no effect*". For example, it was reported in the Residential Property Investment Magazine September 1999 (as reproduced on the Department of

Building and Housing website (www.dbh.govt.nz) that a tenancy agreement included a clause imposing an additional 7.5% arrangement fee, for the purposes of organising a repair. Despite the tenant signing this and supposedly agreeing to this charge, it would not be enforceable. Section 45 of the Act provides that it is the landlord's responsibility to maintain the premises in a reasonable state of repair.

BONDS

A landlord cannot require payment by way of bond of an amount greater than four weeks' rent which is payable under the tenancy agreement. The Act states that if the tenant pays the bond to the landlord, the landlord must give the tenant a written receipt for the bond, and within 23 working days of payment of the bond, the bond must be forwarded to the Tenancy Services Centre, together with a statement (bond lodgement form). The landlord may claim some or all of this money if the tenant causes damage to the property, or owes rent to the landlord when they move out. A bond refund form must be completed and signed by both the landlord and tenant, setting out the amount to be paid to the landlord and tenant. If the tenant and landlord cannot agree on the division of the bond, then either party (or both) can make an application to the Tenancy Tribunal for the matter to be heard before a mediator. If no settlement is reached in mediation, the application would then be set down for a hearing in the Tenancy Tribunal.

RENT

A landlord cannot require the payment of any rent more than two weeks in advance. To increase the rent a landlord must give at least 60 days' written notice of rent increases. A landlord cannot increase rent for 180 days from the start of a tenancy and no more than once every 180 days thereafter. A tenant can apply to the Tenancy Tribunal for an order to reduce a rent increase to an amount in line with market rents.

UTILITIES

The Act provides that the landlord will pay for certain outgoing (including rates, water charges and insurance premiums).

The tenant will pay the following outgoing incurred during the tenancy, unless the landlord has agreed in writing to pay for any of the outgoing:

- all charges for electricity or gas supplied to the premises;
- all charges in respect of any telephone connected to the property;
- water charges in respect of the premises (including the cost of charges for standard meter readings) if:
 - the premises have a separate water meter, and
 - the tenancy agreement stated, at the commencement of the tenancy, that the tenant will pay for any metered water to the premises, and
 - the water supplier charges for water provided to the premises on the basis of metered usage.

All three of the above conditions must be met for the tenant to be charged for water.

The Tenancy Tribunal can be contacted for its view on whether waste water charges are also payable by the tenant. The law is unclear, and practice may vary depending on what area the property is in and whether the waste water is charged on a metered basis or there is a flat fee payable. For tenancies that commenced before 23 September 2003, where landlords have been paying for waste water charges, landlords are advised to continue paying those charges, and not to change their practices arbitrarily.

The Tenancy Tribunal has ruled that in the Nelson City Council and Tasman District Council areas the landlord is to pay the supply charge. The Nelson City Council calls this the 'daily line charge' and Tasman District Council calls it the 'daily charge'.

ASSIGNMENT OR SUBLETTING BY TENANT

The Act provides that a tenancy agreement can state that the tenant is prohibited from assigning, subletting or parting with possession

of the premises during the term of the tenancy. In the absence of such a provision, the tenant may at any time during the tenancy assign, sublet or part with possession of the premises with the prior written consent of the landlord and in accordance with any conditions attached to that consent by the landlord. The landlord cannot withhold that consent unreasonably nor attach any unreasonable conditions to it.

SALE OF PREMISES BY LANDLORD

If the landlord puts the premises on the market for the purposes of sale or other disposition, the landlord must give written notice of that fact to the tenant. For the purpose of showing the premises to prospective purchasers, the landlord may, with the prior consent of the tenant, which is not to be unreasonably withheld, and subject to such reasonable conditions as the tenant may attach to that consent, enter the premises at any reasonable time. If the premises are sold with vacant possession to be provided by the landlord, the minimum period of notice required to be given by a landlord to terminate a tenancy is 42 days. The notice must be in writing, the intention to terminate the tenancy on a particular date or on the expiry of a particular period must be stated in the notice.

LANDLORD'S RIGHT OF ENTRY

If a landlord wishes to inspect the premises, the landlord must give the tenant at least 48 hours' notice and cannot inspect the premises more than once in four weeks. If the landlord intends to carry out any repairs or maintenance to the premises, the landlord must give the tenant 24 hours' notice. The landlord can enter the premises in any case of emergency, and with the consent of the tenant given at, or immediately before, the time of entry.

TERMINATION OF TENANCY/RENT ARREARS

Tenants must give 21 days' notice that they intend to terminate the tenancy.

Landlords must give 90 days' notice, or 42 days' notice if they are re-occupying or the property is sold with vacant possession. A tenancy will also be terminated by order of the Tenancy Tribunal. The Act provides that on an application

being made by a landlord to the Tenancy Tribunal, the Tenancy Tribunal will make an order terminating the tenancy if the Tenancy Tribunal is satisfied that:

- the rent was, at the date on which the application was filed, at least 21 days in arrears; or
- the tenant has caused, or permitted any other person to cause, or has threatened to cause, substantial damage to the premises; or
- the tenant has assaulted, or has threatened to assault, the landlord or any member of the landlord's family, or any agent of the landlord, or any occupier of any building of which the premises constitute a part, or any neighbour of the premises or of any such building.

However, the Tenancy Tribunal may instead of making a final termination order for non-payment of rent, make a conditional order if, but only if, it is satisfied that:

- the tenant will pay any rent in arrear within a period specified by the Tribunal; and
- it is unlikely that the tenant will commit any further breach.

TENANCY TRIBUNAL

Tenancy Services provides a mediation service aimed at resolving disputes out of court, and for those disputes that are not mediated or otherwise resolved, parties can make an application for the disputes to be heard at the Tenancy Tribunal. The Tribunal is part of the Ministry of Justice. The decisions of the Tribunal are deemed to be orders of the District Court, and can therefore be enforced by the Department for Courts. Parties normally represent themselves at the Tribunal and it is unusual for parties to be represented by lawyers.

RESIDENTIAL TENANCIES AMENDMENT BILL AND REVIEW OF ACT

The Residential Tenancies Amendment Bill that is currently going through Parliament will, if enacted, introduce changes to the Act mainly to govern long term boarding houses. The Bill will also amend a number of provisions in the Act relating to general tenancies. The Bill is not based on a total review of the Act and, therefore, will not revise the Act in its entirety. The

Bill will clarify the uncertainty in the interpretation of some sections of the Act, specifically the Bill will:

- confirm that landlords will be liable for waste water charges and fixed charges on water;
- enable the Tenancy Tribunal to award exemplary damages against landlords whose failure to comply with building requirements and health and safety regulations result in substandard housing;
- confirm that tenants are liable for damage caused intentionally or carelessly even though the landlord may have taken insurance, and
- require real estate agents to charge the letting fee to landlords rather than tenants.

In addition to the Residential Tenancies Amendment Bill, in November 2004 it was announced that there was to be a review of the Act. The reason given for the review of the Act is that the residential tenancy market has changed significantly in the last 18 years. More people are investing in residential rental housing, and more tenants are in rental housing long term. In general terms the review is looking to provide a balance between the tenants' need for affordable and stable rental housing, and the commercial needs of landlords to manage their properties efficiently. The Department of Building and Housing has issued a discussion document and submissions closed on 18 February 2005.

Email

annette.edwards@harkness.co.nz

Website www.harkness.co.nz