METHODIST ALLIANCE
NGA PURAPURA WETERIANA

Submission to the Ministry of Business, Innovation and Employment on the Reform of the Residential Tenancies Act 1986

19 October 2018

This submission is from:
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Reform of the Residential Act 1986

Who we are

The Methodist Alliance is a formal alliance of Methodist Missions, parishes and community based social services and trusts, including cooperating ventures. This grouping constitutes a major provider of a range of services for children, young people and their families.

The Methodist Alliance brings together a number of large social service providers such as Lifewise in Auckland, Wesley Community Action in Wellington, Christchurch Methodist Mission as well as local community services provided by individual parishes. It includes new social service organisations, for example, Siaola Vahefonua Methodist Mission, the Samoan Synod within the Methodist Church and Te Taha Māori.

The Methodist Alliance is grounded in a commitment to Te Tiriti o Waitangi and the bi-cultural journey of the Methodist Church of New Zealand - Te Hāhi Weteriana o Aotearoa, where Te Taha Māori and Tauiwi work in partnership.

Overview

We support the reform of the Residential Tenancies Act ("the Act") as a much needed review to redress the imbalance of power between tenants and landlords. There have been significant shifts in the housing market with home ownership at a 60 year low, over a third of all households renting and a marked increase in the number of children living in rental accommodation. People in rental accommodation have higher rates of mobility which can have negative consequences for children in relation to education and social interaction.[1]

The purpose of this reform aligns with the Methodist Alliance's vision for a just society in which all people flourish.

The right to housing

Aotearoa|New Zealand ratified several international treaties which recognised the human right to adequate housing.[2] This international obligation means that the State

[1] Statistics New Zealand. 2016. Changes in home-ownership patterns 1986–2013: Focus on Māori and Pacific people. Wellington: Statistics New Zealand. http://www.stats.govt.nz/browse_for_stats/people_and_communities/housing/changing-maori-pacific-housing-tenure.aspx

[2] 1948 Universal Declaration of Human Rights, 1965 Convention on the Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1979 Convention on

has a duty to protect the right of people in New Zealand to enjoy adequate housing and a responsibility to provide remedies. Everyone has the right to live in security, peace and dignity.[3] New Zealand's Human Rights Commission states that the government has a duty to respect, protect and fulfil this right.[4]

We **recommend** that the right to adequate housing is included in the purposes of the Residential Tenancy Act.

Modernising tenancy laws so tenants feel more at home

Numbering in this document corresponds to the numbering of the questions for consideration in the discussion document.

We agree with removing the ability for landlords to end periodic agreements without providing the tenant with a reason.

This provides the tenants with more security of tenure as their right to live in their home cannot be arbitrarily withdrawn.

2.1.1 The Methodist Alliance supports the proposal that landlords be required to issue a notice to the tenant to improve their behaviour before the landlord can apply to the Tenancy Tribunal to end the tenancy.

The process that exists in the Act provides for the landlord to issue a notice to the tenant with 14 days to remedy the situation. If there has been no remedy within the 14 days, then the landlord can apply to the Tenancy Tribunal to end the tenancy. The landlord would need to provide the tribunal with evidence of the breach, when the notice was given and the tenant would also have the opportunity to provide evidence of any remedy.

This addresses some of the imbalance of power between the landlord and tenant. It would be unfair to tenants if there was no opportunity to remedy a breach or to provide evidence at a subsequent tribunal hearing that either there was no breach or an alleged breach had been remedied.

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the Elimination of All Forms of Discrimination Against Women, the 1989 Convention on the Rights of the Child, and the 2006 Convention on the Rights of Persons with Disabilities

[3] https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

[4] https://www.hrc.co.nz/files/4215/1363/5639/2017_07_25_-_Right_to_housing_flyer_-_updated.pdf

2.1.2 The examples listed in paragraph 37 and 38 cover the kinds of behaviour that would interfere with the reasonable peace, comfort, or privacy of other tenants or neighbours.

2.1.3 Evidence the landlord could provide to the tribunal to support the claims could include photographs, letters, audio recordings, video recordings, emails, affidavits, Police reports, Excessive Noise Direction from Noise Control etc.

However a landlord should not be obliged to act on a neighbour's complaint if they have subsequently withdrawn the complaint. Although there may be grounds where a landlord may still act on a substantiated but withdrawn complaint, for instance were a vulnerable elderly tenant has been coerced to withdraw complaints by pressure from their gang neighbours.

2.1.4 It would be clear and simple if the 90 day notice period was applied to all instances where the landlord is required to give notice to the tenant. So this would include where the property was being sold for vacant possession, where the landlord requires the property for themselves, a family member, or an employee.

The 90 day notice would provide the tenant with time to find alternative accommodation. It is the minimum reasonable time for tenants to secure alternative accommodation in a tough housing market.

The increase from 42 days to 90 days' notice can be easily accounted for in the contract for sale and purchase.

Consistency in the notice period provides for more certainty for tenants.

We **recommend** a standard notice form be drafted with tick boxes for landlords to select the reason for giving a 90 day notice of termination and providing evidence they are basing their decision on. It should also clearly indicate the date the notice is given and the date the notice period ends.

The consistency in the landlord's 90 day notice period would not prevent the landlord from applying to the Tenancy Tribunal for a termination order if they required a shorter notice period or wanting to end a tenancy for a reason not specified in the Act.

2.1.5 When a rental property is sold, the tenancy should transfer to the new owner unless there is mutual agreement between the parties to end the tenancy. The

income a property provides when it is tenanted should be viewed as an added benefit to a property, rather than a burden.

2.1.6 Landlords should not be able to end a tenancy so the property can be advertised for sale with vacant possession. This would negatively impact on the tenants' rights to security of tenure, which should be given priority.

Also a property does not always sell when it is placed on the market. If landlords were allowed to end a tenancy so the property could be advertised for sale with vacant possession would also create a loophole for landlords to end a tenancy without a real reason and then take the property off the market.

2.1.7 We agree that tenants deserve to know the reason for terminating a tenancy and the evidence the landlord is basing their decision on. These could include the reasons set out in the current Act, where the landlord can apply to the Tenancy Tribunal for a termination, and we agree these should be increased in scope to cover the suggestions in paragraphs 38 and 40. Evidence could include photographs, letters, audio recordings, video recordings, emails, affidavits, statutory declaration from the family member stating that they are moving into the property etc.

The first two additional grounds for termination proposed in paragraph 42 relating to extensive alternations, refurbishment etc and change in use from residential to commercial are valid, and we support them.

However we do not support the last two additional grounds relating to where the landlord's interest in the property ends, and where a mortgagor becomes entitled to possession. A 90 day notice period could easily be incorporated in any documentation relating to both these additional grounds and should not usurp the tenant's right to security of tenure.

2.1.8 A false reason to terminate a tenancy should be considered an unlawful act and subject to penalties. Tenants should have the right to apply to the Tenancy Tribunal to challenge reasons for termination. If it is proven that the landlord did not have a valid reason for termination, the tenants should be eligible for exemplary damages and costs.

2.1.9 The 21day notice for tenants to end a tenancy is reasonable. In the current rental market there is no evidence to suggest that landlords have difficulty in security a new tenancy within this timeframe.

2.1.10 A member reports that it took four months after a tenant left the property for work to be undertaken to restore the property to a state where it was able to be re-tenanted. The property had to have pest eradication and be completely refurbished after damage from a tenant's many years of cigarette smoking and hoarding.

2.1.12 We support the removal of the "no cause" termination from periodic agreements which currently allows landlords to end a tenancy without giving a reason. The tenant's right to security of tenure outweighs the landlord's right of ease of termination.

Removing the no cause terminations may increase the length of tenancies, and encourage good communication between landlords and tenants.

2.1.13 Some Methodist Alliance member organisations are community housing providers that provide emergency, transitional and social housing. These tenants are vulnerable and wrap around support is provided by our member organisations to assist the tenants in sustaining their tenancies.

Emergency and transitional housing are both short term in nature and this difference needs to be recognised in the tenancy agreements.

2.1.14 Public housing providers should be obliged to give a 90 day notice where the tenant is no longer eligible for public housing.

However we recommend that public housing providers be given an exception from the 90 day notice period where a tenant is being transferred to a different public housing property. This could be shortened to a 21 day notice or earlier as agreed between the parties.

2.1.15 If the "no cause" termination is removed from periodic tenancy agreements, landlords may be more likely to offer fixed term agreements. Landlords may choose to offer fixed term agreements as an alternative as the tenancy would naturally come to an end without the need to provide a reason for termination. Landlords may see this as proving them with protection when renting to a previously unknown tenant.

2.1.17 At present a fixed term tenancy becomes a periodic tenancy upon expiry of the fixed term unless either party gives the other written notice of their intention not to continue with the tenancy. However this option is rarely taken up with many

landlords offering another one year fixed term tenancy rather than let the tenancy agreement default to a periodic tenancy.

Some tenants report that one year fixed term tenancies are offered year after year, and they remain in the same house for many years but with only one year's certainty of tenure.

Where there have been no concerns raised during the one year tenancy, it seems unreasonable for the landlord to offer another one year fixed term tenancy over and over rather than letting the tenancy default to a periodic tenancy.

Where no concerns have been raised within a fixed term tenancy, tenants should be offered the right to renew, extend or modify their fixed term tenancy. However without any obligation on landlords to agree to provide more security to tenants, the status quo may remain with tenants being offered one year fixed term tenancies over and over again.

An option could be for a fixed term tenancy automatically reverts to a periodic tenancy upon expiry where the landlord has not raised any concern during the fixed term, unless otherwise agreed by the tenant. This would pass the power to the tenant to set the term of the tenancy at the end of the fixed term.

While this would run the risk of landlords issuing formal notices, the issuing of notices should be restricted to a breach of the tenant's responsibilities and require evidential proof of an alleged breach. There should be a corresponding right for tenants to challenge the issue of formal notices in the Tenancy Tribunal. If the challenge was upheld, the landlord would be subject to fines and liable to pay the tenant costs.

2.1.18 Imposing a minimum length for fixed term tenancies may provide more security for tenants, depending on the minimum length. However it would not always be feasible for providers of emergency, transitional or social housing. These providers would need to be exempt from a minimum length for fixed term tenancies.

New Zealand has an increasing number and proportion of households living in rented accommodation, and therefore our laws need to offer more protection to this growing and more vulnerable population.

The Growing Up In New Zealand longitudinal study found half of private renters had moved house between the birth of a child and the infant's first birthday, compared with less than one in five home owners and one in four households in social housing.[5]

Other countries offer minimum lease periods of two years. This would provide greater certainty for tenants. However a minimum lease period of one year may suit other groups such as students and young professionals. If offering a two year minimum lease, the tenants could elect a fixed term at their discretion. However it may be difficult to prove undue influence by a landlord where a tenant elects a shorter timeframe.

2.1.19 The key to making landlords more comfortable in offering periodic tenancies is education and advice on the advantages of period tenancies. These include:

- Periodic tenancies decrease the amount of paperwork landlords need to complete in comparison with fixed term tenancies.
- Tenants are likely to feel more secure in a periodic tenancy and stay longer rather than having the relative instability of fixed term tenancies being offered year after year, but with no certainty for the tenant. Tenants are more likely to maintain the property in a periodic tenancy as they are more likely to view it as their home.
- Also finding new tenants can be costly and time-consuming and while the property is empty it is not earning an income for landlords.

2.1.20 Open-ended or periodic tenancies provides more security and stability for tenants. However fixed term tenancies would still need to be available for emergency, transitional or social housing providers.

If only periodic tenancies were allowed it would provide more certainty as it would remove the difference in the notice period provisions between fixed term and periodic tenancies.

2.1.21 The Government could limit fixed term tenancies to providers of emergency or transitional housing providers only.

[5] Growing up in New Zealand, Residential Mobility Report 1: Moving house in the first 100 days, 2014, p21

2.1.22 If fixed term tenancies were removed, there would need to be some allowance in the periodic agreement to permit mutually agreed lengths of tenancy to be negotiated between the parties. This is not a one size fits all scenario as tenants with significant housing needs, young children, vulnerable elderly etc require greater security of tenure than students and more transient groups of tenants.

Landlord and tenant responsibilities

2.2.1 & 2.2.2 We believe that the current obligations and prohibitions on tenants are reasonable and fit for purpose.

2.2.3 The tenant's responsibility to keep a property "reasonably clean and tidy' does not make it clear what standard of cleanliness a landlord can expect the tenant to maintain the property in. It is very subjective, as what may be reasonable to one person would not be to another. It is also determined by the standard the premises were in at the start of the tenancy.

Photographic evidence of the state of the property at the beginning of the tenancy would make it clear what standard would clear, and could also be used if a dispute arose at the end of the tenancy.

Any additional responsibilities such as commercial cleaning of the carpets, should be negotiated and mutually agreed by the parties and recorded in the tenancy agreement, however we note that this is unenforceable by the Tenancy Tribunal.

2.2.4 There is no need for tenants in a longer-term tenancy to have additional responsibilities for the care and maintenance of the property. A longer tenancy should not trigger a standard higher than reasonably clean and tidy. Tenants are more likely to consider the property their home in a longer term tenancy and therefore undertake a higher level of care and maintenance than in shorter term tenancies.

2.2.5 With the move to greater security of tenure for tenants, this suggests that tenants should have a greater responsibility for ensuring that the property is maintained to a reasonable standard of weathertightness/ventilation/decorative state etc. If the reduction in frequency of inspections is also considered, there is a risk to landlords of significant deterioration to the property (for example, once black mould is established it is hard to eradicate, but it is easy to avoid/limit the establishment through use of suitable, non-moisture generating heating,

opening windows etc.). This may in turn suggest that a cycle of redecoration could form part of the contract between landlord and tenant – or that a tenant may need to undertake to maintain insurance against significant property deterioration.

2.2.6 We do not believe that the law provides sufficient protection to the landlord where tenants do not meet their obligations. Where a tenant does not advise their landlord of damage in a timely manner, the landlord's insurance may not cover the wider damage and the ultimate cost of repair would cost considerably more than early remediation. .

Tenants report that they have advised their landlords of damage or the need for repair and this is often not acted on. Tenants advise that this is often the case where a property manager is involved and it would appear that the message often does not get through to the landlord.

We **recommend** the regulation of property managers as advocated by Anglican Advocacy.[6]

2.2.7 – 2.2.9 We believe that landlord obligations are clear and understood, however many landlords appear unaware or wilfully disregard them. Although it may appear that some landlords are not kept well informed by their property managers.

2.2.10 At present the landlord can inspect their property every four weeks, however in reality, very few do. Prima facie this seems an unduly high frequency and has the potential to interfere with the tenants' right to peaceful enjoyment of the property.

However this needs to be balanced by the landlord's responsibility to ensure that the property is being maintained to the required standard.

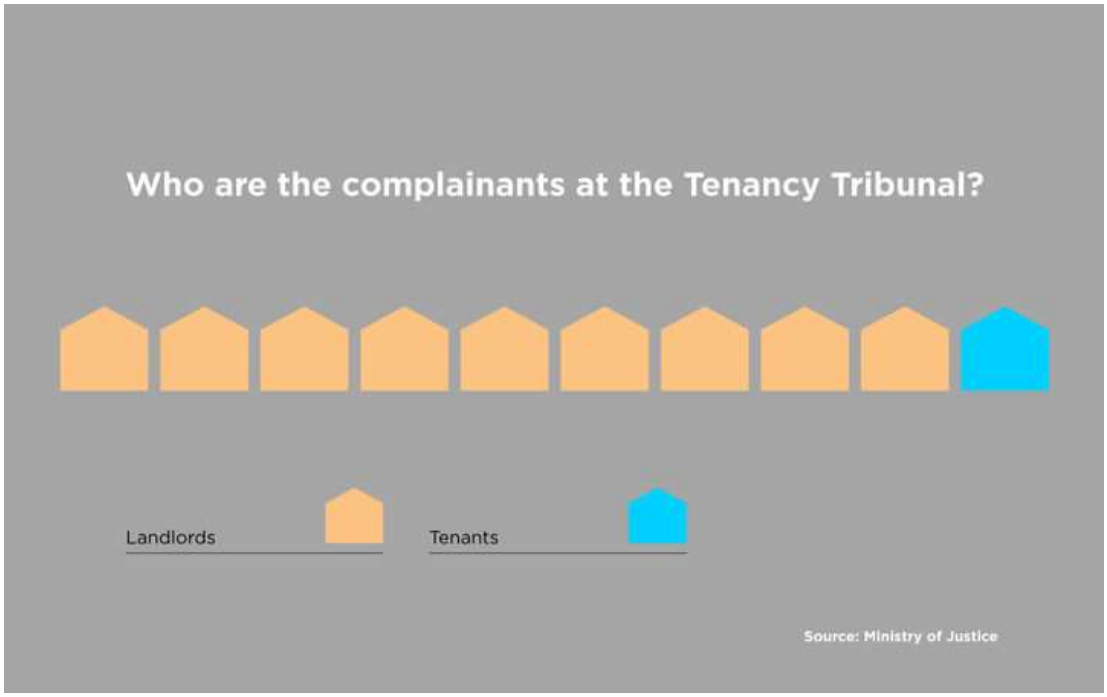
Where a landlord or property manager trusts the tenant, the frequency of inspections usually reduces as trust and confidence has been built over time.

We **recommend** that the frequency of inspections is limited to six monthly after the first year of a tenancy, where there has been no issues raised in previous inspections.

[6] http://www.anglicanadvocacy.org.nz/wp-content/uploads/2018/08/PM-open-letter-final.pdf

2.2.11 There is an inherent power imbalance in the tenant and landlord relationship. Tenants report they are reluctant to go to the Tenancy Tribunal with 90% of cases taken by landlords.[7]

Considering the process is funded through interest on bonds lodged with Tenancy Services, it does not appear to be protecting tenants as well as it is protecting landlords.



Tenants are scared of damaging the relationship with the landlord and jeopardising future tenancies with an inability to get a good reference if they take a case to the Tenancy Tribunal. Many property managers and landlords regularly search the Tenancy Tribunal's website using prospective tenant's names to check if there have been orders made against them, or whether they have taken their landlord to the tribunal. If they have, they are often labelled as a "difficult tenant" regardless of whether their claim was justified against the previous landlord.

We **recommend** the government use unclaimed bonds to fund an advocacy service for tenants.

[7] https://www.radionz.co.nz/news/in-depth/365295/why-renters-won-t-complain-about-landlords

2.2.12 The responsibility for maintaining heating equipment, ventilation methods, and any other improvements installed under the healthy homes standards should be borne solely by the landlord.

2.2.13 Where a landlord makes improvements to a property to make it warmer or drier, a tenant should only be obligated to use it when it would cause damage not to use it. A landlord may choose to put in a heat pump, however a tenant should not be obligated to use it and the non-use would not cause any damage to the property.

However, some of our members report that some tenants don't use heating or ventilation even when they are not responsible for paying the electricity.

Tenants have advised they have been refused permission by their landlord to install a heatpump, even when the tenant offered to pay for costs of installation and purchase of the heat pump.

Modifications

We **recommend** that tenants should be allowed to make minor modifications to their rental property eg. repainting, hanging pictures, and securing furniture in the event of an earthquake.

We suggest the test of minor would be defined by consultation with the landlord and agreement as to the type and number of modifications requested by the tenant. This will build communication, trust and relationship with tenants and landlords.

Any modification that would require building consent clearly does not meet the test for minor.

2.3.3 It is reasonable for tenants to be obliged to reverse a modification if the landlord has not agreed to the modification, unless both parties agree otherwise.

2.3.4 If the landlord does not wish to take on the modification and the tenant refuses to reverse it at the end of the tenancy, the tenant should be liable for the cost of reversing the modification. The landlord could apply to the Tenancy Tribunal for meet the reasonable costs of reversing the modification however the landlord should be able to provide quotes for this work.

The landlord could also be eligible to claim for associated loss of income if the work caused delays which prevented the property being re-tenanted.

2.3.5 We agree with the grounds stated in paragraph 98 as being reasonable and justify the landlord in refusing a tenant's request to make a minor alteration.

2.3.6 21 days is reasonable amount of time for a landlord to consider a request from a tenant to make minor modifications.

2.3.7 We believe it is reasonable for landlords to require tenants to use a suitably qualified tradesperson. All modifications that require a building consent should require a suitably qualified tradesperson to carry out the work.

2.3.8 Permitted modifications that do not require the landlord's consent should include hanging pictures, and securing furniture in the event of an earthquake. Repainting could be undertaken where mutually agreed colours and to a good standard of workmanship.

However tenants should still be liable for any damage caused by the modification whether they are permitted or not.

2.3.9 There may be unintended consequences of a minor alteration eg. when a water pipe is damaged when hanging a picture. This could result in significant damage to the property and would be unforeseen by the tenant and the landlord. Where damage has been caused by such alterations it should be the responsibility of the tenant to meet rectification costs, unless such costs have arisen through previously unremediated issues (e.g. a known and reported leak).

2.3.10 We would prefer option one as it ensures there is open communication between the landlord and tenant.

Keeping pets in rental properties

There is a wealth of research that supports the idea that owning a pet has a positive impact on a person's mental health and wellbeing.[8] 64% of New Zealand households have at least one pet.[9] 58% of people who do not have a pet would like to get one and one of the barriers is that the landlord does not allow animals.[10]

Housing New Zealand is a pet friendly landlord, and it is not unreasonable to expect private landlords to allow their tenants to have the benefits of pet ownership. We

[8] https://www.healthnavigator.org.nz/healthy-living/tips-for-healthy-living/o/owning-a-pet-is-good-for-your-mental-wellbeing/
[9] http://www.nzcac.org.nz/privacy-statement/7-blog/73-companion-animals-in-new-zealand-2016
[10] Ibid

recommend that tenants are allowed to keep pets in their rental accommodation and landlords must not unreasonably refuse a pet request.

However, some social housing spaces are designed using a community model with open communal spaces where it would be difficult to provide a safe environment for dogs.

The existing law which provides for a bond should cover any damage to the property which may be caused by pets, and also provides for tenants to ensure that they do not unreasonably interfere with the reasonable peace, comfort and privacy of others. Therefore we believe the current law is adequate in protecting landlords' rights.

To allow landlords to charge additional fees like a pet bond or oblige the tenant to undertake commercial carpet cleaning if they have a pet, would place further barriers and costs on the tenants in an already stretched rental market where the tenants requires significant costs in setting up a new tenancy, and would also be legally unenforceable.

2.4.5 Reasonable grounds for a landlord to object to a tenant's request to keep a pet include:

- Lack of fenced areas/nature of terrain/consideration of risk to native wildlife
- Type, number and size of pet (for example, large dogs could be intimidating/ a danger to other tenants)
- Suitability of accommodation (for instance, a studio could not really accommodate a tenant and six Great Danes)

2.4.8 A pet bond is a potential option; compulsory microchipping; "responsible pet owner" status could be a requirement. Owning a pet, like entering into a tenancy, is a long term obligation involving both costs and benefits. Abandonment of unwanted pets at the end of a tenancy or when the tenant moves voluntarily creates stress on landlords, both emotionally and practically.

Setting and increasing rent

3.1.2 We recommend that rental bidding is banned. The practice of rental bidding puts more power in the hands of landlords and increases the power imbalance between landlords and tenants.

It also makes the vulnerable in our society more vulnerable and increases injustice.

3.1.3 We **recommend** that option two – prohibiting the request or acceptance of rental bids is adopted. We believe this is the better option to ensure equality and equity for tenants. It provides certainty and transparency for tenants and the market. There is a wealth of information for landlords to assess market rent without having to revert to rental bidding.

3.2.1 The three month limit for tenants to challenge a rent increase is reasonable. However the majority of tenants do not realise they have the right to challenge rent increases or how to do this. We **recommend** that government use unclaimed bonds to fund an advocacy and education service for tenants.

3.2.2 We **recommend** that guidance is provided on what constitutes "substantially exceeding market rent." We **recommend** that increases in rent are limited to the Consumer Price Index. If a landlord increases the rent above this, we **recommend** that they provide evidence to support this increase. This could be that substantial work has been undertaken on the property to support the increase.

3.3.2 We **recommend** limiting rent increases to once every 12 months as this will provide tenants with certainty and enable them to budget with confidence. Many tenants are on fixed incomes and if rent increases were limited to once a year it will provide them with certainty of their accommodation costs and the ability to plan for their future.

The 12 month frequency will still allow landlords to regularly review rents.

The 12 month frequency will also align with how often the Ministry of Social Development reviews Income Related Rent Subsidies for tenants. It is essential that there is the possibility for tenants in these circumstances to maintain the right to have this reviewed earlier if their circumstances change.

Enforcement

The Tenancy Tribunal was established to resolve tenancy issues between landlords and tenants, although as previously stated, the vast majority of proceedings are brought by landlords. Even information on the Tenancy Services website seems to be weighted in favour of the landlord with FastTrack Resolution limited to issues relating to the landlord.[11]

[11] https://www.tenancy.govt.nz/disputes/fasttrack-resolution/

Tenants are reluctant to lodge proceedings with the Tenancy Tribunal for fear of being blacklisted or losing their home.[12] We **recommend** the Tenancy Tribunal allow tenants to remain anonymous when they take a case to the tribunal while landlords remain named. This would go some way to address the inherent power imbalance in the tenant – landlord relationship and provide protection to tenants who wish to take cases to the tribunal without fear of being blacklisted.

5.1.4 We support the proposal for MBIE to have the power to enter the common spaces of boarding houses without the prior agreement of at least one of the tenants. Many people living in boarding houses are often vulnerable, and more likely to be unemployed, on low incomes,[13] and may suffer from drug dependency or emotional issues.[14] Māori, and Pasifika people are overrepresented in boarding houses.[15] Over half report a health or disability issue and are highly transient.[16] This vulnerability means that boarding house tenants often lack the capability to enforce their rights without support.

5.1.5 We **recommend** MBIE be required to give a boarding house landlord 24 hours' notice before exercising their power of entering common spaces of boarding houses. This timeframe matches the landlord's notice period to enter a tenant's room.

5.1.6 We support the proposal that MBIE is given powers to undertake audits of landlords and property managers. We believe that it is important that an independent third party provides oversight and has the ability to investigate allegations of improper practices. This need is increased due to the increase in numbers of people renting.

5.1.7 We support MBIE having the ability to consolidate multiple breaches of the Act as proposed. We agree that this will provide efficiencies for both MBIE and the Tenancy Tribunal resources and enable cases to be resolved quicker.

5.1.8 We **recommend** that higher penalties be made available for breaches of the Act when a single case is taken for multiple breaches. The current penalties are not sufficient to act as a deterrent to landlords for lack of compliance.

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[12] https://www.stuff.co.nz/business/105334077/threat-of-blacklist-reportedly-stopping-tenants-from-using-tenancy-tribunal

[13] http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/outside-norm/boarding.aspx

[14] https://www.parliament.nz/resource/en-nz/50DBSCH_SCR57007_1/a7eb89c92d5234548b9212b2bb58a10c5b5a32fa

[15] Ibid

[16] Ibid

5.1.9 We consider it appropriate for MBIE to enter into enforceable undertakings with landlords. We believe this will provide incentives to change poor practices by landlords.

5.1.10 We consider it appropriate for MBIE to issue improvement notices which relate to the health and safety of the tenant and the property.

5.1.11 We recommend the maximum penalty for failure to comply with an improvement notice is increased to $1,000. We note that the Tenancy Tribunal rarely awards the maximum amount.

5.1.12 We support MBIE having the ability to issue infringement notices in circumstances where a breach of the Act is straightforward to prove.

5.1.13 We believe that infringement notices for landlords would only be effective in holding them accountable for poor behaviour and to encourage positive behaviours if the penalties are commensurate with the breach.

Where MBIE is effectively acting on behalf of tenants, consideration should be given to the tenants receive compensation for breaches of the Act.

Alternatively funds collected by MBIE under the issue of infringement notices and improvement notices could be used to fund an education, support and advocacy service for tenants.

We note that the State of Victoria uses a scale of penalty units for breaches of their Act. This ranges from 10 to 60 penalty units with the value of the penalty unit being $161.19 for the 2018-2019 financial year.

We recommend that the government considers a scale similar to the one used in Victoria and that the maximum penalty of the infringement notice should also change with the Consumer Price Index to keep the level relevant.

We recommend that MBIE create a Special Rent Account and tenants are given the option to pay rent to this account where an infringement notice or improvement notice has been issued until it is resolved. This would act as another incentive for landlord to comply with notices issued. MBIE would act as an independent third party in holding the rental and paying this out once the matter has been resolved.

5.1.15 – 5.1.18 The levels of exemplary damages are low for breaches considered to be unlawful acts. We recommend increasing the amount of exemplary damages that can be awarded to a maximum of $10,000 for serious and/or repeated breaches.

If the change is made to make these penalties instead of exemplary damages it would mean that the penalty would be paid to the Government rather than the party impacted by the unlawful act. This would a significant change to the current law. If the unlawful act was committed by the landlord it would create further imbalances in the tenant landlord relationship.

We do not believe that penalties would be a better incentive for landlords or property managers to proactively comply with their obligations under the Act. In particular the maximum penalty of $200 for landlords who fail to keep records seems particularly low, especially when MBIE is seeking powers to undertake audits. This is less than the average one week rent in New Zealand and does not act as a deterrent. Minimum penalties in Victoria start at $1,611.90.

5.1.19 We believe that the current time limit of 12 months after termination is a reasonable timeframe for a party to make a claim to the Tenancy Tribunal seeking exemplary damages.

Summary of recommendations

The Methodist Alliance makes the following recommendations to the Select Committee:

1. The right to adequate housing is included in the purposes of the Act.

2. A standard notice form be drafted with tick boxes for landlords to select the reason for giving a 90 day notice of termination and providing evidence they are basing their decision on. The form should clearly record the date the notice was given and the date the notice period ends.

3. Public housing providers are given an exception from the 90 day notice period where a tenant is being transferred to a different public housing property. This could be shortened to a 21 day notice or earlier as agreed between the parties.

4. There is regulation of property managers, as advocated by Anglican Advocacy.

5. The frequency of inspections is limited to six monthly after the first year of a tenancy, where there has been no issues raised in previous inspections.

6. The government use unclaimed bonds to fund an advocacy service for tenants.

7. Tenants should be allowed to make minor modifications to their rental property eg. repainting, hanging pictures, and securing furniture in the event of an earthquake.

8. Tenants are allowed to keep pets in their rented accommodation and landlords must not unreasonably refuse a pet request.

9. Rental bidding is banned.

10. Prohibiting the request or acceptance of rental bids.

11. Government use unclaimed bonds to fund an advocacy and education service for tenants.

12. Guidance is provided on what constitutes “substantially exceeding market rent.”

13. Increases in rent are limited to the Consumer Price Index. If a landlord increases the rent above this, they are required to provide evidence to support this increase.

14. Limiting rent increases to once every 12 months.

15. The Tenancy Tribunal allows tenants to remain anonymous when they take a case to the tribunal.

16. MBIE be required to give a boarding house landlord 24 hours' notice before exercising their power of entering common spaces of boarding houses

17. Higher penalties be made available for breaches of the Act when a single case is taken for multiple breaches.

18. The maximum penalty for failure to comply with an improvement notice is increased to $1,000.

19. The government considers a scale similar to the one used in Victoria and that the maximum penalty of the infringement notice should also change with the Consumer Price Index to keep the level relevant.

20. MBIE create a Special Rent Account and tenants are given the option to pay rent to this account where an infringement notice or improvement notice has been issued until it is resolved.

21. We recommend increasing the amount of exemplary damages that can be awarded to a maximum of $10,000 for serious and/or repeated breaches.