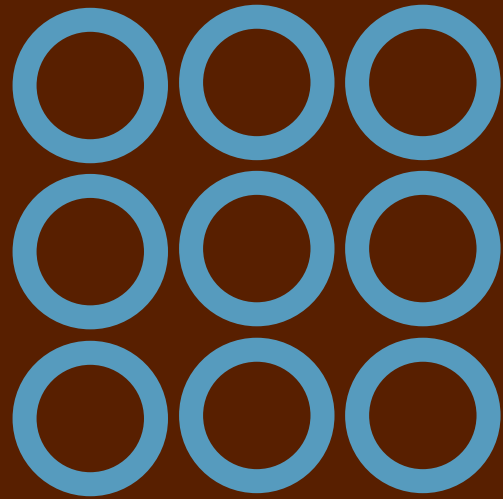


# Getting the Balance Right

Te Mahi kia Tika ai te Whārite



REVIEW OF THE  
RESIDENTIAL TENANCIES ACT  
1986



Department of  
Building and Housing  
*Te Tari Kaupapa Whare*



## THE NEW ZEALAND RENTAL HOUSING MARKET

**1/3** of New Zealanders rent their homes.

**81%** of these people rent from a private landlord or trust.

**19%** rent from a public landlord (such as Housing New Zealand Corporation or a local authority).

**15 months** or less is the average duration of a tenancy.

50% end within 10 months, 33% within 6 months and 13% within 3 months.

**400,000** people call Tenancy Services for advice each year.

**210,000** bonds are lodged for rental properties each year.





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# Introduction

## Have your say on rental housing.

Welcome to the Review of the Residential Tenancies Act (“The RTA” or “the Act”).

The Residential Tenancies Act sets out the rights and obligations of people who rent their homes and of the people they rent from. The Act covers things like payment of rent, bond, property repairs and giving notice. It came into being in 1986.



New Zealand has changed significantly since 1986 – from the technology we use, to the cars we drive, the way we live and our view of our place in the world.

The people who are landlords and tenants in New Zealand, and the needs of those people, have changed too.

While most New Zealanders own the house they live in, more people are renting than ever before. About a third of our population lives in rented homes. Those who rent have changed too - more older people and families are renting their homes, for instance. In many cases people rent because they have no option, but in other cases it’s a lifestyle choice.

Landlords have changed too. For many people, rental property has become an important business investment and a significant part of saving for retirement.

It’s time to look at the RTA to ensure it provides a good balance between the needs of tenants for a decent home and the needs of landlords to manage their rental properties effectively.

*Getting the Balance Right* sets out some issues around renting that we’d like you to think about. This document has been written by the Department of Building and Housing with help from an External Reference Group. We selected members for this group based on their knowledge of residential tenancies and housing issues in general. These people gave us valuable insights, and I thank them for their work on the review so far.

So, if you are a landlord, a tenant, a property manager, or just someone interested in rental housing we invite you to have a look at this document and think about the issues. If you’ve got something to say about rental housing, you can use the submission form in the centre pages of this document.

We look forward to hearing from you.

Katrina Bach

Chief Executive  
Department of Building and Housing

# Making a Submission

We welcome your views on the themes and issues raised in this discussion document, and more generally on residential tenancies. We encourage you to make a submission so that a wide range of perspectives can be considered as part of the Review.

To help with your submission we have developed a series of questions relevant to the themes and issues outlined in the discussion document. These are set out on the submission form in the middle of the document. You can choose to answer these questions or to respond as you choose.

All submissions will be carefully considered. This will help us to determine the level and nature of concern about each issue discussed across the range of submissions.



All submissions must be in writing. You can make your submission by using the form provided here or on-line at [www.dbh.govt.nz](http://www.dbh.govt.nz), or by writing to us. If you do not use the submission form provided, please ensure that your submission includes the following information:

- *Your name.*
- *Your address, telephone number and email address.*
- *Whether you are a landlord, tenant or property manager or whether the organisation you are submitting for represents any of these groups.*
- *If you are representing an organisation or group, please give the name and contact details for that organisation or group, and the position you hold.*

**Please send submissions, to be received by 5pm, 18 February 2005 to:**

*RTA Review  
P O Box 10729  
Wellington*

Your submission (but not your personal contact details) will be available to the public. If you do not want your submission to be available to the public (for example - if it contains commercially sensitive information), you must indicate this. Any request for a copy of your submission will be considered under the provisions of the Official Information Act 1982.

You can find this discussion document, along with a short form version, the submission form and instructions for making an electronic submission on [www.dbh.govt.nz](http://www.dbh.govt.nz). Additional hard copies can be obtained by phoning the Department of Building and Housing on 0800 83 62 62.

We encourage you to make a submission so that a wide range of perspectives can be considered as part of the Review.

Submissions must be received by 5pm, 18 February 2005.

# Executive Summary - Themes and Issues

Because the way we live has changed so much, Government has decided to review the Act.

New Zealand's housing environment today is quite different from what it was when the RTA came into effect in 1986. Because the way we live has changed so much, the Government has decided to review the Act.

The Review is taking place within the context of the Government's wider NZ Housing Strategy. Government's interest in reviewing the RTA is not to remove the protections provided by it, but to ensure that it continues to meet the needs of landlords and tenants in today's housing environment.

*Getting the Balance Right* identifies the following key themes and issues for the Review and provides some discussion on each. It also poses questions about the implications of these themes and issues for you to consider. Your answers to these questions will help the Government decide what changes may be required to the RTA.



## **MORE PEOPLE RENT AND IT'S IMPORTANT TO GET THE BALANCE BETWEEN LANDLORDS AND TENANTS RIGHT.**

New Zealand has changed since 1986, and now more New Zealanders rent and proportionately fewer live in houses they own. Because more people are renting, more people are affected by the RTA. This means that the social and economic costs of getting regulation of the rental market wrong and the benefits of getting it right are bigger.

Within the rental market, more individuals and families depend on housing provided by private landlords (rather than state or council landlords). This means that private rental housing is having a bigger impact on New Zealand's housing, social and economic outcomes than it did in 1986.



## **THE CIRCUMSTANCES OF PEOPLE RENTING ARE MORE DIVERSE.**

The family and individual circumstances of people renting are more diverse than they were in 1986.

Proportionately fewer young people are flatting away from home and more older people and more families with children are renting. Many of these people will need or choose to rent for longer periods than they have in the past.

Tenants and landlords are more culturally diverse and more have English as a second language. Some tenants have special needs - for instance - they might need a very large house to accommodate extended family members, or they might need a particular form of accommodation because they are disabled.



## **PEOPLE WITH DIFFERENT INDIVIDUAL AND FAMILY CIRCUMSTANCES HAVE DIFFERENT NEEDS FOR STABLE HOUSING.**

A level of certainty about being able to live in the same home over time is very important for families, especially those with school-aged children, and for older people. Single people and couples might also value being able to stay in the same home over time, depending on their circumstances. This is what we mean when we use the words 'stable housing' in this document.

Because more people are renting, more people are affected by the RTA.

The family and individual circumstances of people renting are more diverse than they were in 1986.

Stable housing is very important for families, especially those with school-aged children, and for older people.

Many households in New Zealand achieve stable housing through owning their own home, but for an increasing proportion this is not possible, while others prefer to rent for lifestyle and other reasons.

Most people who rent in the private sector have a periodic tenancy that can be ended by either party at short notice. Fewer people have a long-term fixed tenancy.

While social housing (such as state housing) can provide stability, the capacity of that sector is limited.



### **HOUSING IS BECOMING LESS AFFORDABLE.**

It seems that both buying and renting a home is becoming less affordable, especially for low-income earners and for people living in growth areas like Auckland or in rural areas where quality housing is in short supply.

Being a landlord involves both risk and costs. These costs may deter some people from becoming landlords and providing affordable housing for low-income earners. Changes have been made to help landlords trace ex-tenants who owe them money but there are still concerns about how payment orders from the Tenancy Tribunal can be enforced against tenants. Many landlord/tenant disputes and evictions occur over unpaid rent.

It may be that some tenants would benefit from additional support to budget better and to manage on limited finances. There may also be ways to decrease some of the costs faced by landlords and to encourage landlords to provide affordable rental housing.

It seems that both buying and renting a home is becoming less affordable.



### **IS THERE A PROBLEM WITH THE QUALITY OF RENTAL HOUSING?**

The RTA does not require rental houses to meet particular quality standards.

While some rental properties are new and purpose built, many are older homes that have cycled onto the rental market. The quality of these properties is variable and sometimes poor. Rental houses, like some owner-occupied houses, are not always well maintained.

The RTA requires landlords to keep the premises in a 'reasonable' state of repair' but different interpretations of what 'reasonable' means are a common cause of tenancy disputes.

The RTA does not require rental houses to meet particular quality standards.



### **STANDARDS OF PROPERTY MANAGEMENT ARE VARIABLE.**

Small and part-time landlords dominate the private rental sector. Many manage their properties well. Some do not. Some are 'accidental' landlords and some are only landlords until they can sell and realise a capital gain on their investment property or find a more desirable investment.

The incidence of large-scale landlords and the use of professional property managers are low. Further, standards of practice between property managers are also variable.

Many landlords manage their properties well. Some do not.



### **DO PROSPECTIVE LANDLORDS GET THE RIGHT ADVICE?**

There are few entry barriers to investing in residential property. Concerns have been raised about the adequacy of financial and other advice provided to potential property investors and landlords. Often the advice that is provided includes no reference to the obligations and duties of becoming a landlord, managing relationships with tenants or the practicalities of entering into a service business. Instead, residential property investment is frequently 'promoted' as if it were a passive investment.



### **NOT ALL RENTAL ACCOMMODATION IS COVERED BY THE RTA.**

The rental housing market includes specialist accommodation that sometimes has a high service component, such as serviced apartments and student accommodation. The RTA excludes these

and some other forms of accommodation with a high service component. While the RTA is currently being amended to cover boarding houses, other forms of specialist accommodation with a service component are either regulated separately or not at all. People who own or live in these types of accommodation cannot automatically use the mediation services provided by *Tenancy Services* or the Tenancy Tribunal.



#### **IT IS NOT ALWAYS CLEAR WHO IS RESPONSIBLE FOR PAYING SOME HOUSEHOLD COSTS.**

The cost of providing utilities (such as water) and services (such as removal of wastewater or rubbish collection) to rental homes is becoming a frequent cause of dispute between landlords and tenants.

This is because of a trend to charge both the fixed and variable costs of these services direct to occupiers (who may be tenants) rather than property owners, in ways not envisaged by the RTA.

For instance, some gas companies are now charging separately for the costs of maintaining meters and lines to houses (even when no gas is used).

In other cases, there may only be one gas, water or power meter to a rental property that has been divided into a number of rental units and no way of knowing the actual share of the power or water used by different tenants.

There is a need to establish clear principles to guide the way that household costs are divided.



#### **TENANCY SUPPORT SERVICES FOR LANDLORDS AND TENANTS ARE IMPORTANT.**

The RTA provides for tenancy support services for both landlords and tenants, including education and information, advice, mediation and adjudication. Most of these services are provided by the *Tenancy Services* part of the Department of Building and Housing (formerly the Ministry of Housing). A recent review of *Tenancy Services* indicated that the approach being taken by *Tenancy Services* is right - with a focus on trying to deal with disputes between landlords and tenants as early as possible. Landlords and tenants thought that the services provided were useful, but also noted that there was room for improvement in some areas.



#### **WOULD SOME TENANTS BENEFIT FROM ADVOCACY SERVICES?**

Some tenants may need additional help to understand and act on their rights and responsibilities under the RTA.

For instance, people with a mental or other disability may have difficulty accessing their rights and dealing with their responsibilities as tenants; people who have language difficulties or a different cultural background may be uncomfortable with the tenancy mediation and adjudication process.

The RTA could provide for an advocacy service for such tenants.

**We invite your responses to each of the issues and questions raised in *Getting the Balance Right*. If you consider that there are other issues or questions that have not been covered, please include them in your submission.**

Household costs such as water and rubbish collection are becoming a frequent cause of dispute between landlords and tenants.

The right tenancy support services need to be provided for landlords and tenants.

Some tenants may need additional help to understand and act on their rights and responsibilities under the RTA.

## The Residential Tenancies Act (RTA).

The RTA regulates the rental housing market by defining the rights and obligations of landlords and tenants. It applies to both private (for profit) and social sector landlords (such as Housing New Zealand Corporation, local authorities and charitable trusts). It provides a legal basis for the relationships between landlords and tenants. Critical to the RTA is a balancing of the social needs of tenants for housing with the business needs of landlords to manage their rental properties effectively.

### Among the RTA's main features are that it:



- requires tenancy agreements to be in writing, and sets out what needs to be covered in a tenancy agreement;
- provides for bonds and rents including maximum amounts for bonds and restrictions on the number of rent increases;
- sets out the rights and obligations of landlords and tenants including a tenant's rights to vacant possession and quiet enjoyment, a landlord's responsibilities for maintenance and a landlord's rights to enter the rental property;
- provides for the termination of tenancies including the circumstances under which tenancies may be terminated and the steps required to terminate a tenancy;
- provides for the Tenancy Tribunal to resolve matters of dispute; and
- provides for enforcement and offences, including enforcement of possession and other orders made by the Tenancy Tribunal.

It is eighteen years since the RTA came into effect. The housing environment has changed a lot since 1986. More people now live in houses they rent from private landlords. Amongst these people are more families and older people. Because of the increase in people living in private rental properties, the operation of the private rental sector is now more important to the housing and social outcomes of New Zealanders than it was in 1986.

In directing this Review, Government noted the importance of rental accommodation in the New Zealand housing mix. It is not Government's intention to lessen the protections provided by the RTA. The aim is to ensure that the RTA continues to provide a sound basis for a sustainable rental housing sector that *balances* the business needs of landlords against the social needs of tenants and their families for affordable, stable, good quality housing.



### ADMINISTRATION OF THE RESIDENTIAL TENANCIES ACT.

The Department of Building and Housing administers the RTA. It took over this role from the Ministry of Housing on 1 November 2004.

As part of its role the Department of Building and Housing provides services to landlords and tenants through *Tenancy Services*. *Tenancy Services* has 22 dispute resolution offices throughout

The RTA regulates the rental housing market by defining the rights and obligations of landlords and tenants.

The RTA is 18 years old and a lot has changed since 1986.

New Zealand that provide information and advice, dispute resolution and mediation for landlords and tenants. The *Tenancy Services Centre* also processes all tenancy bonds and provides bond and tenancy advice via two 0800 numbers.

You can learn more about *Tenancy Services*, the Tenancy Tribunal and the Residential Tenancies Act at [www.dbh.govt.nz](http://www.dbh.govt.nz).



#### RTA REVIEW TERMS OF REFERENCE.

It is intended that the Review will lead to a RTA that is characterised by:

- the minimal necessary impact on the operations of the rental market;
- an appropriate balance between the needs and obligations of landlords and tenants;
- high levels of compliance with the RTA and easily enforceable rights and obligations (in-so-far as this is within the scope of the Residential Tenancies Act);
- an appropriate level of flexibility in regulation to accommodate the variety of residential rental transactions and relationships, and the development of future trends; and
- a style that is easy to understand, communicate and implement.

***The Review is separate from the current Residential Tenancies Amendment Bill that is going through Parliament.*** That amendment is relatively minor, and primarily designed to extend the RTA to boarding houses. The Review will provide for a far more comprehensive examination of the RTA.



#### CONNECTION TO THE NZ HOUSING STRATEGY.

The Review is also taking place within the context of the NZ Housing Strategy, led by Housing New Zealand Corporation (HNZC).

The NZ Housing Strategy discussion document *Building the Future: Towards a New Zealand Housing Strategy* raised questions about housing in New Zealand, including specific questions on the private rental sector. Some of the people who made submissions on the NZ Housing Strategy and met with the Strategy team had comments and suggestions on rental housing and the RTA. These comments and suggestions concerned housing affordability, stable housing and rental housing quality, among other things. They will be considered during the RTA Review. You can learn more about the NZ Housing Strategy at [www.hnzc.co.nz/nzhousingstrat/index.htm](http://www.hnzc.co.nz/nzhousingstrat/index.htm)



#### SCOPE OF THE RTA REVIEW.

The RTA Review is not occurring in isolation from other areas of government. Nor is it likely that all of the issues that arise from the Review will be addressed through changes to the RTA. This is because the RTA is only one of a number of laws and regulations that impact on housing in New Zealand. For example: the RTA does not cover provision of the Accommodation Supplement or the tax treatment of rental properties.

At the same time as the RTA Review, there are other reviews occurring that also have implications for the rental housing market. These include:

- a review of the Unit Titles Act by the Department of Building and Housing;
- a review of financial intermediaries by the Ministry of Economic Development;
- a review of the Real Estate Agents Act by the Ministry of Justice;
- a review of the New Zealand Building Code by the Department of Building and Housing; and
- a review of the depreciation rules by Inland Revenue.

It is likely that issues will be raised during the RTA Review that cannot be addressed primarily through the RTA. These issues will also be considered by the Review.

The Review is also taking place within the context of the NZ Housing Strategy, led by Housing New Zealand Corporation (HNZC).

At the same time as the RTA Review, there are other reviews occurring that also have implications for the rental housing market.

# Themes and Issues

In this part of *Getting the Balance Right* we identify and discuss key themes and issues with implications for the rental housing market. We identify key changes to the housing environment together with important structural issues associated with the market. We discuss the implications of these changes for the rental market and the RTA and invite your responses to questions about their implications.

## More people rent and it's important to get the balance between landlords and tenants right.



Since the RTA was passed in 1986 more New Zealanders depend on or choose to live in rental housing. Of those who do, most rent from a private landlord rather than a social landlord<sup>1</sup>.

These changes have occurred during a period of overall growth in the New Zealand population and in the number of New Zealand household units, which increased from 1.08 million in 1986 to 1.34 million in 2001.

The number of people living in houses they own, rather than rent, peaked at 74% between 1986 and 1991 and declined to 68% by 2001.

The reasons for these changes are complex and include:

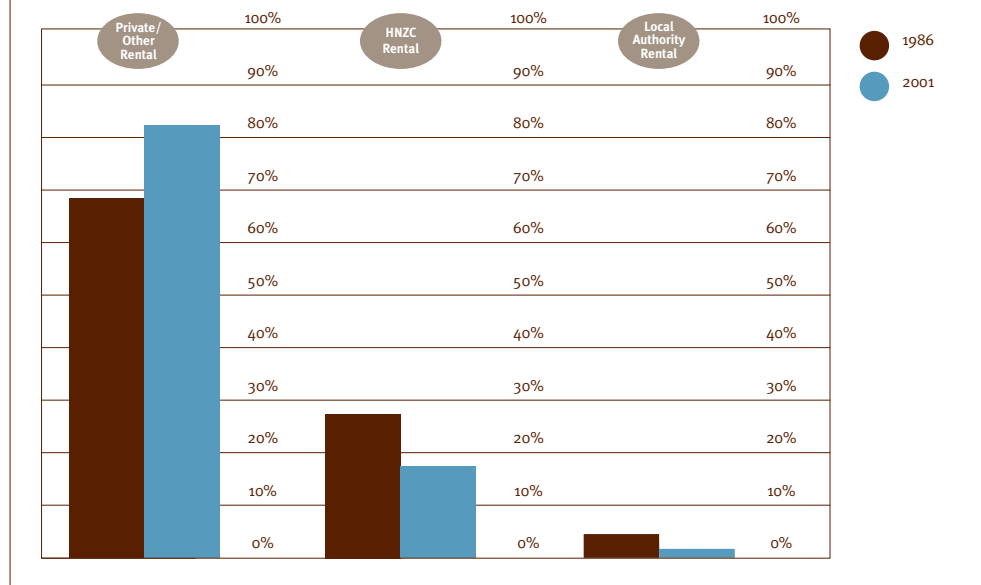
- Decreasing home ownership affordability. House prices have increased relative to income. While repayment of a mortgage may be affordable, saving the amount required for a deposit may be more difficult. When it is difficult or impossible to buy, renting becomes the 'default option'.
- Housing affordability is a particular issue in the main urban centres, especially Auckland but also in provincial centres such as Nelson.
- Increasing levels of non-mortgage debt including credit card, hire purchase and student loan debt can restrict people's access to mortgage finance and home ownership.
- Patterns of family and household make up are changing, and some of these changes may affect people's willingness or ability to buy a house. These changes include couples choosing to have children later and an increasing number of sole parent families.
- Decreasing emphasis on the importance of home ownership among young people - changing lifestyles, labour-force mobility and increased emphasis on other options for spending.
- Proportionally higher population growth among Māori and Pacific peoples, groups with traditionally lower home-ownership rates.
- The increased number of short term visitors to New Zealand, such as overseas students requiring rental accommodation.

Figure 1 shows that the share of people living in privately rented houses (as a proportion of those living in all types of rental houses) increased from 67% to 81% between 1986 and 2001. It also shows that the share of people living in houses owned by Housing New Zealand Corporation reduced from 27% to 17% and the share living in houses owned by local authorities reduced from 4.3% to 1.9%.

<sup>1</sup> Social landlords include Housing New Zealand Corporation, local authorities, some iwi and some charitable organisations. Social landlords are typically motivated by social rather than commercial objectives.

Since the RTA was passed in 1986 more New Zealanders depend on or choose to live in rental housing. Of those who do, most rent from a private landlord rather than a social landlord<sup>1</sup>.

**FIGURE 1. PEOPLE LIVING IN RENTED HOUSES BY LANDLORD**



Because more New Zealanders rent their homes, and more of the homes they rent come from private landlords, the social and economic benefits (and costs) of getting regulation of the rental market right (or wrong) are now greater.

If the balance of rights and responsibilities between tenants and landlords is wrong, it can impact negatively on the willingness of landlords to provide rental housing.

The RTA sets out the rights and obligations of both landlords and tenants and provides a way for each to enforce their rights. The RTA requires tenants to pay their rent, to take reasonable care of the house they rent, and to give notice if they want to leave. Landlords are required to maintain the house, allow their tenants quiet enjoyment of the house and give reasonable notice if they want the tenants to leave.

Some landlords say that they do not have the means necessary to judge the character of tenants when they first enter into a tenancy agreement. They say that the RTA does not provide them with the ability to end a tenancy if the tenant has provided false or misleading information to get the tenancy. Some landlords also say that it can take too long for the Tenancy Tribunal to make orders against 'bad' tenants, that the penalties provided by the Act are insufficient and that it is hard to enforce Tribunal orders because of difficulties in tracing tenants.

Tenants sometimes say that landlords do not properly maintain premises or make repairs within a reasonable time. In such situations tenants can feel powerless. Only a small proportion of tenants take claims against landlords through the Tenancy Tribunal, with only 10% of Tribunal claims being lodged by tenants. Some tenants may instead attempt to resolve the dispute by withholding rent, which in turn may result in an action against them by the landlord.

## QUESTIONS

- **Does the RTA currently achieve the right balance between the rights and obligations of landlords and the rights and obligations of tenants? If not, why not?**
- **How can Tenancy Tribunal orders be better enforced?**

## The circumstances of people renting are more diverse.



The RTA was designed in response to a particular housing environment. In 1986 many of those renting from private landlords were young adults flatting together or young couples prior to buying family homes. The housing needs of older people and families were mainly met through home ownership and the needs of the small proportion unable to afford ownership of a home were mainly met through the social housing sector. This has changed.

Behind the growth in total demand for rental housing are subtle changes to the mix of people renting. The individual and family circumstances of people renting, especially from private landlords, are far more diverse than they were in 1986.

Figure 2 summarises the main changes to the individual and family circumstances of people living in houses they rent. It shows how those renting in 2001 were living in more diverse family and household circumstances than those renting at the time of the 1986 census.

**FIGURE 2. MAIN TRENDS IN THE CHARACTERISTICS OF PEOPLE RENTING BETWEEN 1986 AND 2001**

Characteristic	Trend (1986 to 2001)
<b>Age</b>	People renting in 2001 were more likely to be older than those in 1986, with a sharp increase in the proportion of those aged over 29 and especially in those aged over 40.
<b>Household structure</b>	People renting in 2001 were more likely than those in 1986 to be: <ul style="list-style-type: none"> <li>• sole parent households; and</li> <li>• couples with children.</li> </ul> People renting in 2001 were less likely to be just flatting together.
<b>Ethnicity</b>	People renting in 2001 were from a wider range of ethnic and cultural backgrounds than those who were renting in 1986. In particular, there was a significant increase in the proportion of Asian people renting.

There is a close relationship between household circumstances and children's health status, educational attainment and general social well being. Therefore, of the changes mentioned in Figure 2, perhaps the most important is the increase in the proportion of families with children, and especially sole parent families, living in private rental housing.

Among those living in rental housing are people with special needs related to a physical or intellectual disability. One in five New Zealanders reports having one or more long-term disabilities. In 2001, at least 121,500 adults and 28,300 children with a disability rented their homes. While the proportion of disabled people renting in the private sector is not known, it is known that 91% of people who receive both a Disability Allowance and the Accommodation Supplement rent in the private sector.

People in different individual and family circumstances have different needs in terms of housing and tenancy services. For instance:

- Families with children will want rental accommodation near schools and will want to know that they can stay in their housing for the longer term.
- People with physical disabilities or impairments and older people will seek houses that are accessible and perhaps located close to services or shops that they frequent.
- Larger families will want larger houses, while adults living alone may want smaller houses.

The individual and family circumstances of people renting, especially from private landlords, are far more diverse than they were in 1986.

There has been an increase in the proportion of families with children, and especially sole parent families, living in private rental housing.

People in different individual and family circumstances have different needs in terms of housing and tenancy services.

It is unclear how well the rental sector provides for people with different circumstances and needs.

- Many families and older people will live in rental accommodation for longer periods than in the past, and for an increasing proportion a rental house will be their home for life.
- New migrants or people for whom English is a second language will want tailored information on the RTA and their rights and responsibilities as tenants.

It is unclear how well the rental sector provides for people with different circumstances and needs. For instance, while the RTA prohibits discrimination on the grounds of ethnicity, gender, disability and so on, a 2003 survey of landlords found that most prefer to rent to professionals, young females and retired people, and that most prefer 'not' to rent to large families, students, sole parents and refugees or migrants. It is also noted that the majority of rental houses continue to be traditional three bedroom family houses that have been 'recycled' into the rental market rather than purpose built houses for different individual and family circumstances.

Concern has also been expressed that as demand and competition for rental housing grows, people with special needs or those who are perceived by landlords to be 'less desirable' tenants will find it increasingly difficult to find suitable rental accommodation.

## QUESTIONS

- How well does the rental market respond to the needs of people in different family and individual circumstances?
- What can be done to improve the response of the rental market to a more diverse range of family and individual circumstances?
- Are changes required to the RTA and its administration to respond better to the more varied family and individual circumstances of tenants? If so, what changes are needed?

## People with different individual and family circumstances have different needs for stable housing.

While some people are happy to move home a lot, others rely on being able to stay in the same home for a long time because this meets their work and family needs.



By this we mean that, while some people are happy to move home a lot, others rely on being able to stay in the same home for a long time because this meets their work and family needs. An increasing proportion of older people and families with children now rely on rental accommodation. Being able to stay in the same home is likely to be important to these people.

A stable home environment allows for the development of community links and networks, stable schooling and connection with local health professionals. This can result in improved educational and health outcomes for children. By contrast, students, job seekers and people renting until they save for a house to purchase may place more value on the ease of terminating a tenancy agreement.

The RTA provides for periodic and fixed-term tenancy agreements, but not long leasehold agreements. The Act's specific provisions are as follows:

- Periodic tenancy agreements are the 'standard' or 'default' type of agreement. They run for indefinite periods of time until either the landlord or tenant terminates them. Tenants must give 21 days' notice. Landlords must give 90 days' notice or if they are re-occupying or the property is sold 42 days' notice.

- Fixed-term agreements differ from periodic agreements in that they cannot be broken by either the landlord or the tenant, unless they both agree to break the agreement. If either the landlord or the tenant in a fixed-term tenancy agreement would suffer severe hardship if required to complete the fixed term, they can apply to the Tenancy Tribunal for a reduction in the term.
- The RTA provides that fixed-term agreements of five or more years can be written to exclude reference to the RTA, meaning that none of the Act's provisions or protections then apply to either the landlord or the tenant. Contract law applies instead.
- The RTA allows a landlord to ask a tenant for up to two rents' rent in advance, and a bond of up to four weeks' rent money. The bond money is held by *Tenancy Services* and 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.

The 2003 National Survey of Landlords found that most properties (around 77%) are let on the basis of periodic tenancy agreements. Because such agreements provide for rental properties to be reoccupied at short notice they do not meet the needs of all tenants. Some tenants are unwilling or unable to shift at short notice.

Landlords benefit from stable tenancies and will generally seek to retain tenants who pay their rent on time and meet their tenancy obligations. Most landlords do, however, prefer the flexibility of periodic tenancies because of:

- the difficulty in identifying 'bad' tenants prior to entering into tenancy agreements;
- the ability to increase rents through turnover of tenants;
- the ability to sell rental properties for capital gain in response to appropriate market conditions;
- concern that having a sitting tenant may reduce the opportunity to market a property and realise the value of their asset quickly.

While home ownership offers greater housing stability, we know that more people, including an increasing proportion of families with children and older people, now rely on rental accommodation. Through anecdote we also know that some people who might prefer to rent, for lifestyle or financial reasons, become home owners because they cannot obtain adequate stability from the rental market. While the social sector (such as state housing) can provide better stability, many of those needing such security will not meet the sector's income eligibility requirements. Paradoxically, once in the social sector some tenants will seek to remain despite their improving income status because of the value they place on the stable home provided by the sector.

More use of fixed-term and longer tenancies could be encouraged through either legislative or non-legislative means or a combination of both. For instance, the equivalent to the RTA in the United Kingdom provides for long leaseholds, assured tenancies (similar to periodic tenancies) and short tenancies (less than six months for landlords who want to sell or repossess a rental property). Each tenancy agreement has different conditions associated with it:

- Short agreements provide for the landlord to regain possession of the property six months after the beginning of the tenancy by giving two months' notice.
- Assured tenancies give a tenant the right to remain in a property unless the landlord can prove to the Court that he or she has grounds for possession.
- Long leasehold agreements give the tenant the right to live in the property for a fixed number of years.

The RTA could be amended to accommodate and promote a greater menu of tenancy agreements. This could be achieved by removing the exemption for tenancies longer than five years and adding provisions to accommodate a range of different agreements including long agreements. Doing so would require consideration of:

Most properties are let on the basis of periodic tenancy agreements, which provide for rental properties to be reoccupied at short notice.

The RTA could be amended to accommodate and promote a greater menu of tenancy agreements.

- Improved access to information, for both landlords and tenants, on prospective landlords and tenants prior to entering into a long or fixed term agreement.
- Roles and responsibilities of tenants and landlords in respect of maintenance. Many landlords currently undertake significant maintenance and upgrades between tenants. If tenancies were longer, alternatives would need to be provided for. For instance, the Act could be amended to provide for long-term tenants to meet the costs of some maintenance requirements directly or for landlords to undertake maintenance and upgrade work during a tenancy.
- Bond requirements. With longer tenancies, there might be a need for different bond arrangements.
- Rent control requirements. Any constraints on the ability to adjust rents during a tenancy would be a disincentive for landlords to enter into longer fixed-term tenancies.
- Notice requirements. The RTA would need to state under what, if any, circumstances it might be appropriate to break a long or fixed-term tenancy agreement, and what, if any, notice would be required. It could also provide for a right of renewal if certain circumstances were met.

Alternatively, standard or model long-term agreements could be developed without legislation. Simply providing for longer-term agreements will not, however, achieve greater security for tenants who require it unless landlords are willing to enter into such agreements. Promotion of more stable tenancies, therefore, must also identify and address any issues that result in landlords preferring more flexible agreements.

## QUESTIONS

- **How important is stable housing to people in different family and individual circumstances?**
- **How well does the private rental market respond to different needs for stable housing?**
- **What stops landlords offering longer-term tenancy agreements?**
- **What can be done to encourage landlords to enter into longer tenancy or leasehold agreements for those who want them?**
- **Could the RTA be amended to provide improved choices for people wanting stable housing? If so, how?**

## Housing is becoming less affordable.



Housing has generally become less affordable since 1986. This is the case for both owner-occupied and rental houses and is particularly the case in the main urban centres (especially Auckland), although it is also a problem in some rural and provincial centres where quality housing is in short supply. It may also be a problem in areas such as Nelson and the Hawke's Bay where large seasonal influxes of labour put pressure on housing supply.

Those people unable to save the deposit necessary to purchase a home will have little choice other than to rent. Most renters (apart from the lowest income earners) will need to find housing in the private rental sector.

While people who rent tend to spend less of their household income on housing costs than home owners with mortgages, who on average spend 24.2%, the gap is narrowing. Over the last 15 years the gap between housing costs for mortgaged home owners and renters narrowed steadily, and housing costs faced by renters grew at nearly three times the rate of growth of their household incomes.

While rental housing affordability is largely related to property values and market conditions of supply and demand for rental housing, the RTA does also impact on housing affordability in two main ways.

Firstly, the rights and obligations that it imposes on landlords and tenants affect decisions to invest in rental housing and the rents that landlords charge. Being a landlord involves both risk and costs. These costs may deter some people from becoming landlords and providing affordable housing for low-income earners. Changes have been made to help landlords trace ex-tenants who owe them money but there are still concerns about how payment orders from the Tenancy Tribunal can be enforced against tenants. Many landlord/tenant disputes and evictions occur over unpaid rent.

Secondly, the RTA controls how rents are adjusted. It:

• requires landlords to give at least 60 days' notice of rent increases

• prohibits landlords from increasing rents for 180 days from the start of a tenancy and to no more than once every 180 days thereafter

• prohibits landlords from increasing rents if there is a provision to the contrary in a tenancy agreement

• provides for tenants to apply to the Tenancy Tribunal for an order to reduce a rent increase to an amount in line with market rents.

We know from the 2003 National Landlord Survey that many landlords prefer not to rent to people and families that are likely to be low-income earners. We also know that some landlords have expressed concerns regarding the balance of rights and obligations in the RTA and the extent to which they perceive these to favour tenants. In particular, landlords have raised concerns regarding their ability to identify and manage 'bad' tenants and the:

• different notice periods for landlords and tenants;

• emergency procedures for rapid eviction; and

• access to Tenancy Tribunal findings.

An important focus for the Review is to ensure that the RTA, through its provision of clear and balanced rights and obligations and effective dispute resolution measures continues to facilitate the efficient operation of the rental housing market. To this end there is a need to consider the factors that influence the decisions of landlords to provide affordable accommodation, especially to low income earners. These factors are likely to include both the personal preferences and biases of landlords, and also the extent to which the provisions of the RTA provide for effective management of properties in what some landlords consider a 'difficult' market.

Other options for consideration include the extent to which Government, through funding or other policy initiatives can encourage the supply of affordable quality rental houses for low-income earners.

For instance, could a government agency manage tenancies directly with private landlords on behalf of tenants? Could rents be paid directly by a government agency into a landlord's account if a beneficiary tenant chose to do this? If such policies were considered, should landlords have to meet specific requirements? These could include, for instance, requirements around property management, affordability and quality of their rental properties.

There is a need to consider the factors that influence the decisions of landlords to provide affordable accommodation, especially to low income earners.

- **Does the RTA impact on the supply of affordable housing?**
- **Are the rent control provisions of the RTA appropriate?**
- **How can we reduce the costs faced by landlords?**
- **What can be done to encourage private landlords to provide affordable rental housing for low-income earners?**

### Is there a problem with the quality of rental housing?

The RTA does not require rental houses to meet particular quality standards and does not directly regulate the quality of rental properties.



The RTA does not require rental houses to meet particular quality standards and does not directly regulate the quality of rental properties. Instead, it requires landlords to:

- provide and maintain the premises in a reasonable state of repair;
- comply with all requirements in respect of buildings, health and safety under any other laws that apply to the premises (such as the Building Act 2004);
- compensate tenants for reasonable expenses incurred in repairing the premises (if certain conditions are met);
- take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort or privacy of the tenant in the use of the premises.

The Building Act 2004 provides for the New Zealand Building Code. This sets minimum standards for residential dwellings and other buildings. These standards, however, only apply to building work and do not impact on existing buildings unless they are renovated, altered or their use changed (for example - from commercial to residential).

While the Building Act also provides for local authorities to take actions against owners of dangerous, insanitary and earthquake prone buildings, these provisions are rarely used and only apply to properties that are in very poor states of repair and essentially uninhabitable.

The Health Act 1956 and the Housing Improvement Regulations 1947 also impact on the quality of housing. The Housing Improvement Regulations are out of date and relate primarily to minimum room sizes and sanitary requirements including the number of toilets required in dwelling houses. The Health Act provides for local authorities to issue cleaning or closure orders for properties that have become a health threat, including those that have been contaminated (for instance by illegal drug manufacturing). There is considerable inconsistency in the implementation and enforcement of these provisions by local authorities.

As a general rule few stand-alone houses are purpose built by the private sector for use as rental properties. The usual way that houses join the rental stock is through 'filtering down' from owner-occupation. The rental stock therefore tends to be older than the owner-occupied stock and may not meet modern standards in terms of amenities or energy efficiency, for instance.

The 2003 National Survey of Landlords asked landlords about the ages of the houses they rent out. It found that most are older than 10 years with over one fifth being older than 50 years. The same survey also found that landlords take an unplanned and unsystematic approach to maintenance and repairs.

Housing New Zealand Corporation rents some 'state housing' properties from private property owners, and requires these private owners to provide a 'decent standard' of rental accommodation.

The rental housing stock tends to be older than owner-occupied stock.

Individual tenants dealing directly with private landlords do not always have the same information, confidence or bargaining power to require such 'decent standards' of rental accommodation.

A large number of enquiries to *Tenancy Services* concern interpretation of the word 'reasonable'. What is considered a reasonable state of repair by a landlord is not always considered reasonable by a tenant. Further, when the Tenancy Tribunal is asked to decide disputes related to maintenance it has regard to the age and condition of the property - with lower maintenance expectations for properties that are older and near the end of their economic lives.

The law could be amended to provide more guidance to landlords and tenants on the standards required of rental properties. It could set minimum standards for rental accommodation that a property would be required to meet. Such standards could, for instance, set out requirements in respect of fire safety or insulation. These requirements could be similar to those which currently apply when the use of a building changes from commercial to residential purposes. Another approach would be to modernise and improve enforcement of the Housing Improvement Regulations.

The RTA could also be amended to provide more guidance to landlords and tenants on their obligations to maintain properties. One way to achieve this would be to provide for maintenance codes or standards, which if followed would provide evidence of reasonable maintenance. The Building Research Association of New Zealand has developed such guidelines to educate homeowners on household maintenance requirements. Another option might be to have quality rating schemes for rental properties, perhaps with incentives for landlords to meet rating standards.

What is considered a reasonable state of repair by a landlord is not always considered reasonable by a tenant.

The law could be amended to provide more guidance to landlords and tenants on the standards required of rental properties.

## QUESTIONS

- **What problems are there, if any, with the quality of rental properties in New Zealand?**
- **What, if any, building or housing standards should rental properties have to meet? Should standards for rental properties be set out in the RTA, or in other legislation?**
- **What can be done to clarify the obligations of landlords and tenants for property maintenance?**

## Standards of property management are variable.



There are no provisions in the RTA to govern who can be a landlord, nor that specify the standards required of landlords. Property managers are partially regulated - if they accept a fee for letting a property on behalf of a landlord they must be associated with a licensed Real Estate Agent. If they do not accept a letting fee but work solely for a proportion of ongoing rental income they are not regulated<sup>2</sup>.

More rental properties are now owned and managed by private landlords than in 1986. The reasons for this can be explained by the:

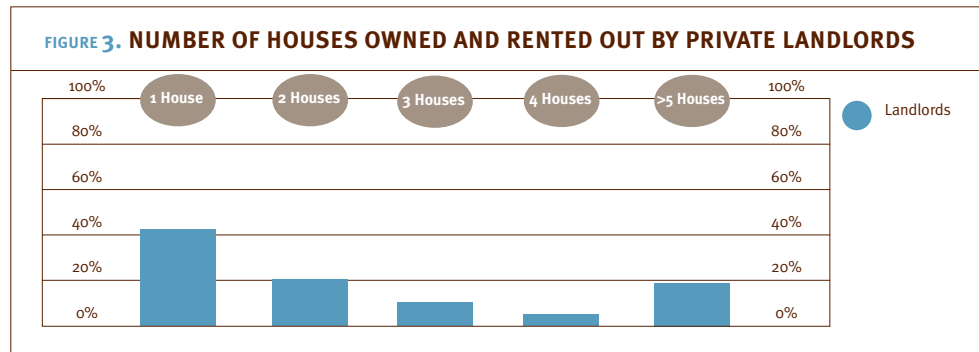
- decline in the share of properties owned and managed by HNZC and local authorities
- lack of regulatory or other barriers to becoming a landlord
- strong performance of property relative to other investments over most of the period since 1986.

<sup>2</sup> Accommodation brokers are covered by separate provisions in the RTA. An accommodation broker is a person or agency that lists properties for rent. Prospective tenants pay a fee to look at these lists. The fee is for looking, rather than a letting fee for any individual property. The RTA provides for regulations relating to accommodation brokers, but none have been passed to date.

There are no provisions in the RTA to govern who can be a landlord, nor that specify the standards required of landlords.

Small time 'DIY' landlords are common amongst private landlords, and corporate landlords very rare.

Small time 'DIY' landlords are common amongst private landlords, and corporate landlords very rare. Figure 3 below shows the results of a 2003 national survey of landlords. It shows that most (42%) owned just one property and that only a small proportion (18%) owned five or more properties<sup>3</sup>.



The reasons why people become landlords vary. For many the primary motivation is capital gain.

The reasons why people become landlords vary. Some are 'accidental landlords', having acquired an extra residential property through inheritance or having kept a house they formerly lived in. For many (64%), the primary motivation is capital gain. Other reasons for becoming a landlord include income for retirement (55.7%) and a regular stream of income (53.1%). Other important considerations include:

- The tax environment - including lack of a general capital gains tax and its allowance for private individuals, some trusts and small businesses<sup>4</sup> to offset income from other sources against expenditure on rental property investments. It is likely that this environment works to favour individual rather than corporate landlords.
- The expectation of capital gains and strong performance of property relative to other forms of investment.
- The perception that equity markets and superannuation schemes have performed poorly (relative to property investment) over most of the period 1989 to 2003.

While many landlords are experienced, with an average of either 6 to 7<sup>5</sup> or over 11<sup>6</sup> years experience in the business, the 2003 National Survey of Landlords also found considerable churn in those entering and exiting the market. It found that over one fifth (21.9%) of all landlords surveyed had been in the business for less than one year. This churn is likely to relate to investment cycles and the recent buoyancy of the property market. The trend could quickly reverse.

Most private landlords self-manage their properties. The 2003 National Survey of Landlords reported that few seek professional advice or use professional property managers to manage their properties. It also found that the management systems of most are far from sophisticated. It found that:

- Few landlords seek professional advice in setting rents, with most instead relying on information gained from real estate agents and newspapers.
- Most landlords do not have a budget for property maintenance and for most expenditure on maintenance is unplanned.
- Relatively few landlords use property managers to manage maintenance and repairs. Those that do use managers are more likely to also be members of industry organisations such as the New Zealand Property Investors Federation. In 2003, a survey by the ANZ and the NZPIF of landlords that were predominantly members of the New Zealand Property Investors Federation reported a more professional approach to property management by these landlords, with greater proportions relying on property managers and professional advisers (33% and 38%).

<sup>3</sup> A survey by the ANZ and Property Investors Federation found a structure somewhat more weighted towards larger-scale holdings.

<sup>4</sup> Loss Attributing Qualifying Companies for example.

<sup>5</sup> Kay Saville Smith (2004), National Landlords Survey, CRESA.

<sup>6</sup> ANZ/NZPIF (2003), Investors Survey.

- Most landlords find their own tenants, rather than using a property manager, and most select tenants on the basis of a ‘casual chat’. Less than a quarter run credit checks, and hardly any systematically use background checks, references or credit information in their selection decisions.
- A large proportion (over one third) of landlords do not make routine property inspections.
- Most landlords (almost two thirds) have tenant problems, with the non-payment of rent the most commonly reported problem.

While more landlords are using professional property managers, their use remains less common in New Zealand than in other countries. The use of professional property managers can result in more consistent, more objective and more proactive approaches to rental property management and improved communication and relationships with tenants, but this is not always the case. *Tenancy Services* reports that many disputes arise from poor landlord and property management practices.

Given the large number of landlords in the market, it is difficult for a potential tenant to judge the ‘quality’ of their landlord or property manager prior to entering into a tenancy agreement with them.

An important question for the Review is whether the RTA should be amended to provide incentives for landlords and property managers to improve their performance. For instance, the Act could be amended to provide for the registration of landlords and property managers, in addition to the current provisions relating to accommodation brokers. This could be achieved by either:

- providing for everyone to be initially registered, and for landlords or property managers that fail to meet certain minimum standards to be struck off the register and prevented from managing properties themselves; or alternatively
- requiring people to demonstrate their competence or fitness against a set of standards before being allowed to manage properties.

Such provisions could, however, prove a barrier to entry for some landlords, especially those that own only one or two rental properties, and might result in private landlords providing fewer rental properties. Alternatives might be to provide incentives for landlords to register voluntarily or seek accreditation against some industry standard. For instance, options could be explored for the direct crediting of rental payments out of income support benefits for landlords who are accredited or registered.

Another option might be to amend the RTA to provide for the development of a standard or ‘quality mark’ that a landlord or property manager might choose to adopt as a way of signalling their quality in the market.

*Tenancy Services* reports that many disputes arise from poor landlord and property management practices.

An important question for the Review is whether the RTA should be amended to provide incentives for landlords and property managers to improve their performance.

## QUESTIONS

- **What impact do variable property management practices have on the private rental market?**
- **What can be done to improve property management practices and professionalism amongst landlords and property managers?**
- **What level of regulation is appropriate for landlords and property managers? Should they be registered, or alternatively, should there be a “Qualmark” for these services?**

## Do prospective landlords get the right advice?



Related to concerns regarding the professionalism of landlords are concerns regarding the adequacy of financial and other advice that is used to inform their rental property investment decisions.

There are few regulatory or other barriers to people becoming a landlord. Investment in residential rental property has proved popular over recent years, partly because of the relatively poor performance of other investments, partly because of the tax treatment of such rental property and partly because rental property is an investment that many people feel comfortable with because they have personally experienced renting or owning a home.

There are many agencies and individuals that have set themselves up as advisers to people thinking about investing in residential property. These include banks and other lending institutions, real estate agents, property managers, financial advisers and self styled entrepreneurs. While the information provided is sometimes comprehensive and high quality, this is not always the case. Often it does not include vital information on:

- the rights and obligations associated with becoming a landlord, including the requirements of the RTA;
- the importance of and the ongoing cost of property maintenance;
- information to the effect that residential property and its management is a service industry, not a passive financial investment;
- the importance of communication and relationship management skills in dealing with tenants;
- the risks associated with rental property ownership including those of abandonment and damage.

As a result of inadequacies in financial advice, some residential property investors enter the market with overly optimistic views of the returns to be made and an inadequate understanding of the implications of becoming a landlord including the requirements of the RTA. While *Tenancy Services* can provide advice to potential investors, it has little direct influence over what others provide.

There are many agencies and individuals that have set themselves up as advisers to people thinking about investing in residential property.

While the information provided is sometimes comprehensive and high quality, this is not always the case.

### QUESTIONS

- **Where do potential property investors and landlords find advice to help them with their investment decisions?**
- **Is the type and quality of advice available to potential property investors and landlords adequate?**
- **What can be done to improve the quality of financial and other advice to prospective property investors and landlords?**

## Not all rental accommodation is covered by the Residential Tenancies Act.

The RTA does not apply to all tenancies.



The RTA does not apply to all tenancies. While the types of tenancy excluded from the scope of the RTA are similar to residential rental tenancies, they have generally been excluded because:

- significant other services are provided alongside the accommodation and are part of the price paid;
- it would unduly limit freedom of action where there is a significant element of personal interaction or risk;
- it would unduly limit freedom of action where there is a clear over-riding public good, for example armed forces barracks and prisons (though in some of these cases the linkage with the residential rental market is tenuous);

- the accommodation service is of a temporary or transient nature and so is not seen as “residential”.

A few examples of situations that the RTA does not apply to are:

- properties that are let for a fixed-term tenancy of at least five years, where the tenancy agreement states that the RTA shall not apply;
- units in retirement villages;
- student hostels;
- properties where landlords provide meals or services to tenants, the value or cost of which forms more than 20% of the rent;
- holiday homes;
- properties where one of the tenants is the landlord;
- properties where the tenant is a member of the landlord’s family.

Some of the tenancies excluded from the RTA are covered by their own legislation or regulation. Residents and operators of retirement villages are covered by the provisions of the Retirement Villages Act 2003. The interests of foreign fee-paying students (aged under 18 years) are protected by the Code of Practice for the Pastoral Care of International Students. In addition there is currently a Bill before Parliament to amend the coverage of the RTA to include boarding houses.

In cases where tenancies are excluded from the RTA and are not covered by their own legislation, the interests of landlords and tenants are covered by contract law rights and obligations, which they can enforce through the courts or the Disputes Tribunal. However, the degree of protection available, and access to justice, may not be as great as for tenancies covered by the Act.

An important question for the Review is whether or not the RTA should cover all tenancies, or whether tenancies with a significant service component should continue to be excluded. A decision to bring all tenancies under the RTA would in turn require consideration of whether the RTA should also cover the additional services associated with the tenancy (such as the provision of meals).

The advantage of applying the RTA to all types of tenancies would be a more consistent approach to regulation. Doing so would also mean that the dispute resolution and other services provided under the RTA would be automatically available to all types of landlords and tenants.

Some people have also asked whether the RTA should apply to relationships and disputes between tenants living within a particular rental household. The RTA does not, for instance, cover disputes between flatmates as to how they divide rent and other costs between themselves, or disputes between boarding house tenants.

It does not apply to properties where landlords provide meals or services to tenants or properties where one of the tenants is the landlord.

An important question for the Review is whether or not the RTA should cover all tenancies, or whether tenancies with a significant service component should continue to be excluded.

## QUESTIONS

- **Should tenancies with a significant service component continue to be excluded from the RTA? Why?**
- **If tenancies currently excluded from the RTA were to be included, should the RTA also regulate the provision of associated services (such as meals)? Why?**
- **Should the RTA apply to relationships and disputes between flatmates or boarding house tenants?**

## It is not always clear who is responsible for paying some household costs.

The cost of providing utilities (such as water) and services (such as removal of wastewater) to rental homes is becoming a more frequent cause of dispute between landlords and tenants.



The cost of providing utilities (such as water) and services (such as removal of wastewater) to rental homes is becoming a more frequent cause of dispute between landlords and tenants.

The RTA defines how landlords and tenants will meet the costs associated with a rental property. These costs are referred to as “outgoings”. The Act provides that the landlord will pay certain outgoings (including rates and insurance premiums) and that the tenant will pay the following outgoings incurred during the tenancy (unless the landlord has agreed in writing to pay for them):

- all charges for electricity or gas supplied to the premises;
- water charges<sup>7</sup> 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 start of the tenancy, that the tenant will pay for any metered water provided to the premises, and
  - the water supplier charges for water provided to the premises on the basis of metered usage;
- all charges in respect of any telephone connected to the premises.

There are a number of utilities and services that have both a fixed-cost component (the cost of providing the service to the house) and a variable-cost component (the cost associated with the amount of the service used). For instance, some gas companies are now charging separately for the costs of maintaining gas meters and gas lines to houses - someone has to pay for these costs, even if no gas is used.

For some services, a limited amount is provided for free, with a cost for extra provision. For instance - some councils provide 52 free rubbish bags to each property per year. Any extra bags have to be purchased. When a tenant leaves a property part-way through a year, remaining rubbish bags may or may not be left for incoming tenants.

In other cases, there may be only one gas, water or power meter to a rental property and no way of knowing the actual share of the water or power used by different tenants.

There is a need to establish clear principles to guide the way that household costs are divided. This is necessary to minimise the risks of unfairness, abuse and dispute. For instance, we might need to determine whether or not a tenant should have to pay for the fixed cost of attaching and maintaining the water supply to the house, or just the variable cost associated with the water consumed.

A simple base principle would be for the landlord to pay any fixed infrastructure cost associated with service provision and for the tenant to pay the variable costs associated with the actual volume of the service or utility consumed. However, this may not always be practical and those charging for services may include the fixed cost with the variable cost in their bills.

<sup>7</sup> This will include wastewater charges (for grey water and sewage), as long as these three conditions are met.

There is a need to establish clear principles to guide the way that household costs are divided.

### QUESTIONS

- **Why are there so many disputes over responsibilities for household costs?**
- **How should household costs associated with a rental property be divided between tenants and landlords?**

## Tenancy support services for landlords and tenants are important.



Effective law requires:

- acceptance of the need for law;
- widespread knowledge and understanding of the legal requirements;
- quick, affordable and cost effective resolution of disputes between parties; and
- quick and effective enforcement of breaches of the law.

The RTA provides for a government department (the Department of Building and Housing) to hold tenancy bonds in a Residential Tenancies Trust Account, and to perform each of the following functions necessary to administer the Act:

- research and investigate matters affecting the interests of landlords and tenants;
- make information available and take other steps necessary to ensure that members of the public are aware of their rights and obligations as landlords or tenants;
- provide advice to people on the provisions of the Act and their enforcement;
- investigate alleged breaches of the Act and take appropriate action;
- report to the Minister on matters relating to residential tenancies.

It also provides for a dispute resolution service via mediation and the Tenancy Tribunal to resolve disputes relating to tenancies.

Services for landlords and tenants are provided through *Tenancy Services*, a division of the Department of Building and Housing. *Tenancy Services* has 22 dispute resolution offices throughout New Zealand that provide information and advice, mediation and referrals to the Tenancy Tribunal and education for landlords and tenants. The *Tenancy Services* Centre also processes all tenancy bonds and provides free phone 0800 access to a tenancy and bond information service.

The potential users of these services are varied in terms of their social, cultural, socio-economic and other characteristics, and also their ability to access the information and services provided by *Tenancy Services*.

The Ministry of Housing recently reviewed the effectiveness of *Tenancy Services*. The review commended the early intervention approach taken and noted widespread stakeholder support for the services provided. It also found that:

- the total costs of mediation (including the time taken) can deter some people from using the service, especially landlords and property managers who instead prefer either to filter out tenants that are likely to cause future problems or to mediate issues directly;
- some landlords believe that the Service is biased in favour of tenants;
- the nature of services provided varies between centres and the information and advice provided could be improved;
- the way in which advice and services are provided can be a barrier to some people accessing and using them (opening hours and location of centres for instance);
- time delays and direct and indirect costs deter people from using the service;
- ineffective enforcement of Tenancy Tribunal orders degrades the system.

Services for landlords and tenants are provided through *Tenancy Services*.

- **What tenancy services are critical to an effective rental housing market?**
- **Are these services adequately provided for in the RTA?**
- **What can be done to improve the administration of the RTA and the delivery of information and other services to both landlords and tenants?**

### Would some tenants benefit from advocacy services?



The Department of Building and Housing currently provides support to landlords and tenants through *Tenancy Services*.

In the 2003-2004 financial year, about half of all calls to the *Tenancy Services* 0800 number came from tenants and half from landlords. However, approximately 90% of applications lodged with the Tenancy Tribunal were lodged by landlords. What is not clear is whether this is because landlords have more reasons to make applications than tenants do, or because tenants are less likely to make an application, even if they have good cause.

The Department of Building and Housing has recently commissioned interviews with *Tenancy Services* clients and ran a submission process on the Residential Tenancies Amendment Bill. Housing New Zealand Corporation also ran consultation meetings as part of the NZ Housing Strategy.

During all of these processes, people indicated that some tenants may need additional help to understand and enforce their rights and responsibilities under the Residential Tenancies Act. They suggested that some particularly vulnerable tenants may be unwilling or unable to deal with issues with their landlord. Illiteracy, language difficulties, cultural differences and mental health issues were mentioned as things that could put tenants at a disadvantage. Other tenants may simply be concerned that they will be evicted if they raise concerns about their tenancy.

Two groups of tenants were mentioned who could benefit from advocacy services:

- vulnerable tenants, such as those with a mental health issue, or young people who may have difficulty accessing their rights and dealing with their responsibilities as tenants - this can lead to a power imbalance between tenant and landlord; and
- people who, for reasons such as language difficulties or cultural differences, are uncomfortable with the tenancy mediation and adjudication process.

It is possible that the provision of advocacy services in these cases could benefit both landlords and tenants, as a result of tenants better understanding their rights and responsibilities and being assisted to engage in constructive conversations with their landlords.

In the Australian state of Victoria, tenants' advocacy services are funded by State Government. However, the way that Victoria provides tenancy services is very different from the way they are provided in New Zealand. Consumer Affairs Victoria (part of the Victorian Department of Justice) contracts community groups across Victoria to provide advice to public and private tenants and information for landlords. In this way, community organisations in Victoria perform similar functions to *Tenancy Services* in New Zealand. However, as well as information and advice, some of these community groups are also funded to provide advocacy services for tenants.

Some tenants may need additional help to understand and enforce their rights and responsibilities under the Residential Tenancies Act.

The provision of advocacy services in these cases could benefit both landlords and tenants.

These advocacy services may include:

- assisting tenants to negotiate through issues with landlords;
- helping tenants to complete applications to the Victorian tribunal which deals with landlord/tenant disputes;
- accompanying tenants to the tribunal.

## QUESTIONS

- **Would the RTA work more effectively if advocacy services were available for tenants? If yes, why? If no, why not?**
- **If you agree that advocacy services should be provided, do you think they should be provided for all tenants, or for some particular types of tenant? Which types?**
- **How might advocacy services be provided?**
- **If advocacy services were to be provided, should they be provided independently of Tenancy Services? Why?**





