



Department of  
Building and Housing  
*Te Tari Kaupapa Whare*

# **Review of the Residential Tenancies Act 1986: Synopsis of Submissions**

This report does not necessarily reflect the views of the Department of Building and Housing and does not reflect official Government policy.

# **Executive Summary**

## **Introduction**

This document summarises submissions received in response to the public discussion document *Getting the Balance Right: Review of the Residential Tenancies Act 1986* ('the Discussion Document'), which the Department of Building and Housing (the Department) published in early November 2004.

## **Response**

The Department received 574 submissions.

The majority of submissions were from landlords. Only 39 submissions were received from tenants or groups representing tenants; however, another 33 submissions were received from community organisations, disability groups and public health organisations, which also represented the perspective of tenants or particular groups of tenants. 24 submissions were received from property managers and 12 from central and local government.

## **Key Findings**

The key findings of the public consultation, both public meetings and written submissions, are set out below. Findings from the written submissions have generally been consistent with issues identified during the public meetings.

### **Balancing the rights and obligations of landlords and tenants**

While some submitters felt that the balance of rights and obligations in the Residential Tenancies Act 1986 (the RTA) is about right,

- landlords and property managers tended to the view that the RTA favours tenants, particularly in relation to notice periods, rent arrears, and inadequate penalties for tenants' breaches of their obligations under the RTA; and
- tenants and tenant groups felt the RTA favours landlords and property managers, such as the ability for landlords to refuse to rent to people or to give 90 days' notice without having to provide a reason, and inadequate penalties for landlords or property managers who fail to make repairs or adequately maintain their rental property.

### **Enforcement of Tenancy Tribunal orders**

Comments about enforcement of Tribunal orders focused particularly on:

- the difficulties landlords have in tracing tenants who owe them money;
- the number of processes, the time, and the costs involved in enforcement and collection and that not all of these costs are recoverable from the party that owes the money; and
- whether there are sufficient and adequate penalties to create proper incentives for compliance with Tenancy Tribunal orders.

## **Meeting the diverse needs of tenants**

Of those that offered a clear opinion, the majority felt that the needs of a diverse range of tenants were adequately addressed by the market. However, some submitters commented on the shortage of suitable accommodation, particularly in certain geographical areas, for certain groups, such as large or extended families, people with children, those with a disability, persons with mental health issues, beneficiaries and those on low incomes.

A number of suggestions were made about ways to address this, including:

- providing more information for landlords and developers about housing needs and trends;
- redirection of benefits or direct crediting from wages to pay rent;
- more support for community housing initiatives and public/private partnerships;
- incentives (e.g., tax incentives or access to direct payment of benefits for rent) for landlords who provide rental accommodation for tenants with particular needs.

## **Stable housing**

While the majority of submitters agreed stability was important, there was little consensus about whether stability of tenure of rental accommodation is a problem or what are the factors that lead to turnover of tenancies.

Suggested drivers of turnover included:

- landlords selling properties because of the greater-than-expected difficulties involved in being a landlord, or in order to realise capital gains or purchase a more profitable or valuable property; and
- tenants moving to better quality or larger housing, or for reasons of affordability or debt, or simply for lifestyle reasons.

Many landlords expressed a preference for longer tenancies but felt that fixed term tenancies were difficult to enforce if tenants wanted to break them.

## **Housing affordability**

As indicated above, comments were received about the shortage of suitable accommodation for beneficiaries and those on low incomes. Comments were also made about affordability of rental accommodation, particularly in certain parts of New Zealand.

Landlords noted that rents are a reflection of the cost of residential property more generally and that in some instances rents do not cover the property owner's total costs (mortgage servicing costs, maintenance, etc.).

Suggestions about ways to address affordability included:

- redirection of benefits to pay rent;

- increased provision of state housing
- more support for community housing initiatives and public/private partnerships;
- incentives (e.g., tax incentives or access to direct payment of benefits for rent) for landlords who provide rental accommodation for low-income tenants and beneficiaries.

## **Housing quality**

Submitters were divided as to whether there was a problem with the quality of rental housing.

Even amongst those who agreed there was a problem and would like minimum standards, there was a range of views about what might constitute minimum standards (e.g., heating, insulation, adequate cooking facilities, soundproofing, smoke detectors).

A number of people felt minimum standards were already adequately addressed in other legislation and supported a free market approach to rental housing standards, with the market dictating quality at each price level. There was some support for a voluntary rental housing quality standard, such as a star rating.

Both landlords and tenants expressed concerns about the impact that a minimum standard, or even a voluntary standard, could have on rent levels.

With respect to clarifying the obligations of landlords and tenants for property maintenance, it would appear that a number of maintenance issues are the result of conflicting interpretations of the RTA. Particular comments were made about the use of the word “reasonable” in the Act (*reasonable* state of repair) and the need for clarification or guidance about what is considered “reasonable”, e.g., who is responsible for things such as trimming trees, cleaning gutters and cleaning chimneys.

## **Standards of property management**

There were conflicting views as to whether or not there is a problem with standards of property management, and if so, where the problems lie.

A number of people suggested that market forces already do a satisfactory job of maintaining standards.

Some submissions expressed concern about landlords’ lack of professionalism and knowledge of the RTA, with a few expressing the view that landlords should be encouraged or required to use professional property managers.

Other submissions expressed concern about professional property managers, including the fact that many are associated with real estate agencies, do not have adequate training in property management, and may have a conflict of interest between their responsibilities as property managers and as real estate agents.

There was support for provision of more education and information to landlords and property managers. Specific mention was made of the benefits of attending the Department's landlord seminars, joining a landlord association and obtaining information from Tenancy Services. There was less support for property managers and/or landlords being required to obtain some form of standard or qualification.

### **Advice and information**

There was an overwhelming call for increased provision of information and education about a range of things, including about the Act itself, interpretation/clarification of some provisions in the Act, rights and obligations under the Act, rental market information, maintenance requirements and costs, and the risks associated with being a landlord.

Submitters suggested a number of channels for the provision of information, including:

- enclosing information with bond receipts;
- distributing information through schools, churches, community organisations, accountants, banks, and financial advisers;
- providing translators and more translated information;
- providing more information to migrants;
- providing tenants with a copy of the RTA;
- providing a "plain English" list of landlord and tenant obligations.

### **RTA coverage**

The majority of submitters were against extending the coverage of the RTA to include tenancies which have a significant service component, such as the provision of meals. Submitters were concerned about the prospect of adding another layer of bureaucracy, resulting in extra costs or a reduction in the supply of accommodation. There were also concerns expressed about complicating the RTA or creating delays to the dispute resolution process for general tenancies.

A number of submissions, both for and against, were received in relation to RTA coverage of boarding houses. Several submissions were also received about coverage of university halls of residence. (Inclusion of boarding houses and university halls of residence in the RTA is addressed in the Residential Tenancies Amendment Bill 2001, reported back from Select Committee in March 2003.)

The majority of submitters were opposed to extending the coverage of the RTA to flatmates and boarding house tenants.

A few submitters suggested providing the ability for neighbours of tenanted properties to access the dispute resolution mechanisms of the RTA.

### **Responsibility for household costs**

There was little consensus as to how household costs should be split between landlords and tenants, although there was call for liability to be clarified, via the RTA

or guidance material, or as agreed between the parties at the beginning of a tenancy, perhaps with the support of a 'model' provided by the Department of Building and Housing.

Most comments related to costs associated with water and wastewater. One argument was that landlords should be liable for health and sanitation, including water and wastewater charges. The counter to this argument was that landlords should not be held liable for something they have no control over (i.e., the amount of water used). Passing on costs to the user was seen as a means of conserving resources.

There was also no clear agreement as to how fixed and variable costs should be divided between landlords and tenants. There was some suggestion that landlords should be liable for costs relating to the provision of facilities or maintenance, but there were also calls to balance this against the practical implications of splitting utilities bills.

### **Tenancy support services**

The most common services identified by submitters as critical were:

- advice;
- information;
- education;
- dispute resolution;
- the bond service; and
- enforcement.

A number of submitters stressed the need for advice to be unbiased, consistent, accurate and easily accessible. The same comments were made in respect of mediation and adjudication services.

A number of submitters commented on the need to raise the profile of Tenancy Services and improve the accessibility of Tenancy Services (both in terms of physical access and office hours).

### **Advocacy**

Submitters were fairly evenly divided as to whether or not advocacy services should be provided to tenants.

Amongst those who support some kind of advocacy service, there were mixed views as to whether it should be available to all tenants or targeted to particular needs. A large number of people suggested a third option under which advocacy services would be available for both landlords and tenants.

There were mixed views about who should provide the service and about the need for an independent service, with only a slight preference indicated for providing advocacy services separately from Tenancy Services.

## **Other comments**

There were a range of comments on other issues relating to the RTA or residential tenancies in general. Many of these repeated or expanded on responses made to previous questions, such as termination of tenancies and notice periods; advance rent and bonds; issues related to enforcement and the Tenancy Tribunal; and issues of interpretation and terminology.

There were also more general comments about the extent to which the rental market should be regulated or left to market forces, as well as the extent to which the RTA should or could be used to address social issues via the private rental market.

Finally, some comments fell outside the scope of the RTA Review, such as:

- the issue of service tenancies in the farming sector;
- lessees under the Maori Reserve Lands Act 1986 wanting their tenancies to be subject to the RTA;
- the need for greater efforts to be made to assist families to save towards a house mortgage deposit; and
- local planning provisions should require property developers to allocate a percentage of developments to affordable housing.