

NELSON PROPERTY INVESTORS ASSOCIATION
SEPTEMBER 2020 NEWSLETTER
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Our fifth meeting of the year is on Tuesday 22 September at the Honest Lawyer at 7:30 pm preceded by the good old dinner at 6 pm.

For a change we are getting back to basics by having a chartered accountant speak. Belinda Getz a Director from RWC is speaking. RWC is what used to be called Richard Woodhouse Accountants. With so many tricky and dare I say good tax things our government has offered up along with the impact of Covid 19 it is a good time to hear from a professional accountant. Many of the one off deals have a date slipped into the equation so everyone needs to be up to speed on such matters. Please send table bookings to me. There is no need to book a seat for the meeting but you do need to arrive before we commence.

The Residential Tenancies Amendment Bill is now law

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The following is an abbreviated version of the Act but landlords and tenants should not rely solely on this because there are many other very significant changes that if ignored or not followed correctly will result in significant penalties or lost rent and bonds.

The Government's Residential Tenancies Amendment Bill 2020 received Royal Assent on 11th August 2020 and is now law. Here are the details.

After almost two years since the controversial tenancy law reform has been announced, the new law has passed and certainly re-wrote the rules for NZ landlords.

The major reforms contained in the Bill are:

Remove 90-day no-cause terminations

Landlords will not be able to end a periodic tenancy without reason making it more difficult and time-consuming for landlords to remove problematic tenants. The list of approved reasons for terminating tenancies under the RTA will include:

- Tenants are 21-days behind on rent (application to the Tenancy Tribunal)
- Repeated rent arrears. Tenants have been over 5 days behind on rent at least 3 times in a 90-day period (application to the Tenancy Tribunal)
- Repeated anti-social behaviour. Tenants displayed anti-social behaviour at least 3 times in a 90-day period (application to the Tenancy Tribunal)
- Hardship relief (application to the Tenancy Tribunal)
- The property owner or a family member is moving into the property (63-day notice)
- The landlord's employee needs to use the premises (63-day notice)
- The property has been put for sale (90-day notice).
- The property was sold, and the new owner wants to move in (90-day notice)
- The landlord is planning to conduct extensive alternations, repairs or redevelopment of the property making it impracticable for tenants to continue living on the premises (90-day notice)
- The property is going to be demolished (90-day notice)

- The property is to be used for commercial purposes or was acquired to facilitate the use of nearby land for commercial purposes (90-day notice)

Require that fixed-term tenancies automatically converting to periodic on expiry unless both parties agree that the tenancy will end

If the landlord doesn't want to continue with the tenancy, then they must use one of the grounds specified above to end the tenancy. If the tenant doesn't want the tenancy to continue, they can give notice between 28 days and 90 days before the end of the fixed term period.

Ban rent bidding

The landlords will not be able to invite or encourage tenants to bid on the rental (pay more than the advertised rent amount). Advertising a property without a rental price will be prohibited.

Limit rent increases to once a year

The minimum period between rent increases will now be twelve months as opposed to every six months.

Allow tenants to make minor alterations to a rental property

Landlords will be required in most instances to permit the installation of ultra-fast broadband and allow other minor alterations to houses such as baby-proofing, hanging pictures, and earthquake proofing.

Allow tenants to request assigning a tenancy to someone else

All requests to assign a tenancy (including fixed-term tenancy) must be considered. Landlords cannot decline unreasonably. If a residential tenancy agreement prohibits assignment, it will be of no effect.

These are big changes that certainly will affect both tenants and landlords.

The bulk of the reforms will come into effect in six months on 11th February 2021 to give tenants and landlords time to prepare for the new rules.

I have gone through the new legislation clause by clause and the notes below are how I interpret them. Others including MBIE will I am sure issue advice and opinions which will modify, clarify and systemise the changes and how they have to operate in the real world outside of the halls of power. The last minute changes introduced covering family violence and the ability of tenants to leave a tenancy after two or less days using a new way to communicate with the landlord for both fixed term and periodic tenancies are extremely difficult to understand and comprehend. Generally it takes a few disasters aired in the media to highlight problems caused by laws passed on the hoof. Innocent parties will be hurt in the hurried departure and need to be protected from the sort of things property managers and landlords witness from time to time. Welcome to my world. From time to time you will need compassion, courage, and nerves of steel. However, eventually common sense will prevail. If it is all too hard step aside and give the management to someone who can handle the stress and danger of the residential tenancy battle field. Our industry has never been for the faint hearted and it is definitely much harder now.

A clause by clause description of the RTA amendments 2020 by Glenn. August 2020.

13A. It is no longer permissible to say a fixed term tenancy will end / terminate on a specified date. You need to say the "Term" will expire on a specified date and will convert at that time to a periodic tenancy.

22 Landlords must state the rent on their advertisements and must keep a copy of that advertisement for 12 months. No distinction is made of what

medium the advertisement is put on so copies of advertisements in Facebook, Trademe, and cardboard posted in the garden must be kept. It is not permissible to put a "For Rent" notice in the window it must state the rent being asked.

22G (2) does not forbid landlords accepting an unsolicited higher rent offered.

24. Rent increases are limited to 12 months. Note for practical purposes this will need to be once per 53 weeks because there are 52 weeks and one or two days per year. The RTA specifies rent is accrued daily but is normally in New Zealand paid weekly. Sure it is possible to have a broken rent period but this is not recommended for administration reasons. It can be very confusing in Tribunal if you have a broken rent period.

42 A and B. Tenants are permitted to do minor alterations and improvements to the property. The request can be verbal or in writing. Failure to approve any request within 21 days is a punishable offence but only if the request is in writing and only if the request is unreasonable. I think the term "reasonable" means no surprises so in order to avoid a difficult issue in the future you need to put what your reasonable conditions are in the tenancy agreement. For instance it would be reasonable to state all electrical or plumbing work must be carried out by the landlords preferred contractor at the tenants cost, no blocking of vents, barriers in rooms impeding the operation of smoke alarms and ventilation, no obstruction of windows causing reduced light as required by the Healthy Home legislation, all painting to be carried out by landlords preferred contractors, no indoor plants that breath and impact on the healthy home standards, all posters and pictures to be attached by picture hooks and not use command hooks or nails. All modifications and fixtures to be removed and reinstated before a tenancy ends or is reassigned.

43B(3) a tenant may at any time during a tenancy (note not before a tenancy commences) may assign a fixed or periodic tenancy. A landlord commits an unlawful act if they withhold permission to do so unreasonably. One must set those conditions out clearly in the tenancy agreement to attempt to not to appear irrational and unreasonable. One would consider the same conditions must apply for reassignment as are for initial granting of a tenancy. This being to meet the applicant in person, formal identity by way of passport or other photo ID, foreign driver licences are not an acceptable identification, payment of the bond of 4 weeks current rent plus one weeks rent in advance, credit and reference checks from prior landlords, employers, and any land ownership details of the applicants or their landlords and completion of application form detailing the above. If the applicant claims they have just arrived in the country then sight the immigration stamp in the passport.

44A Recovery of Expenses. It has been the practice for many years to permit property managers to charge tenants the cost of reletting associated with breaking of fixed term tenancies. Every tenancy adjudicator had their own rules that changed from time to time without warning. Well it is now written into the law but it better be well documented and reasonable. So again putting things like the cost of meth testing, credit checks, land ownership enquiries, staff time and motor vehicle running to show prospective tenants, additional landlord cleaning not normally permitted to be charged to outgoing tenants but compulsory for incoming tenants, inspection costs, preparation of new lease documents and so on. Again putting these details into the tenancy agreement will assist but not guarantee you will be successful.

51 Notice provisions by landlords and tenants. The old familiar 42 day notice for re occupation by the owner or sale of the property is gone and is now 63 days if the tenancy is periodic. The owner occupancy clause is now tightened up to be similar to IRD rules using the term "Principle place of residence" In

other words if you want to use this clause expect to be carefully cross examined and you will need evidence to prove your innocence. This clause can be used at the end of a fixed term also because the tenancy will normally be changing to a periodic at that time.

60a A tenant may give 28 days notice to terminate a periodic tenancy at any time. Note carefully not the good old familiar 21 days notice. This unexplained and un called for change will catch a lot people out and be the subject of endless disputes.

At the end of a fixed period the tenant may also give 28 days before the end of the fixed term to end the tenancy. The fixed term can be rolled over by mutual agreement.

55. The old clause used to state if the tenant was 21 days in arrears at the time of making an application then the adjudicator must order a termination. This clause also applies at the time of the hearing if you enter the tribunal using clause 56 and the rent is at that time 21 days in arrears. Well surprise nothing has changed and these clauses are still useable. A lot has been published about getting rid of troublesome tenants by issuing three warning notices over a 90 day period. These only apply to periodic tenancies and replace the old 90 day clause. Note these three notices are not the old familiar 14 day notices to remedy but just a blunt warning with a few silly other bits in them. The sequence of notices can be issued for persistent minor rent arrears and antisocial behaviour.

56 The old 14 day notice to remedy still exists and should be the first most used avenue into the tribunal. However a new problematic clause re family violence was slipped into the act without any form of consultation and public debate.

56B states a tenant can at any time issue a landlord with 2 days notice to end either a periodic or fixed term tenancy if they think family violence has occurred. For any tenancies ending like this landlords will be punished because the rent will reduced by half for the next two weeks if it is going to continue. I am not sure why or how the other occupants can remain if notice has been given. Serving of that notice is of a lower sloppier standard than the long established norm provided for in section 136 which used to require notice by email, hand delivered, or posting which in the good old NZPO days could reasonably be expected to take four days. Serving of family violence notices is instantaneous providing proof is shown that an envelope with the landlords name and address for service is provided. No allowance is made for non working days or snail mail. Domestic violence is defined in the Family violence Act 2018 section 9. All section 56B notices must be accompanied by a statement on a form that is not included in the regulations and written by a prescribed person who is not identified in the RTA. Domestic violence is not restricted to physical assault. Reference is made to certain racial practices that I am not familiar with, that can be regarded as domestic violence? If you are curious go and look and read it for yourself. I fail to see how anyone could regard a relationship as a family without children but the law is always more complicated than the common old English language. So by it appears that you do not need to have a family to suffer from the unthinkable of family violence.

56E states that the landlord may not tell the whole truth to anyone enquiring about the suitability of their prior tenant if the tenancy has ended by use of clause 56b. You will need to state to enquirers that the RTA section 56E restricts what you can say concerning the ex tenant.

Landlords need to carefully consider the implications of the new laws and need to modify how they operate in order to compensate the additional risks that the new laws create. Housing people who appear to be likely to suffer

from this sort of behaviour is very risky. The government has special exemptions from this clause of the RTA for all of their tenancies so clearly such tenants are best left to them.

One though I have had is to cease offering periodic tenancies because there are now very few advantages for landlords to issue them. Instead I propose offering two year long fixed term tenancies. That way when the tenants wish to depart they may still do this after giving 28 days notice but will have to pay costs provided for in section 44A. Provision still remains under section 24(1) (g) (i) to have annual rent increases of fixed term tenancies provided that is included in the tenancy agreement. A few additional weeks rent per property paid by good tenants might balance out the occasional melt down due to problem tenants. Despite these tales of woe I feel blessed to have predominately wonderful long term tenants. Many have been in their "homes" for over 10 years with one being in the same place for 25 years. I have spent over \$100,000 on repairs, maintenance and improvements over the last 12 months. Not all of this expenditure is tax deductible. I am sure I must have at least one grumpy tenant but I only seem to hear from the good ones. 😊

SUBSCRIPTIONS

Thanks to those 112 members who have renewed their \$185 subscriptions for the year. For those whose membership card has expired I am sorry but I have stopped your magazine and discount privileges. New and old members are still trickling in. I like to think politicians and the media will listen to us if we have plenty of members so you can help yourself and others by being a member.

STORAGE AVAILABLE

Harry Pearson one of our members is offering Nelson PIA members a 10% discount on his already competitively priced self storage / container storage options.

He has mostly 10 and 20' shipping containers at 30B Venice Place storage yard in Stoke as well as a few larger containers and all our prices are shown on our website at [Container Storage | Storage Nelson](#). More detail is in the attached advert. Yes that is right Nelson PIA is always keen to help its members and with a few extra \$\$\$\$ from the advert we can supply even better benefits for you.

Hopefully this offer will give people another incentive to join the Nelson Property Investors Association.