

**NELSON PROPERTY INVESTORS ASSOCIATION**  
**JUNE 2022 NEWSLETTER**  
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Our third meeting of the year at the Honest Lawyer Monaco is on Tuesday 14<sup>th</sup> May 7:30 pm. Andrew King our National President is flying in from Auckland to address us. Yes, we still have the before meeting optional meal at 6 pm. We will have our usual rapid-fire AGM then also. I need some help to organise the meetings. I promise you the task is not hard, but it does need a bit of persistence. A free meal at each meeting is offered to anyone who will take on this task.

Note no bookings are required. No charge for attending applies. Non members are welcome, but we do encourage all attendees to subscribe to our free newsletters.

**THE BATTLE FOR PROTECTING THE RIGHTS OF  
LANDLORDS AND TENANTS RAGES ON IN WELLINGTON.**

Andrew King president of the New Zealand Property Investors Federation is coming to address us. Andrew heads up our national body and is in the front line of our battle with the government advocating on behalf of all property investors with particular interest in Residential Investors. There can be no doubt that over the last four years our industry has suffered. But even before the change of government when the Nats were in power some damage was sustained. For instance, when depreciation was removed about \$1 Billion of extra tax per year was extracted. The insurance changes limiting tenant's liability due to "accidents" were introduced by National but eventually passed by the Labour government. The removal of interest deductibility will apparently amount to around \$1.8 Billion per year. I am not sure how much extra tax will result from "Ring fencing" and "Bright Line". Obviously, any extra cost needs to be paid. These payments can be covered by increasing rents and reducing costs. Costs can be reduced by reducing debt (selling down), avoiding higher risk tenants, and repurposing residential properties into other uses such as boarding houses, Air B&B, commercial, and owner occupiers. Sadly, the most at risk in our society be they youth, low income, dysfunctional individuals and ethnic minorities tend to suffer from this lack of competitively priced accommodation. Some suppliers attempt to take short cuts and their foolishness and failures appear frequently in the media. Governments in New Zealand and in other Western democracies have been winding up laws and regulations to protect tenants and this is causing a spiral of problems, such as supply shortages, overcrowding, failure of facilities like bathrooms not designed to handle 20 people using them and so on. Some landlords are saving the cost of paying their modest membership subscriptions and this impacts on our ability to advocate on behalf of the industry. For instance, some organisations and groups have successfully fought the government on various injustices through the courts. The legal costs of such actions are eye watering and often fail.

Locally we help by bringing you the monthly magazine, my newsletters, discounts from suppliers, and having great speakers at our local meetings. I have recently sent out the annual renewal of membership invoices. If you missed yours or want to help others and yourself by joining Nelson Property Investors Association then flick me an email to join.

## **RECOVERING POSSESSION OF RENTAL PROPERTIES WHEN OWNED BY A TRUST**

I have one last property management and the owner who normally lives in Australia decided he would like to live in his family home. The property is held in the name of his family trust for matrimonial reasons. I initially advised him the law has now been changed because the property is owned by his trust he cannot terminate the periodic tenancy as provided for in section 51 (1) and (2) which specifies 63 days notice can be given by the owner. I did wonder if I could use section 51 (2) (c) which specifies if the landlord is not the owner of the premises and the landlords interest in the premises is due to end then 90 days notice is to apply. Obviously if the owner is to reoccupy then my position as the manager / landlord would end.

So, I decided to call the Tenancy Services help centre to make sure my understanding of the new laws was correct. In the past I have figured my way through understanding the RTA by successive successful and failed applications in the Tenancy Tribunal. In the past I have had pleasant off the record discussions with the adjudicator on our mutual understanding of some of the difficult clauses in the RTA.

Here is what the verbal advice of the call centre was. "If the trust is a private trust as opposed to a public trust and the tenancy agreement clearly states the property is owned by such and such a trust then you can issue a 63 day notice to terminate" So I asked what is the definition of a private trust as opposed to a public trust and who is the owner of a trust? The answer came that a public trust is one that is managed by the Public Trust? I answered surely you mean one that is owned by a registered charity or incorporated society. (such as a church or Nelson Housing Trust) I got no answer to that statement. At no stage was the term settler, trustee, or beneficiary used with respect to what they called a private trust? My comment then was, "well my goodness your answer is very different from my copy of the RTA section 51. Can I have a copy or a URL of this just in case I end up in front of a tenancy adjudicator if the tenant appeals the notice." The response was no you cannot have a copy because these notes are produced just for the call centre and are not for the public. Well my goodness I thought so here is a law that we all need to follow but I am not permitted to have a copy of it! Now I am not a lawyer but surely this is a gross injustice and misuse of the power of the state.

## **RENT INCREASES AND THE RTA LAW**

Carrying on from the previous paragraph and the law I recently read about a tribunal case of a landlord in Auckland who issued a large rent increase that was successfully appealed by the tenant. I confess I issued a large rent increase to my tenant in the case above thinking they would simply move permitting the owner to reoccupy. I carefully collected evidence of comparable properties just in case my tenant appealed the rent increase. They did comment about the increase but just paid. They did ask if I had another similar but cheaper property and suspect they looked around and could not find anything of the same quality at a cheaper price.

The law states that rent increases for periodic tenancies can be issued not more often once per year and must not substantially exceed market rent. It appears to me In the Auckland case and in one of my cases years ago the adjudicator did not use the actual wording of the law to make the judgement. Instead, they used a test of "a substantial rent increase" which is of course different to the term "exceed" which is used in section

25. In the Auckland case and mine of years ago the judgement was for a rent set at below market levels and specified that rent must be maintained for a long period. Incidentally clause 25 does not specify a period for the judgemental increase.

Based on what I read in the media the landlords justified the rent increase on their additional costs related to healthy homes, increases in tax and so forth. There was a picture of the house in the media and the set rent looked about what I would expect. The RTA makes no provision for rent increases based on such matters but does provide for "improvements" as a justification. The act makes no provision for charging more if more people occupy the premises. Last year one of my tenants responsibly asked me permission to have her sister move in and offered more rent. I accepted the request to permit the sister to move in but declined the rent increase. The RTA makes no provision for a specified rate of return based on the value of the property. So, my point is never put a justification in rent increase notices. Always keep evidence of similar properties advertised on Trademe or other evidence of "market" rents. Rent valuations are not a science they are an art form. Do not leave rent increases till they are urgent or you get angry. Several modest increases that occur at the same time of the year, every year will be more readily accepted. Generally, the last thing most landlords want is for tenants to move. It is common for tenants to get annoyed with their landlord when they receive a large rent increase. I have seen some tenants leave and actually pay a higher rent after they disagreed with the new rent being demanded.

Regards  
Glenn