AIDE MEMOIRE

FOR HON PHIL TWYFORD

MINISTER FOR HOUSING AND URBAN DEVELOPMENT

REGARDING

HEALTHY HOMES GUARANTEE AND AMENDMENTS TO THE RESIDENTIAL TENANCIES ACT

ANDREW KING

New Zealand Property Investors' Federation

1 November 2017

EXECUTIVE SUMMARY

1 Since *Anderson v FM Custodians Ltd* [2013] NZHC 2423 (Duffy J), rental properties that are not lawfully permitted to be used for residential purposes have not been fully covered by the Residential Tenancies Act 1986 ("**RTA**").

2 Without law reform:

(a) Tenants and landlords will both continue to be excluded from all of the protections, rights, obligations and remedies set out in the RTA if any aspect of the rental property or its occupation as residential premises is unlawful.

(b) The only remedy the Tenancy Tribunal ("**Tribunal**") can currently award is a full refund of all rent paid (on the basis that the tenancy agreement is a "prohibited arrangement" and therefore void under the RTA). This is a harsh and inflexible remedy that creates unjust outcomes in cases where the legal issue with the rental property is a technical one that does not compromise the comfort, health or safety of the tenants.

(c) The effectiveness of the Heathy Homes Guarantee Bill (No 2) ("**HHG Bill**") (and the Government's underlying policy objective of helping Kiwis to live in affordable, warm, dry homes), will be undermined if unlawful residential premises continue to be excluded from the RTA and the only available remedy is a refund of all rent paid during a tenancy.

3 The problems created by the *Anderson* decision can be resolved quickly and effectively by legislative reform. In particular:

(a) The RTA needs to be amended urgently to bring "unlawful residential premises" back under the RTA and fully within the Tribunal's jurisdiction (as they were prior to the *Anderson* decision).

(b) This amendment to the RTA logically fits together with the Government's HHG Bill. Both Bills seek to reform the RTA and the practical effectiveness of the HHG Bill will be undermined if unlawful residential premises are not brought back under the RTA at the same time or before the HHG Bill is enacted.

4 This will fix the problem by ensuring the Tribunal has the power to use the full suite of remedial orders already contained in the RTA in a balanced way that is fair to both landlords and tenants and tailored to the facts and justice of each case.

5 Legislative text for this reform is already contained in the Residential Tenancies Amendment Bill (No 2) ("**RTA Bill**") introduced by the previous Government. Clauses 4 and 18 of the RTA Bill sought to: (a) extend the definition of "residential premises" in the RTA to expressly include tenancies with legal issues; (b) introduce a new section 78A defining "unlawful residential premises" and (c) granting the Tribunal power to make orders in relation to them.

6 However, some parts of the RTA Bill should not be brought forward into the HHG Bill. In particular, the previous Government's proposal to limit the range of powers available to the Tribunal in proposed new sections 78A (3), (4) and (5) of the RTA. The Ministry of Business Innovation and Employment ("**MBIE**") has acknowledged in relation to those proposals:[1]

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[1] MBIE, *Regulatory Impact Statement: Application of the Residential Tenancies Act 1986 to rental premises which are not lawful for residential purposes* (9 May 2017) ("**MBIE RIS**") page 5, at para 10.

(a) The costs, risks and potential unintended consequences (including the impact on rental housing supply) have not been fully considered;

(b) The tenancy sector has not been consulted; and

(c) The proposals will be unsuitable in some factual situations.

7 Prompt, targeted and balanced reform of the RTA that is limited to bringing unlawful residential premises back under the RTA is recommended and will produce immediate benefits for both tenants and landlords by:

(a) Clarifying an area of law that directly affects many New Zealanders;

(b) Avoiding unjust outcomes for both landlords and tenants;

(c) Maintaining the supply of rental housing; and

(d) Achieving the policy objectives behind the HHG Bill without *Anderson* undermining the effectiveness of those reforms.

8 The Executive Officer of the New Zealand Property Investors' Federation ("**NZPIF**"), Andrew King, would welcome an opportunity to discuss with you the negative impact the *Anderson* decision is having on residential tenancies in New Zealand. NZPIF is also happy to provide copies of the Tribunal decisions and other materials referred to in this document,

ABOUT NZPIF

9 NZPIF is an incorporated society under the Incorporated Societies Act 1908 and the umbrella body for 20 local Property Investors' Associations ("**PIA**") throughout New Zealand. PIA combined memberships fluctuate between 3,000 and 4,000 landlord memberships at any one time.[2]

10 NZPIF's objects include representing the common interests of responsible property owners to the community and making submissions to government authorities on issues that concern NZPIF members.3

11 NZPIF also has a Code of Ethics to promote high standards among PIA members ("**Code**"). A copy of the Code is attached as **Appendix C**. The Code contains clauses that are particularly relevant to the issues raised in this Aide Memoire relating to:

(a) The quality and condition of rental premises;[4] and

(b) Landlord compliance with legal requirements.[5]

12 NZPIF has previously made submissions to the select committee on the RTA Bill in relation to unlawful residential premises and these are attached as **Appendix D** for completeness.

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2 One PIA membership can cover an individual landlord, a couple, or up to 10 people within a company or other organisation.

3 *Constitution of the New Zealand Property Investors Federation Inc* (24 September 2004), cl 3.0.

4 Clause 6 provides: "Members will provide the premises in a high state of cleanliness at the start of each tenancy and act promptly to investigate & remedy any reasonable request by a tenant, maintaining the premises in a comfortably liveable standard consistent with the age and character of the premise."

5 Clause 11 provides: "Members should keep themselves informed on & comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises, with particular regard to the Residential Tenancies Act 1986."

PROBLEM

The *Anderson* decision

13 The two aspects of the High Court decision in *Anderson* that are creating the biggest problems for residential tenancies in New Zealand are the rulings:

(a) Rental properties that are not lawfully able to be used for residential purposes are not "residential premises" as defined under the RTA; and

(b) The only orders the Tribunal can make in these cases are that the tenancy agreement was a "prohibited transaction" under section 137 of the RTA and the landlord must refund all of the rent paid over the life of the tenancy (as if the tenancy had never existed).

Problems for landlords and tenants

14 The *Anderson* case has created three major problems for residential tenancies in New Zealand:

(a) First, the Tribunal does not have jurisdiction to award suitable remedies to either tenants or landlords if there is any legal issue with residential occupation of the property. As a result, tenants and landlords are both deprived of the comprehensive scheme of protections, rights, obligations and remedies set out in the RTA.[6]

(b) Second, the only available remedy (of a full rent refund to the tenant) is an inflexible and harsh one that is not suitable in many cases. The Tribunal is unable to have regard to the nature of the legal issue or the quality of the property and tailor remedies accordingly. This is causing unjust outcomes for some landlords. This is particularly so in cases where, for example:

(i) The legal compliance issue is a technical one that has no direct impact on the physical comfort, health or safety of the tenants;[7]

(ii) The legal compliance issue is not known to the landlord when they enter into the tenancy agreement;[8] or

(iii) There is a legal or practical barrier to achieving perfect compliance but none of the underlying policy concerns regarding the nature and quality of the premises or the health and safety of tenants are present.[9]

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6 The RTA covers every aspect of the relationship between a landlord and tenant including, for example, bond lodgements, smoke alarms, rights to quiet enjoyment, termination notices and compensation for property damage.

7 See for example, *Parry v Inglis* (unreported, 27 April 2017, Tenancy Tribunal Dunedin, Adjudicator J Wilson) in which a tenant sought a rent refund after she discovered that conversion of the premises had not been consented. The landlord was subsequently granted a Certificate of Acceptance that was backdated by the Council to before the tenancy began but a full refund of $10,940 was given despite the lack of consent being found to have had no impact on the physical comfort, health or safety of the tenant. This case has been appealed to the District Court. In an NZPIF survey of PIA members between 7 and 12 September 2017, 81.4% of the 816 respondents were either "very concerned" or "extremely concerned" about the potential consequences of this decision.

8 See for example *Wahab v Seo* (unreported, 13 January 2017, Tenancy Tribunal North Shore Auckland, Adjudicator M Benvie) in which the Tribunal accepted the landlord did not know the downstairs flat could not legally be rented out before an application was made for a rent refund. The Tribunal accepted the landlord had been sold the property on the basis the property could legally be rented out. Despite this, the rent refund of $2,450 was granted to the tenant.

9 Rental properties in this category can include for example, granny flats, villa conversions, minor dwellings, and properties zoned for commercial use. These property types are particularly prevalent in and around town and city centres and a significant proportion of these would never be able to be consented under existing legal requirements but do provide quality and affordance housing for tenants.

See for example the Tribunal decision in *Parbhu & Patel as Trustees of the Impala Trust v Want* (unreported, 22 March 2017, Tenancy Tribunal Lower Hutt, Adjudicator A Bardsley) in which the rental premises had a limited resource consent for use as "a caretaker's residence only". The Tribunal was not able to take into account the "quality,

(c) Third, the legal position created by the *Anderson* decision is being exploited by some opportunistic tenants trying to avoid their own obligations under the RTA or obtain a windfall in the form of a unjustified and disproportionate rent rebate. [10] MBIE noted in a recent Regulatory Impact Statement that there was potential for this to occur,[11] and this has been mentioned in a number of Tribunal decisions during 2017.

Problems for the Government's HHG Bill

15 Another consequence of the *Anderson* decision is that the practical effectiveness of the Government's HHG Bill may be undermined if unlawful residential tenancies are not brought back under the RTA when the HHG Bill is passed.

16 The purpose of the HHG Bill is to amend the RTA to ensure "...every rental home in New Zealand meets minimum standards of heating and insulation".[12] The proposal is to amend the RTA so that:

(a) MBIE would be required to publish minimum standards for: heating methods, insulation methods, indoor temperatures, ventilation, draughts, and drainage.

(b) It would be an 'unlawful act' under the RTA for a landlord to not comply with those standards for which the Tribunal may award exemplary damages of up to $3,000.

17 However, if the legal position created by the *Anderson* decision is not corrected by legislation when the HHG Bill is enacted, this decision will thwart the HHG standards and enforcement measures the Government intends to introduce into the RTA thus, this is because any 'unlawful act' in breach of the RTA (including non-compliance with the future HHG standards) will currently push a residential tenancy out of the definition of "residential premises" in the RTA. The RTA will no longer apply and the only order the Tribunal will be able to make is for a full rent refund as if the tenancy agreement had never existed.

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convenience, or condition" of the premises and awarded a full rent refund of $12,400 despite nothing that the tenant was already $8,000 in rent arrears and there was no detrimental effect on the health, safety or comfort of the tenant.

In contrast, in *Summers v Gill* (unreported, 2 August 2017, Tenancy Tribunal Wellington, Adjudicator L Binns) *Anderson* was distinguished by the Tribunal in order to deny a full rent refund because the legal issues with the property "did not materially impact on the tenant" and "the landlord took all reasonable steps to ensure there was no legal impediment to occupation of the premises." (At paras 9 & 10).

[10] See for example *Edwards & Townsend v Wongeoon Vast Ltd* (unreported, 3 October 2017, Tenancy Tribunal Christchurch, Adjudicator R Armstrong) in which tenants originally applied to be released from a fixed term tenancy on the basis their relationship had ended. They subsequently learned the conversion of the building from a single dwelling into three dwellings had not been consented and amended their application to claim a full rent refund. The Tribunal in that case refused to follow the ruling in *Anderson*. However there are Tribunal decisions going both ways on this issue.

[11] MBIE RIS at page 5, at para 10. MBIE stated:

> "There is a wide spectrum of residential premises which could fall into the category of "unlawful" (for example due to a lack of resource consent or building certification), from well appointed but unconsented "granny flats" (which are safe and habitable in all respects) through to badly converted garages or cottages on farms with inadequate plumbing and insulation (which are genuinely unfit for rental purposes). While there may be some situations in which a full rent refund may be inappropriate, there may be others where it would not, for example a subsidiary unit on an existing property for which the landlord has not obtained the relevant resource consent for residential use or which does not comply with the relevant district plan. In such circumstances, it would be unfair for opportunistic tenants to obtain a rent refund "windfall".

[12] Explanatory Note to the HHG Bill.

PROPOSED SOLUTION

Bring unlawful premises back under the RTA via the HHG Bill

18 The proposed legislative solution is to bring unlawful residential premises back under the RTA.

19 The policy objective supporting the HHG Bill will be achieved more quickly and effectively if this amendment to the RTA is made either before or at the same time as the HHG Bill is enacted.

20 This amendment to the RTA has a natural and logical fit with the HHG Bill:

(a) Both reforms involve amending the RTA; and

(b) The amendment to bring "unlawful residential premises" back under the RTA is urgent and the HHG Bill is included within the Government's 100 day plan.

Two clauses from the RTA Bill could do this...

21 Two clauses from the Residential Tenancies Amendment Bill (No 2) ("**RTA Bill**") introduced by the previous Government on 23 May 2017 would be suitable, with minor amendment, for bringing unlawful residential premises back under the RTA. In summary they are:

(a) **Clause 4**: extending the current definition of "residential premises" in the interpretation section 2(1) of the RTA to also include unlawful residential premises.[13]

(b) **Clause 18:** inserting a new section 78A into the RTA (Orders of Tribunal relating to unlawful residential premises). However, only the first two subsections of 78A, (1) and (2), are recommended to bring unlawful premises under the RTA. The new sections 78A (1) and (2) of the RTA would:

(i) give the Tribunal power to declare premises "unlawful residential premises" at any time in a proceeding; and

(ii) define the term "unlawful residential premises".

But the definition of "unlawful residential premises" needs to be simplified

22 NZPIF submitted to the select committee on the RTA Bill that part (b) of the proposed definition should be deleted. The reasons for this recommended change are outlined in **Appendix A** attached. The simplified definition supported by NZPIF would then read:

> "(2) For the purposes of this Act, **unlawful residential premises** means residential premises that are used for occupation by a person as a place of residence and cannot lawfully be occupied for residential purposes by that person (whether generally or whether for the particular residential purposes for which that person is granted occupation)."

Prescriptive penalty provisions proposed in RTA Bill should be rejected

23 None of the other parts of the RTA Bill should be brought forward into the HHG Bill.

24 In particular, the prescriptive powers and penalties in relation to "unlawful residential premises" that were set out in proposed sections 78A (3), (4) and (5) of the RTA:

(a) are not necessary to bring unlawful residential tenancies back under the RTA;

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[13] The current definition of "residential premises" is: "any premises used or intended for occupation by any person as a place of residence". Clause 5 of the RTA Bill would extend this to unlawful premises by adding on the words "whether or not the occupation or intended occupation for residential purposes is or would be unlawful."

(b) will cause injustice in some cases, and

(c) will have a significant but unintended negative impact on the supply of rental housing in New Zealand.

25 These proposed amendments to the RTA appear to have been partly the result of a recommendation by MBIE to "...prescribe a 'menu' of remedies for the Tribunal to invoke."[14] However, the text of the RTA Bill as it was introduced appears to be less flexible than MBIE's original recommendations suggest. MBIE has also acknowledged in relation to its own recommendations that it had not been possible to: [15]

(a) undertake a comprehensive analysis of the possible costs, risks, and unintended consequences of the proposals,

(b) consult with representatives of the tenancy sector;

(c) assess the potential impact on the supply of rental housing; or

(d) quantify or estimate how many tenancies may have involved unlawful premises.

A SIMPLE AND BALANCED SOLUTION IS RECOMMENDED

26 NZPIF supports targeted and balanced legislative reform of the RTA that brings unlawful residential premises back under the RTA but otherwise leaves the Tribunal to exercise the full suite of powers and remedies already available to it under the RTA. This will avoid the harsh unintended consequences that more prescriptive reform of the RTA would cause.

REASONS FOR CHANGE

27 The law reform proposed will produce immediate benefits for many New Zealanders and achieve important policy objectives by:

(a) **Clarifying the law in this area** quickly, clearly and with legislative certainty will relieve the Tribunal of the time and burden of trying to apply the *Anderson* decision to unsuitable cases. This will consequently make the resolution of tenancy disputes less complex and expensive for many New Zealanders:

(b) **Protecting both tenants and landlords** by making the full suite of rights, obligations and remedies in the RTA available to them in cases where there is any legal issue with residential premises:

(c) **Empowering the Tribunal** to exercise its discretion to use the existing remedies in the RTA in a way that is balanced, fair and just in all the circumstances of each case. This will allow the Tribunal to make the necessary distinction between the competing policy objectives of:

(i) **Punishing unscrupulous landlords** who attempt to exploit vulnerable tenants by renting properties that are both unlawful and unsuitable because they have a legal issue that has a direct impact on the physical comfort, health or safety of the tenants; and

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[14] See MBIE RIS page 10 at para 27 recommending the RTA Bill "...prescribe a 'menu' of remedies for the Tribunal to invoke which are suitable for the particular circumstances of a case – including taking into account the benefits and other consideration(s) tenants may have gained through the tenancy."

[15] MBIE RIS at page 2.

(ii) **Preventing injustice to good landlords** in cases where the landlords have acted reasonably and provided healthy and safe homes to tenants at reasonable prices.

(d) **Ensuring the HHG Bill is effective** when enacted and the underlying policy objectives are not undermined by unlawful residential premises continuing to fall outside the RTA.

(e) **Maintaining housing supply** by ensuring that good landlords who have acted reasonably are not discouraged from renting properties where there are no health and safety issues for tenants. If the consequences of a legal compliance issue are too severe or inflexible, many landlords will choose to withdraw healthy, and safe very much needed rental properties from the housing market at a time when there is an acute shortage of housing in New Zealand. This is especially so in the Auckland region where housing pressures and property prices are known to be particularly high.

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APPENDIX A

WHY THE DEFINITION OF "UNLAWFUL RESIDENTIAL PREMISES" PROPOSED IN THE RTA BILL NEEDS TO BE SIMPLIFIED

Definition proposed in RTA Bill

28 The definition of "unlawful residential premises" that was proposed by the previous Government in the RTA Bill (to be included in a new section 78A(2) of the RTA) was unnecessarily complex and was drafted as follows:

> "(2) For the purposes of this Act, **unlawful residential premises** means residential premises that are used for occupation for a person as a place of residence but—
>
> "(a) that cannot lawfully be occupied for residential purposes by that person (whether generally or whether for the particular residential purposes for which that person is granted occupation); and
>
> "(b) where the landlord's failure to comply with the landlord's obligations under section 36 or 45(1)(c), or section 66H(2)(c) or 66I(1)(c), as relevant, has caused the occupation by that person to be unlawful or has contributed to that unlawful occupation.

Existing legal obligations referred to in that definition

29 The "landlord's obligations" referred to in part (b) of the definition of "unlawful residential premises" are essentially obligations to comply with all applicable laws. Those obligations are expressed in the RTA as obligations to:

(a) "... take all reasonable steps to ensure that, at the commencement of the tenancy, there is no legal impediment to the occupation of the premises for residential purposes;"[16] and

(b) "... comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises."[17]

Proposed definition should be simplified

30 NZPIF submitted to the select committee on the RTA Bill that part (b) of the proposed definition of "unlawful residential premises" should be excluded. The reasons for this are outlined briefly below. The amended definition would read:

> "(2) For the purposes of this Act, **unlawful residential premises** means residential premises that are used for occupation by a person as a place of residence and cannot lawfully be occupied for residential purposes by that person (whether generally or whether for the particular residential purposes for which that person is granted occupation)."

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[16] Section 36 (Legal impediments to occupation).

[17] Section 45(1)(c) (Landlord's responsibilities). Sections 66H(2)(c) and 66I(1)(c) essentially create the same obligations as sections 36 and 45(1)(c) referred to above but in relation to boarding houses which are not relevant here.

Reasons

31 Part (b) of the definition of "unlawful residential premises" should be deleted for the reasons outlined below.

(a) First, part (a) of the definition is all that is necessary to achieve the policy objective of reversing the decision in *Anderson*. Every residential property or residential occupation that has a legal compliance issue that satisfies Part (a) of the definition should be dealt with under the RTA as "unlawful residential premises". Adding any additional requirements to the definition of "unlawful residential premises" risks creating a new subset of unlawful residential premises that will not be brought back under the RTA because they do not satisfy any additional criteria.

(b) Second, part (b) of the definition is confusingly circular and adds nothing useful. Part (b) essentially states that the relevant legal compliance issue must have been contributed to by breach of the landlord's duty in section 45(1)(c) of the RTA to "... comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises." However, breach of the section 45 duty to comply all legal requirements will automatically be established by the fact that there is a legal compliance issue with the tenancy. There is no policy reason for this confusing repetition in the definition.

(c) Third, section 45(1)(c) of the RTA already imposes a very wide obligation on landlords to comply with <u>all</u> applicable laws <u>relating to buildings, health and safety</u>. (Emphasis added). Breaching the section 45(1)(c) duty to comply is already an "unlawful act" under the RTA for which exemplary damages of up to $4,000 can be awarded.[18] In this context, it is neither necessary nor desirable for the duty in section 45(1)(c) of the RTA to be incorporated into the definition of "unlawful residential premises."

(d) Fourth, limiting the definition of "unlawful residential premises" to part (a) of the proposed definition gives the Tribunal the flexibility to tailor the existing remedies under the RTA to the facts and justice of each case. This will enable the Tribunal to consider what is fair and appropriate in all of the circumstances, including for example: the nature and state of the premises; the nature of the legal compliance issue involved; the reasonableness of the landlord's behaviour; the impact of the legal issue on the physical comfort, health or safety of the tenants; the duration of the tenancy; the amount paid by the tenant as rent; and the conduct of the tenant

[18] See section 45(1A) and Schedule 1 of the RTA. This is in addition to any other remedies that would be available to the Tribunal under the RTA.

APPENDIX B

MBIE RIS on RTA Bill

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Regulatory impact statement

Application of the Residential Tenancies Act 1986 to rental premises which are not lawful for residential purposes

newzealand.govt.nz

Agency disclosure statement

This Regulatory Impact Statement has been prepared by the Ministry of Business Innovation and Employment (MBIE). It provides an analysis of options for addressing a tenancy sector issue which has recently emerged in respect of tenancies over rental premises which are not lawful for residential use.

The analysis has been constrained by the limited time available, specifically it has not been possible to undertake a comprehensive analysis of the possible costs, risks and unintended consequences of the proposals.

It is not possible to quantify or even estimate how many tenancies relate to premises which may be unlawful for residential purposes. This is because the lawfulness or otherwise of rental premises only arises when the relevant local council is involved and a case comes before the Tenancy Tribunal. However, the frequency with which the issue is arising in the Tribunal (almost weekly) suggests that there are likely to be a high number of rental properties across the country which could be said to be unlawful for residential purposes.

It is difficult to assess how or whether the preferred proposal will have an impact on the supply of rental housing. The proposals may result in a slight reduction in the availability of rental properties, as landlords become aware of the new provisions and penalties for entering tenancies over unlawful rental premises. Were this to occur, there could be a disproportionate impact on vulnerable tenants, who are likely to be more inclined to enter into tenancies where the premises are unlawful, due to limited choice. However, we consider the benefits of the proposal outweigh the costs, because of the importance of ensuring landlords provide rental properties which are fit for purpose. In addition, it is important that landlords do not evade their obligations under the Residential Tenancies Act and that all tenants are afforded all their rights and protections in the Residential Tenancy Act.

Under the preferred proposal, where the parties wish the tenancy to continue, the Tribunal will be able, where appropriate, to give the landlord the opportunity to comply with the relevant legislative requirements. Therefore we do not expect the proposals to result in many displaced tenants or have adverse welfare consequences.

Due to the time constraints, it was not possible to undertake consultation with representatives of the tenancy sector, which may have produced other proposals for addressing the issue. Should the proposals be implemented, future reviews of the Residential Tenancies Act will provide an opportunity to assess the effectiveness of the changes.

Authorised by:

Claire Leadbetter
Manager, Construction & Housing Policy team
Building, Resources & Markets

9 May 2017

Contents

Status quo and problem definition

Background

How can residential premises be "unlawful"?

1. Unlawful residential premises are those used for residential purposes but which are not lawfully permitted to be used for residential purposes because they were physically constructed for another purpose. Examples are commercial buildings being used for residential purposes, and existing dwellings or garages being used for more than one household group without the appropriate physical separation for safety purposes. Such premises may contravene the Building Act 2004 if they do not comply with the building code, if the building is deemed dangerous or unsanitary, or if there are inadequate means of escape from fire. In other cases, the use of the premises for residential purposes is inconsistent with the relevant resource consent. In cases which come before the Tenancy Tribunal, premises have been deemed unlawful for residential purposes by councils, which have responsibility for enforcing the requirements of the Building Act 2004 and Resource Management Act 1991.

Relevant provisions of the Residential Tenancies Act 1986

2. In entering into tenancy agreements over premises which are not lawful for residential purposes, landlords would be breaching their obligations under the Residential Tenancies Act 1986 (RTA) to:

    a. "comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises" (sections 45(1)(c) and 66I(1)(c) of the RTA) - an on-going obligation; and

    b. "take all reasonable steps to ensure that at the commencement of the tenancy, there is no legal impediment to the occupation of the premises for residential purposes" – an obligation at the start of the tenancy (sections 36 and 66H(2)(c) of the RTA).

Previous understanding of the application of the RTA to unlawful residential premises

3. Unlawful residential premises were previously found to be covered by the RTA and the Tribunal would make orders in relation to such tenancies in the same way they would a lawful residential premise, so long as the use and intention of the parties was for residential purposes (e.g. rent refunds, rent reduction, termination, compensation for failure to comply with building requirements and work orders to remedy the breach).

4. This approach appeared to be in accordance with the definition of residential premises in the RTA as "any premises used or intended for occupation by any person as a place of residence" (section 2). In many instances the Tribunal ordered remedies in favour of the landlord, such as rent arrears and other costs, despite breaches by the landlord of his or her obligations under the RTA to comply with relevant enactments and ensure there is no legal impediment to occupation of the premises for residential purposes.

Magnitude of unlawful residential premises

5. It is not possible to quantify how many tenants may be living in residential premises which could be considered unlawful but the number is likely to be high because of the number of situations to which the decision could apply, including illegally converted garages, unconsented dwellings and commercial properties. The issue could be more prevalent in

Auckland where pressure for rental housing is higher than in other areas.

Effect of High Court decision on Tribunal jurisdiction and remedies

6. A High Court case - *Anderson v FM Custodians Ltd* [2013 NZHC 2423] (*Anderson*) – has set a precedent which has called into question the previously understood application of the RTA in cases of unlawful residential premises and has created legal uncertainty. In the Anderson case, the High Court found that where a property is not lawfully able to be used for residential purposes (in that case the unlawfulness was the use of a building outside the scope of its resource consent), it is not a 'residential premises', as defined in the RTA. Essentially, the High Court inferred lawfulness into the definition of "residential premises" in section 2 of the Act.

7. The *Anderson* decision has affected the Tribunal's jurisdiction and its ability to award remedies in cases where the premises in question are unlawful for residential use. Most adjudicators are following the Anderson precedent ruling that the Tribunal has no jurisdiction, because the premises cannot lawfully be used as residential premises and therefore there is no residential tenancy agreement. It follows that the Tribunal cannot invoke any remedies under the RTA, except for ordering a partial or full refund of rent and other amounts received from the tenant on the grounds that the tenancy was a "prohibited transaction" under section 137 (Prohibited transactions) of the RTA.

8. In a few cases adjudicators have decided that if the tenancy is not covered by the RTA (because the property in question is unlawful for residential purposes), then the Tribunal has no jurisdiction at all and cannot make any orders, including section 137 rent refunds. Since *Anderson*, the Tribunal has not been making orders in favour of landlords where the premises are found to be unlawful (e.g. rent arrears).

Problem definition

Tenancy Tribunal does not have discretion to award appropriate remedies

9. The *Anderson* decision has had a constraining effect on the ability of the Tribunal to exercise discretion in ordering appropriate remedies. In most cases the Tribunal has only awarded partial or full rent refunds. Unlike other disputes, the Tribunal does not have the ability to investigate and adjudicate on a case by case basis, in accordance with its duty under the RTA to "exercise its jurisdiction in a manner that is most likely to ensure the fair and expeditious resolution of disputes" (section 85).

10. There is a wide spectrum of residential premises which could fall into the category of "unlawful" (for example due to a lack of resource consent or building certification), from well-appointed but unconsented "granny flats" (which are safe and habitable in all respects) through to badly converted garages or cottages on farms with inadequate plumbing and insulation (which are genuinely unfit for rental purposes). While there may be some situations in which a full rent refund may be inappropriate, there may be others where it would not, for example a subsidiary unit on an existing property for which the landlord has not obtained the relevant resource consent for residential use or which does not comply with the relevant district plan. In such circumstances, it would be unfair for opportunistic tenants to obtain a rent refund "windfall".

Lack of protection for tenants

11. The Tenancy Tribunal's lack of jurisdiction over disputes in these cases means that tenants living in unlawful residential premises are not consistently afforded the protections and standards under the RTA, for example: bond lodgement requirements; smoke alarms; insulation; requirements in respect of buildings, health, and safety; cleanliness requirements; termination notice requirements; rent increase obligations; and rights to quiet enjoyment.

Role of MBIE Tenancy Compliance and Investigations Team unclear

12. It has become unclear whether the Tenancy Compliance and Investigations Team (in the Ministry of Business Innovation and Employment) is able to take action against landlords in breach of minimum obligations under the Act in respect of unlawful residential premises, because of the effect of the *Anderson* decision.

Inadequacy of legislative deterrents

13. The issue has highlighted the inadequacy of legislative deterrents available to discourage landlords from offering tenancies over unlawful premises. Councils have the ability to req uire compliance or failing that, issue infringement notices or take prosecutions against property owners (including landlords) under the Building Act 2004, for example for:

    a. changing the use of a building without notifying and obtaining approval of the council (e.g. from commercial to residential);

    b. carrying out building work which does not comply with the building code (whether or not a building consent is required);

    c. carrying out building work without the required building consent; and

    d. knowingly permitting a person to use a building for which the building is unsafe or unsanitary or that has inadequate means of escape from fire.

14. However, it is understood that many such offences are not prosecuted and neither are many infringement fines issued, as they are not brought to the attention of councils and because of the resources required to prove non-compliance. Infringement fines for failure to comply with these requirements under the Building Act are generally only between $1,000 and $5,000. In any case, the Building Act has very few requirements (and penalties) to regulate premises at the point at which they are offered for rent.

15. It is unfair that some landlords can continue to benefit while evading legal requirements, while the vast majority of landlords are rightfully complying with their obligations.

Objectives

Outcomes/objectives

16. The objective of the proposal is to provide clarity and guidance to the Tenancy Tribunal and rental sector where rental premises are found to be unlawful for residential purposes. In doing so, the solution should:

    a. ensure tenants are afforded the full protection of the RTA in cases where the use of the residential premises is found to be unlawful;

    b. discourage landlords from offering tenancies for premises which are not lawfully able to be used for residential purposes;

    c. ensure the application of the RTA and the jurisdiction of the Tribunal is clear; and

    d. enable the Tribunal to exercise its discretion in terms of ordering appropriate remedies (including the refunding of rent).

Options and impact analysis

Options considered

17. Three options were assessed against the objectives above as follows:

    1. *Status quo*
    2. *Amend RTA to cover unlawful residential premises*
    3. *Amend the RTA to include specific orders and remedies to address unlawful residential premises*

Option 1 – status quo

18. Under this option, no legislative change would be required. It would be left up to the Tribunal to make decisions taking into account the precedent set by the *Anderson* decision. Under this option, the Principal Tenancy Adjudicator could issue a Practice Note in order to ensure consistent decisions.

Analysis against criteria – option 1

19. This option does not meet the objectives as it does not address the legal uncertainty and does not:

    a. ensure tenants are afforded the full protection of the RTA in cases where the use of the residential premises is found to be unlawful;

b. discourage landlords from offering tenancies for premises which are not lawfully able to be used for residential purposes;

c. ensure the application of the RTA and the jurisdiction of the Tribunal is clear; and

d. enable the Tribunal to exercise its discretion in terms of ordering appropriate remedies (including the refunding of rent).

Option 2 – Amend RTA to cover unlawful residential premises

20. Under this option, the definition of "residential premises" in the RTA would be amended to expressly include premises for which residential use is unlawful (due to non-compliance with relevant legislation). This would clarify the application of the RTA and the jurisdiction of the Tribunal in a way which returned the situation to the understanding prior to the *Anderson* decision.

Analysis against criteria – option 2

21. This option would clarify the application of the RTA and the jurisdiction of the Tribunal in respect of unlawful residential premises and therefore satisfy the third objective. It would also ensure that tenants were afforded the full protection of the RTA (the first objective), as the whole RTA would apply to cases where the premises were found to be unlawful for residential purposes. Therefore tenants would be able to enforce their rights, for example in respect of bond lodgement, smoke alarms and insulation.

22. However, while option 2 would give the Tribunal discretion over remedies (objective four), it does not guarantee the Tribunal will exercise its discretion to order appropriate remedies in all cases. This is because the Tribunal would be able to apply the whole framework of rights, obligations and remedies under the RTA to both tenants *and* landlords. For example, even where a landlord was found to have breached his or her obligations in respect of section 45(1)(c) (compliance with building, health and safety requirements under any enactment), adjudicators would still be able to award costs and work orders in favour of the landlord.

23. This was the case prior to the application of the *Anderson* decision, when the Tribunal frequently awarded rent arrears and other costs in favour of landlords, despite rental premises being found to be in breach of legal requirements in respect of the Building code, health and safety and sanitation. This is not appropriate in terms of protecting vulnerable tenants from unscrupulous landlords and neither would it discourage landlords from offering unlawful rental premises – objective two.

24. Option 2 risks "legitimising" unlawful tenancies, as there would be no change to the current types of exemplary damages for which a landlord can be liable and inadequate statutory deterrents for such behaviour.

Option 3 - Amend the RTA to include specific orders and remedies to address unlawful residential premises

25. Under option 3, the RTA would be amended to clarify the application of the RTA and therefore the Tribunal's jurisdiction and to include a tailored set of provisions in respect of unlawful residential premises, including specific penalties. Under this option, the RTA would be amended to:

a. include a provision that, for the avoidance of doubt, in cases where the residential premises are unlawful because of any legal impediment to the occupation for residential purposes or the premises cannot lawfully be used for residential purposes, the Tenancy Tribunal has jurisdiction to consider such cases; and the chief executive of the Ministry of Business, Innovation and Employment (MBIE) may continue to exercise all duties,

obligations and discretionary powers under the RTA;

b. provide that:

- where the Tribunal makes an order requiring the landlord to remedy the legal impediment within a specified time frame by complying with the relevant enactment (e.g. applying and obtaining the relevant consents or permits from the council), it will be an unlawful act if a landlord fails to comply with such an order; and

- the unlawful act above attract exemplary damages of up to $4,000 (equivalent to exemplary damages for the unlawful act of failure by landlord to meet obligations in respect of cleanliness, maintenance, building or health and safety requirements);

c. provide that where the Tribunal finds that a landlord failed to comply with sections 45(1)(c) or 66I(1)(c) or to ensure that there is no legal impediment to the occupation of the premises for residential purposes, it may make any or all of the remedies and orders against the landlord available to it under the RTA, including:

- an order of exemplary damages for committing an unlawful act by failing to comply with the landlord's obligation in sections 45(1)(c) or 66I(1)(c) of the RTA;

- if appropriate in the circumstances, an order requiring the landlord to remedy the breach within a specified time frame, by complying with the relevant enactment;

- an order of exemplary damages for committing an unlawful act for failing to take all reasonable steps to comply with the above order;

- an order terminating the tenancy on an application by the tenant;

- an order for the repayment of the whole or part of the rent paid to the landlord, taking into account the benefit received by the tenant from the tenancy; and

- any other order in favour of the tenant that the Tribunal considers appropriate for the circumstances, taking into account the benefit received by the tenant in relation to the tenancy;

d. provide that where the Tribunal finds that a landlord has breached his or her obligation to ensure there is no legal impediment to the occupation of the premises for residential purposes, the Tribunal shall not order rent arrears in favour of the landlord (unless, taking into account the benefit of the tenant in relation to the tenancy, it would be unfair not to order rent arrears)

e. Subject to the above limitations, all other provisions of the RTA would continue to apply. Tenants would still be bound by their responsibilities under the RTA and have access to all the usual remedies against landlords, such as compensation for breach right to quiet enjoyment or exemplary damage for harassment.

Analysis against criteria – option 3

26. Option 3 best meets the objectives for the proposal. It would clarify the application of the RTA and the jurisdiction of the Tribunal and ensure tenants are afforded the full protection of the RTA in cases where the use of the residential premises are found to be unlawful – objectives three and one.

27. It would enable the Tribunal to exercise its discretion in terms of making appropriate orders, as the amendments will prescribe a "menu" of remedies for the Tribunal to invoke which are suitable for the particular circumstances of a case – including taking into account the benefits and other considerations tenants may have gained throughout the tenancy (objective four).

28. Importantly, by including a specific unlawful act and associated exemplary damages, option 3 will address the objective of discouraging landlords from offering tenancies for premises which are not lawfully able to be used for residential purposes. Preventing landlords from claiming rent arrears will also signal the seriousness of the breach and act as a deterrent (objective two).

29. There is a risk that vulnerable tenants (e.g. those of limited means) may be disproportionately affected by the proposal, as they are more likely to accept tenancies where the premises are unlawful, due to limited choice. There may be a slight reduction in rental housing on offer once the proposal is implemented and as landlords become aware of the changes. However, the overriding principle is ensuring landlords provide rental properties which are fit for purpose and therefore the changes are likely to benefit all tenants – including vulnerable tenants – in the long run. Sub-standard rental premises should not be legitimised on the basis that "at least the tenant has a roof over her head".

30. Under option 3, the Tribunal will be able to give the landlord the opportunity to comply with the relevant legislative requirements (where appropriate and the parties wish the tenancy to continue).

31. Registered community housing providers (and their tenants) are unlikely to be affected by the proposals as they are unlikely to be operating unlawful premises. This is because, in order to become a registered community housing provider, organisations must provide evidence to the Community Housing Regulatory Authority that they have adequate policies and procedures to ensure that they comply with relevant legislation (including the Building Act 2004, Building Regulations 2004, RTA).

Consultation

Agency consultation

32. The following agencies were consulted on this Regulatory Impact Statement: the Treasury, the Ministry of Justice, Housing New Zealand Corporation, the Ministry of Social Development, the Ministry of Justice, Te Puni Kokiri, the Ministry for the Environment and the Department of Internal Affairs. The Department of the Prime Minister and Cabinet was informed.

Stakeholder consultation

33. The Principal Tenancy Adjudicator of the Tenancy Tribunal was consulted on the proposals.

34. Due to the time constraints, it was not been possible to undertake consultation with representatives of the tenancy sector.

Conclusions and recommendations

35. Option 3 is MBIE's preferred option for addressing the issue of unlawful residential tenancies. This is because it best meets all the policy objectives and provides a balanced solution. Option 3 gives the Tribunal discretion to award remedies on a case by case basis but with statutory guidance.

36. The benefits of the proposal outweigh the costs, because of the importance of ensuring landlords provide rental properties which are fit for purpose. In addition, it is important that landlords do not evade their obligations under the Residential Tenancies Act and that all tenants are afforded all their rights and protections in the Residential Tenancy Act.

Implementation plan

37. The final policy option agreed by Cabinet for implementation would require amendments to the RTA. No regulations would be required to be made in order to give effect to the policy options.

38. MBIE would publicise the proposed amendment, and further details once the RTA amendments were in force. The policy would be publicised through the Service Centre, website, ephemera and other options as decided by Government.

39. MBIE will also work with the Tenancy Tribunal to ensure staff understand the implications for their business and are ready to deal with applications under the new legislative framework.

40. The enforcement of Tenancy Tribunal Orders would not be affected by this proposal.

Monitoring, evaluation and review

41. Tenancy Tribunal decisions will be monitored as a gauge of the effectiveness of the amendments once legislation has been passed. MBIE will also liaise with Tenancy Services staff (including mediators and adjudicators) and seek feedback from tenancy stakeholder groups.

42. The impact of the amendments will also be monitored in terms of the number of contact centre calls about unlawful residential premises.

43. Finally, the effectiveness or otherwise of the changes will be able to be assessed in the context of upcoming reviews of the Residential Tenancies Act.

APPENDIX C

NZPIF Code of Ethics

NEW ZEALAND PROPERTY INVESTORS FEDERATION

CODE OF ETHICS

Purpose

The purpose of the code is to inspire and promote high standards among PIA members through defining good and ethical behaviour in the provision of rental accommodation to tenants.

Tenant relationships

1. Tenants shall be treated with respect, in a business like manner with the landlord as a service provider.

2. A rental property should be treated as the tenant's home and regard will be given for the tenant's peace, comfort and privacy.

3. Members should be aware of what government assistance may be available to their tenants in relation to their tenancy, and assist them if requested.

Professional behaviour

4. Dishonesty, deception or misrepresentation shall not be used in any activities involving members' property business activities.

5. When asked to supply a reference for a tenant, members will supply true and accurate information in order to assist the tenant and fellow rental property providers.

6. Members will provide the premises in a high state of cleanliness at the start of each tenancy and act promptly to investigate & remedy any reasonable request by a tenant, maintaining the premises in a comfortably liveable standard consistent with the age and character of the premise.

7. Members will monitor the rental market and take a responsible approach to setting rental prices by considering market rent levels and any other specific or unique conditions of the property.

Discrimination

8. In both advertising and tenant selection, members will choose the most appropriate applicant and will not discriminate against anyone on the basis of gender, marital status, religious belief, ethnicity, disability (physical or psychiatric), illness, age, political opinion, employment status, family status, or sexual orientation.

Confidentiality

9. A tenant's privacy will be protected and credit histories will not be obtained without the prospective tenant's written authority.

Community

10. Members shall have regard to the neighbours of their rental properties and will take all reasonable steps available to them to protect neighbours peace, comfort and privacy from the member's tenants.

Compliance

11. Members should keep themselves informed on & comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises, with particular regard to the Residential Tenancies Act 1986.

APPENDIX D

EXTRACT FROM NZPIF SUBMISSIONS TO SELECT COMMITTEE ON RESIDENTIAL TENANCIES AMENDMENT BILL (NO 2)

Unlawful residential premises

The NZPIF believes the Tenancy Tribunal should be able to determine cases where a residential tenancy has been in existence in an unlawful premise. Addressing the consequences of a High Court decision (*Anderson v FM Custodians Ltd* [2013] is seen as a positive move.

The NZPIF is generally in agreement with improving standards of rental property in New Zealand, and would not like to see properties that are highly unhealthy or highly unsafe being used for residential accommodation until they have been repaired or remedied. We use the terms highly unhealthy or highly unsafe as the terms unhealthy or unsafe are subjective and we would not like to see these terms interpreted too prescriptively or severely. This could result in a large number of perfectly good rental properties being removed from the market and become unavailable for tenants who would find them perfectly acceptable.

Despite agreeing with the philosophy of improving rental property standards, we would not like to see ramifications of the Anderson case see Tribunals making harsher rulings than previously against rental property providers who are providing rental property of good quality and appropriateness, despite not being technically lawful.

Granny flats, Villa conversions, some minor dwellings and dwellings in premises zoned for commercial use have previously been treated more as incorrect than unlawful, with authorities turning a blind eye to them as long as they provide a good level of accommodation.

There are a considerable number of these types of properties in various areas around New Zealand, typically in areas close to town or city centres. These types of properties are often very affordable options for limited income people to live in relatively expensive areas.

It is likely that a significant proportion of these dwellings will never be able to be consented. Even a local authority issued Certificate of Acceptance may be difficult to obtain for these properties for reasons such as a fire wall between units.

Without a firewall they cannot obtain a Certificate of Acceptance, but there may be other ways to improve the safety of these properties, such as interconnected smoke alarms.

While the NZPIF does not condone slum rental properties, we do not want to see properties that are highly desired by tenants removed from the rental stock. This could lead to an even greater shortage of rental properties at a time when we really need more.

We view section 78A(2)(b) as being extremely problematic as it provides for the Tenancy Tribunal to declare the property unlawful if the landlord fails to comply with ANY of the requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises.

It is unlikely that anyone knows the full extent of the wide ranging Acts of Parliament that could be applied to a rental property. There will be numerous small requirements hidden within various acts that could be used against rental property owners.

The Tribunal is almost directed to make awards of exemplary damages and partially or completely refund rent payments back to Tenants and reject a landlords claim for rent or other amounts owing. The consequences of an owner getting it wrong in this section of the RTA is being extended drastically in this Bill.

How this section of the Bill will be interpreted is unknown, however as it stands there will be far reaching ramifications that will be difficult to foresee or quantify. It will be extremely easy for owners to fail to comply with ANY of the requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises.

In addition, as tenants will be compensated for bringing cases to the Tribunal, there is an incentive for them to do so. Some tenants aware of this policy will seek out unlawful but suitable rental accommodation, live it for up to six years and then apply to the Tenancy Tribunal for a refund of the rent they have paid and exemplary damages. This would be financially crippling for the rental property owners and an enormous risk that they may have no idea about.

Faced with such high financial risks, it is probable that any rental property owner renting such a property will end the tenancy, revert the property back to a single dwelling and either occupy it themselves or sell it.

The NZPIF is already aware of property managers asking owners to end tenancies so they can then make an application for a Certificate of Acceptance (COA). Once

council has been notified, if the property cannot or is economically unable to be altered to receive the COA, the owner is unable to rent it out again.

Clause 78A(2)(b)

78A(3): Despite anything to the contrary elsewhere in this Act,—
(a) unless the Tribunal is satisfied that, having regard to the special circumstances of the matter, including the nature of the premises, it would be unjust not to make the order, the Tribunal must not order the tenant to pay to the landlord—
(i) any sum found to be owing by way of rent in arrear; or
(ii) any other sum by way of damages or compensation:

(b) if the landlord has applied for termination on the ground of rent in arrear, the Tribunal may, but is not required to, make the order terminating the tenancy.

This clause means that a property that doesn't comply with ALL aspects in respect of buildings, health, and safety under any enactment so far as they apply to the premises can be deemed an unlawful property. This extends the ramifications of not complying with this section by allowing all rent to be refunded to the tenant in addition to the current awarding of exemplary damages.

Unless the Tribunal believes it would be unjust not to make the order, the Tribunal must not order the tenant to pay to the landlord any rent arrears owing or any other sum by way of damages or compensation. This is unjust.

Given the difficulty of finding and understanding what these requirements are, the potential consequences appear extremely harsh.

Technical points could be used against rental property owners to demonstrate that they have not complied with the various acts and their rental property is therefore deemed unlawful.

The NZPIF was recently advised of a case where a rental property was severely water damaged during a once in 100 year flood. The tenant had to move out, but raised the point about whether the drain layer that installed the drainage system was registered or not. The current owner had purchased it from another person who had actually undertaken the drainage work, so did not know who had undertaken the work. There was no record of who undertook the work on the council files. While the work itself was deemed appropriate, it could not be clarified if the drain layer was qualified to do the work. The question was asked if the owner had complied with the building act and if not was the owner liable for some of the tenants possessions that were damaged during the flood.

Under this scenario and if this Bill passes in its current form, The owner could be found to have not complied with the building act because they couldn't prove that the work was carried out by a suitably qualified person. Once found to be unlawful, the Tribunal can award all the rent to be refunded to the Tenant.

In addition, it could be the tenant who actually breaks the requirements of the acts through the way they treat the property, with the ramifications falling onto the owner. This would be grossly unfair.

As an example, The Housing Improvement Regulations state that Every house shall be free from dampness. However dampness can be caused by many factors which may, or may not be related to the condition of the property. If a tenant manages a property in such a way that it creates dampness, this Bill could be used to declare the property unlawful and any rent owing by the tenant will remain owing and any or all of the rent that the tenant has paid can be awarded paid back to the tenant.

This section of the Bill is highly unfair to rental property owners. It could see any transgression of any act relating to the building, health, and safety of the property, no matter how minor, leading to the property being declared unlawful.

Once declared unlawful, the Tribunal must not order the tenant to pay rent arrears or any other money owing (unless it would be unjust not to do so) and can refund any rent paid back to the tenant. In addition to not receiving income owed to them and continue to lose income with delays to when they can get access to the property to remedy the situation and get the property tenanted again, or revert it back to a single dwelling.

Property managers are reporting that many clients are selling their rentals because extra regulations and the risk of getting it wrong is putting them off. Providing rental accommodation has become a very marginal activity and the ramifications of section 78A(2)(B) could see a significant increase in providers exiting the market and a reduction in new providers.

Some would see this as a positive outcome as it would reduce house prices and the properties are likely to be sold to first home buyers. Many people view this as a zero some outcome as you lose a rental property but a tenant becomes a home owner.

The problem with this situation is that the latest census data shows that nearly half the population live in rental properties that only account for a third of all properties in New Zealand. This means that on average there are more people per rental property compared to owner occupied property.

As an example, consider two couples living together in a rental property. If one couple decides to buy the rental for themselves, the other couple need to find a new rental to live in. One property has been removed from the rental pool, Two tenants have become homeowners, but two tenants now need to find rental accommodation that, without an increase in supply, doesn't exist.

On current estimates, if 100 rental properties are sold to first home buyers, an additional 56 rentals will be needed to accommodate the remaining tenants.

Recommendations

The NZPIF recommends that this section of the bill be suspended until the extent of unlawful dwellings can be estimated to establish what affect this bill could have on rental property supply.

If this section of the Bill goes ahead, the NZPIF recommends that the committee establishes what type of property is acceptable to continue being available as a rental, with further options developed that allow the many near acceptable dwellings to continue being available for tenants to live in.

Further options could include:

I. interconnected fire alarms to be used between separate dwellings in a villa conversion when a fire wall is impossible or uneconomic to install.

II. Receive a COA based on local regulations when the property was built or converted rather than on current standards.

III. Apply existing use rights for when a property has been used as a rental for a certain number of years.

These options could be suitable methods of removing undesirable rental properties from being available to tenants while preventing other otherwise suitable rental properties from being caught out as collateral damage.

If none of these options is acceptable, the NZPIF recommends that a long lead in period be applied so that the impact of the law will not apply over a short period of time, helping to reduce inequitable losses for rental property owners and a potentially significant reduction of rental property availability for tenants.

The NZPIF recommends that section 78A(2)(B) is taken out completely as it could lead to an enormous number of properties being classed as unlawful, depending on how it is interpreted and acted on.