

## **Residential Tenancies Act 1986**

### **Summary of recent Amendments: enacted and pending.**

This is a brief summary. I have not focused on specific standards or compliance dates. If you have queries I suggest you go to the Legislation ([www.legislation.govt.nz](http://www.legislation.govt.nz)), speak to members at your local PIA, or contact Tenancy Services. There is considerable information on the Tenancy Services website – some easy to follow and some not so easy. Some advice has changed on the site as Tenancy Services themselves get to grips with all the changes and how they should be interpreted. Check for updates - as an example of a lesser known landlord requirement: as of 1 July 2019, *A landlord has to make a signed statement in the tenancy agreement that they will comply with the Healthy Home Standards.(section 13A(1CA)), this along with all your other statements and declarations.*

I will have missed some changes as there are many and they all impact on what we do as landlords. My aim is to set out the key changes and for readers to appreciate just how expansive they are. What is very sobering – there may be even greater changes waiting for landlords in the Residential Tenancies Act (RTA) Review.

To get a sense of the changes I suggest you read section 123 of the current RTA – this is the section covering the Ministry of Business, Innovation and Employment's (MBIE) powers, which are extensive. It is sobering to think there is 38.5 staff (as of 13 May 2019) operating specifically under this section to investigate landlords - and only landlords.

*Disclaimer: I am not a lawyer, this is not meant as legal advice but rather my own opinion and to add to the general discussion on the RTA legislative changes. If you want to act on information written here you should obtain your own legal advice.*

#### **The Legislation Summaries are:**

- RTA Amendment Act 2016
- Healthy Homes Guarantee Act 2017 - this amends the RTA
- RTA Amendment Bill 2018 (no 2) - passed its third reading – Law - end of 2019
- RTA Tenancies (Prohibiting Letting Fees) Amendment Bill 2018 – Law – Self explanatory

#### **A Brief Outline of the RTA Review:**

The review started as a discussion document released by P Twyford (Minister of Housing). From this document submissions were made to (MBIE). Submissions closed late 2018 and a report has been written for the minister with suggested changes to the RTA. This sits on his desk and we wait.

## RTA Amendment Act 2016

### Key Regulations

- 1) s123 And s123a      Functions and Powers of Chief Executive.
- 2) s124                      Chief Executive may Prosecute Landlords
- 3) s54                        Retaliatory Notice
- 4) s61                        Abandonment Provisions
- 5) s138 and s138B      Insulation and Smoke Alarms

### • s 123 and s123A Functions and Powers of Chief Executive.

- (i) s123                      (1)(a) Investigate, conduct research into any matters ..... in any particular case
- (1)(b) Publish reports etc to inform members of public on rights and responsibility of landlord and tenant.
- (ii) s123 1(db)            May publish comments about landlords
- (iii) s123A – E            All new sections regarding MBIE power

### By Section – s123A to E:

- A: Documents must be retained by L/L and produced to MBIE as required.
- Lists everything
  - Unlawful Act - \$1000
  - MBIE: Must give written notice
  - MBIE *Reasonably* requires them to carry out its functions
  - 12 month time limit from end of tenancy
- B: Documents retained by tenant and produced to MBIE
- Lists everything
  - MBIE: Must give written notice
  - MBIE *Reasonably* requires them to carry out its functions
  - 12 month time limit from end of tenancy
- C: Powers re produced documents
- Inspect records and take copies or extracts
- D: Power of Entry to inspect premises
- Must be authorised by Tenancy Tribunal (TT) order under section 123 E
  - 123E TT will order entry if MBIE has *reasonable* grounds for:
    - Breach of Tenancy Agreement or the RTA and
    - The inspection is *reasonably* required re the breach
  - The power to inspect includes:

- Use any testing/checking equipment
- Take photographs, sound, video measurements
- Take samples for analysis
- To test things
- L/L or tenant must assist
- Officer must provide ID , TT order etc.
- Offence of \$2000 – failure to comply (not U/L Act)

**s124 MBIE may take or defend proceedings on behalf of any party if :**

- There is a cause of action and
- It is in the public interest
- On behalf of any party in a tenancy agreement (includes a guarantor)

**s124A MBIE may take proceedings as if tenant**

- Initiate or assume proceeding
- Even against the tenant's wishes - not to proceed
- Grounds:
  - Condition of premises are a significant health and safety issue
  - L/L has committed a serious breach
  - In MBIE's opinion any conduct by L/L undermines public confidence in the administration of the act

**s124B Supplementary provisions**

- Cannot start proceedings if 12 months after MBIE became aware of the incident. (sat on their hands)
- MBIE has the power to settle

**S133 Tenancy Tribunal or MBIE may require terms of tenancy agreement**

- TT or MBIE can request this during or up to 12 months after tenancy ended.

▪ **Retaliatory Notice**

Extension of time for a tenant to lodge a claim has increased:

- Was 14 now 28 days after notice given
- If declared retaliatory – U/L Act \$4000

▪ **Abandonment Provisions s48 Right of entry**

- If rent 14 days in arrears and
- L/L has reasonable cause to believe abandonment has occurred
- L/L can enter to ascertain if abandonment – 24hrs notice

**s91AA Tenancy Tribunal within 10 days**

- TT has to determine abandonment application within 10 working days.

#### s45 Landlord's Responsibility

- S45(1)(C)(b) Any work carried out during the tenancy must be carried out in accordance with specified NZ Standards. It may be the case that if work is not up to standard then the tenancy may be deemed an *unlawful tenancy*.
- I consider section 45 to be a critical section for landlords. When added with the definition of an *unlawful tenancy* as set out in RTA Amendment Bill (no 2), non compliance in anyway could be very costly for a landlord. (no repairs, slow, poor or dangerous repairs and non compliant repairs) Take care.

#### S13 Contents of Tenancy Agreements

- S13(1)(f) Insulation statement - if missing, incorrect or misleading - U/L act \$500. Must be signed in addition to the tenancy agreement signature.

## Healthy Homes Guarantee Act 2017

### Healthy Homes Guarantee Act becomes the RTA

Mostly enforced on 1 July 2019

- 1) Empowers MBIE to set minimum standards
- 2) All landlords must meet these standards
- 3) Healthy Home Standards – relates to:
  - Heating , insulation , ventilation, moisture ingress
  - Draught stopping, drainage, and anything else they may want to include
- 4) Tenancy statement s13a - 1 July 2019 - (mentioned in the introduction)
  - Landlord must include a signed statement that:
    - (i) the landlord will comply with healthy home standards
    - (ii) includes any information prescribed (s138b(1))
    - (iii) is signed independently of the Tenancy Agreement signature
- 5) Healthy Home Standards can require:
  - Things be installed
  - Inspections, maintenance, replacement
- 6) Healthy Home Standards can specify methods of determining compliance

## RTA Amendment Bill No 2 (2019)

Advice from Minister's office – Law in about 6 months - November 2019

This is an important piece of legislation as it tries to improve issues around tenant damage, how landlords manage drug contamination and unlawful premises. All very important issues for landlords.

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|---------------------------------|---|
| 1) Unlawful Premises            | Defines and prescribes how the TT rules         |
| 2) Damage Liability For Tenants | New process for damage                          |
| 3) Contamination Procedures     | Meth management                                 |
| 4) Section 142 is Repealed      | Refers to the Property Law Act – Osaki origins. |

### 1. Unlawful Premises                      Defines and prescribes TT how to rule

- s2                      Defines a Residential Premises:

*“...means any premises used or intended for occupation by any person as a place of residence, whether or not the occupation or intended occupation for residential purposes is or would be unlawful”*

- s78A                      Defines an Unlawful Premises:

*s78(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 (legal impediment) or 45(1)(c) (landlord’s obligations), or s66H(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.”*

**Consider this a living piece of legislation** – Your tenancy may have complied with all standards at the beginning, but during the tenancy it has failed to comply – this may mean it becomes an unlawful tenancy.

- s77(2)(ac)**      The Tenancy Tribunal has the authority to determine if your tenancy is an Unlawful Premises (this will only be clarified by case law)

**s78A(3) –(5)** The Tenancy Tribunal can order:

- All or some rent paid back
- No rent arrears to be paid
- Part of the rent be paid
- An order to remedy or remove impediments
- A work order to repair
- Exemplary damages against L/L \$4000
- A mix of the above

**s77(2C)** The Tenancy Tribunal is not required to examine every tenancy as to whether unlawful or not.

**s56A** Termination of an Unlawful Tenancy (this also includes a contaminated tenancy)

- 1) *A tenant of premises that at the start of the tenancy were, and that remain, unlawful residential premises may terminate the tenancy by giving 2 days notice”*
- 2) *“Without limiting subsection (1), a landlord or a tenant may apply to the Tribunal for an order terminating a tenancy on the ground that the premises are an unlawful premises, (the tenant has contaminated the property)”*
- 3) *“The Tribunal may make an order if section 78A applies and the tribunal is satisfied that it would be inequitable to refuse to make an order terminating the tenancy”*

## 2. Damage Liability For Tenants

**s49A-E** A simple solution made complicated but better than Osaki.

**s49B(3)** Tenant’s liability limited to the lesser of 4 weeks rent or the amount of excess.

**s13A(1F)(2)** Contents of tenancy agreements

*An Insurance statement* is required in all tenancy agreements from date of assent of amendments (end of 2019?)

- Whether premises insured or not
- The amount of excess
- Relevant risks and any exceptions

- What, if any, acts or omissions of the tenant would have the effect of making insurance moneys under the policy irrecoverable.

**s49B(1)** When is tenant liability not limited by section 49(B)(3):

- Intentional damage
- Damage as a result of an act or omission by tenant and the act or omission constitutes an imprisonable offence
- The act or omission prevents the L/L from making a claim.
- Clause (2), the tenant is liable for damage that is caused by a careless act or omission of the tenant.

**s49D** Unlawful Acts related to liability

- The L/L demands payment of more than entitled to
- The landlord requests the tenant to carry out works that exceed the tenant's liability.

### 3. Contamination Procedures

The term “*In accordance with prescribed methods*” is used in the sections regarding contamination. These contamination standards are set by *Standards New Zealand - NZS8510*.

**s2 Definition of contamination** - At a level above any relevant prescribed maximum acceptable level.

**s45(1AA) Landlord's responsibilities** – The landlord must not knowingly provide a contaminated premises to a tenant at the commencement of the tenancy. Unlawful Act \$4000

**s48 Rights of Entry (s48)** – Allows a landlord to test during a tenancy without the tenant's approval.

- 8am – 7pm – any day
- With 48 hours notice
- Having stated the contaminants being tested for, and
- tested in accordance with prescribed methods

Report to Tenant

- If testing under s48, then within 7 days the L/L must notify tenant in writing of the results and provide a copy of these results.

**s59(5)****Termination**

- Contaminated premises are treated as so seriously damaged as to be uninhabitable
- Treated under 59A
- 2 days notice for Tenant and 7 days for Landlord

**Reinstate**

Decontaminate in accordance with relevant prescribed methods

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