

Information Sheet

Residential Tenancies Amendment Act 2020

Version 1 - August 2020

This Information Sheet has been created with the view to setting out the changes introduced by the recently passed, Residential Tenancies Amendment Act 2020. Most changes will come into effect on the day that is 6 months after the date of Royal Assent. Royal assent was granted on 11 August 2020.

[Click here](#) to access the Residential Tenancies Amendment Act 2020

Rent increases limited to every 12 months

- Landlords can only increase rent once every 12 months for any given tenancy.
- This change comes into force on the day following Royal Assent of the Bill, however, the freeze on rent increases put in place through the COVID-19 legislation remains in place until 25 September 2020. This means that all rent increases can only take effect from 26 September.
- Notices issued from the day after Royal Assent of the Bill will only be valid if they comply with the 12-month rule - Refer to clause 19 of the Bill which amends section 24 of the Residential Tenancies Act 1986 ("RTA").

Removal of right to issue no-cause terminations

- The landlord's right to terminate a tenancy without grounds is an unlawful act therefore, the landlord's right to issue no-cause terminations will be removed, once the provisions come into effect - Refer to clause 38 of the Bill which will provide for new section 60AA of the RTA and amended Schedule 1A ('Amounts for unlawful acts').
- **Penalty - \$6,500**

Anti-social tenants

- Where a landlord has issued a tenant three written notices for separate anti-social acts within a 90-day period, they can apply to the Tenancy Tribunal to end the tenancy - Refer to clause 37 of the Bill which will provide for new section 55A of the RTA.
- The landlord must apply within 28 days after the third notice to the Tribunal - Refer to clause 37 of the Bill which will provide for new section 55A(2)(c).
- Where a tenant challenges a notice of anti-social behaviour in the Tribunal, the landlord must prove the behaviour occurred - Refer to clause 37 of the Bill which will provide for new section 55A(5A).
- Anti-social behaviour **means**:
 - harassment; or
 - any other act or omission (whether intentional or not), if the act or omission reasonably causes alarm, distress, or nuisance that is more than minor - Refer to clause 37 of the Bill which will provide for new section 55A(6).

Note: Whether a tenant's behaviour meets this definition of anti-social behaviour will depend on the individual

situation. In particular, the behaviour must reasonably cause alarm, distress or nuisance that is more than minor. “More than minor” is intended to exclude situations that cause a passing inconvenience.¹

What does the notice need to include?

Each notice for anti-social behaviour must:

- Describe clearly which specific behaviour was considered to be anti-social and if known, who engaged in it; and
- Provide the tenant with the date, approximate time and location of the behaviour; and
- State how many other notices the landlord has issued the tenant within the same 90-day period; and
- Advise the tenant of their right to challenge the notice by making an application to the Tribunal - Refer to clause 37 of the Bill which will provide for new section 55A(2).

Tribunal considerations

- If the Tribunal considers that the notices were issued reasonably and fairly, it must make an order terminating the tenancy - Refer to clause 37 of the Bill which will provide for new section 55A(2).

The Tribunal must not make an order for termination if it is satisfied that:

- It would be unfair because of the circumstances in which the behaviour occurred or the notices were given; or
- The landlord was motivated or wholly or partly by the exercise or proposed exercise by the tenant of any right, power, authority, or remedy conferred on the tenant by the tenancy agreement or any complaint by the tenant against the landlord relating to the tenancy (unless the Tribunal is satisfied that the purported exercise or complaint would have been frivolous or vexatious to such an extent that the landlord was justified in making the application) - Refer to clause 37 of the Bill which will provide for new section 55A(3).

Grounds for terminating periodic tenancies:

In addition to the landlord terminating a periodic tenancy for anti-social behaviour, the following grounds may be used to terminate a periodic tenancy:

- The tenant has been at least five working days late with their rent payments on three separate occasions within a 90-day period - Refer to clause 36 of the Bill which will provide for new section 55(1)(aa).
- Where the landlord will suffer greater hardship than the tenant if the tenancy continues - Refer to clause 37 of the Bill which will provide for new section 55B.
- The tenant assaulted the landlord, their family or property manager and the Police laid a charge. The landlord may issue 14 days' notice pertaining to this ground - Refer to SOP No 565 which will provide for new section 55AA².
- A tenant may terminate a periodic tenancy in any case by giving at least 28 days' notice - Refer to clause 32 of the Bill which will provide for new section 51(2A).

¹<https://www.hud.govt.nz/assets/Residential-Housing/Tenancy-and-Rentals/Residential-Tenancies-Act-Reform-Frequently-Asked-Questions-August-2020.pdf>

²<http://legislation.govt.nz/sop/government/2020/0565/latest/LMS383804.html>

Periodic tenancies can be terminated when the landlord gives at least 63 days' notice if:

- The landlord requires the premises, within 90 days after the termination date, as the principal place of residence for at least 90 days for the landlord or a member of the landlord's family; or
- The landlord customarily uses the premises, or has acquired the premises, for the occupation of employees - Refer to clause 32 of the Bill which will provide for new sections 51(1)(a) to 51(1)(c).

Periodic tenancies can be terminated when the landlord gives at least 90 days' notice if:

- The premises are to be put on the market by the landlord within 90 days of termination; or
- The landlord is required, under an unconditional agreement for sale of the premises, to give the purchaser vacant possession;
- The premises are to be converted into commercial premises and therefore, must be used for at least 90 days (to demonstrate genuine intent); or
- The premises need to be vacant to facilitate the use of nearby land for a business activity (and this is stated in the tenancy agreement);
- Extensive alterations, refurbishment, repairs, or redevelopment of the premises are to be carried out. Work must begin, or material steps towards it need to be taken within 90 days after the termination date. Material step means applying for regulatory consent, seeking engineering or other professional advice or taking any other significant step - Refer to clause 32 of the Bill which will provide for new sections 51(2)(a) to 51(2)(g).

Note: Existing provisions relating to rent arrears, damage, assault and breaches still apply.

Fixed-term tenancy agreements to periodic

Fixed-term tenancy agreements convert to periodic tenancies unless:

- A landlord gives notice using the reasons listed in the RTA for periodic tenancies; or
- A tenant gives notice for any reason at least 28 days before the end of the tenancy; or
- The parties agree to extend, renew, or end the fixed term tenancy - Refer to clause 39 of the Bill which will provide for new section 60A

Tenancy Agreements

- Landlords who fail to ensure that the contents of the tenancy agreement include all the required information, will be committing an unlawful act and exemplary damages may apply - Refer to clause 8 of the Bill which will provide for new section 13A(1AAA) of the RTA and new Schedule 1A ('Amounts for unlawful acts').
- **Penalty - \$750**

Withdrawal by tenant experiencing family violence

- Tenants who are experiencing family violence can withdraw from a tenancy by giving two days' notice - Refer to SOP No 565 which will provide for new section 56B(1).
- The tenant will need to provide evidence of the family violence - Refer to SOP No 565 which will provide for new section 56B(1)(a).

- Regulations will be created to specify what constitutes evidence.

Consent for tenant's fixtures

- The landlord must not unreasonably withhold consent for a fixture, renovation, alteration, or addition - Refer to clause 23 of the Bill which will provide for new section 42A(1).
- If the landlord consents to the request, they can impose reasonable conditions for **both** a minor or a more major change. What conditions are reasonable will depend on the situation. An example might be that the landlord might ask that shelving is installed in a slightly different location to avoid disrupting wiring behind a wall³ - Refer to clause 23 of the Bill which will provide for new section 42A(2).
- If the tenant makes a written request for consent, the landlord must respond in writing within 21 days after receiving the request. Failure to comply is an unlawful act - Refer to new section 42A(3).
- In the response, the landlord must indicate whether or not the landlord considers the fixture, renovation, alteration, or addition to be a **minor change**. Failure to comply is an unlawful act - Refer to clause 23 of the Bill which will provide for new section 42A(4).
- **If the change is more than minor**, the landlord can only withhold consent if the request is unreasonable. In this situation, the landlord can take longer than 21 days to consider the request if they notify the tenant that they will need more time within 21 days of the date the tenant made the request. They must still respond in a reasonable amount of time. Failure to comply is an unlawful act - Refer to clause 23 of the Bill which will provide for new sections 42A(5), section 42A(6) and Schedule 1A ('Amounts for unlawful acts').
- **Penalty - \$1,500**

Minor changes

- If the change is a **minor change**, the landlord cannot withhold consent - Refer to clause 23 of the Bill which will provide for new section 42B.
- A minor change is any fixture, renovation, alteration, or addition of or to the premises that:
 - Presents no more than a low risk of material damage to the premises; and
 - would allow the premises to be returned easily to substantially the same condition; and
 - does not pose a risk to health and safety (including during work to install, remove, or undo the minor change) that cannot reasonably practicably be eliminated or minimised; and
 - does not compromise the structural integrity, weathertightness, or character of any building; and
 - would not have an unreasonable negative effect on any person's enjoyment or use of any property outside the premises; and
 - does not require any regulatory consent (for example, a building consent); and
 - does not breach any obligation or restriction relevant to the premises (for example, an obligation or a restriction imposed by a bylaw, a planning or body corporate rule, or a covenant) - Refer to clause 23 of the Bill which will provide for new sections 42B(2)(a) to 42B(2)(g).
- Tenants must remove the minor changes and remediate the property when the tenancy ends - Refer to clause 23 of the Bill which will provide for new section 42B(4).

³<https://www.hud.govt.nz/assets/Residential-Housing/Tenancy-and-Rentals/Residential-Tenancies-Act-Reform-Frequently-Asked-Questions-August-2020.pdf>

- A landlord commits an unlawful act if the landlord withholds consent for a minor change - Refer to clause 23 of the Bill which will provide for new section 42B(3) and new Schedule 1A ('Amounts for unlawful acts').
- **Penalty - \$1,500**

Examples of minor changes⁴:

- Installing minor accessibility changes that improve safety for disabled people such as visual alerts for fire, security alarms and doorbells, where this has low impacts and will be reversed at the conclusion of the tenancy;
- Securing furniture or appliances to protect against earthquake risk or to make a property child safe;
- Installing a baby gate;
- Affixing child safe latches to cupboards;
- Installing shelving;
- Installing television aerials;
- Installing curtain and window coverings; and
- Installing picture hooks

Assignments:

- A provision in a tenancy agreement that prohibits the tenant from assigning the tenancy is of no effect - Refer to clause 24 of the Bill which will provide for new section.
- All assignment requests need to be considered by the landlord and they may not withhold consent unreasonably - Refer to clause 24 of the Bill which will provide for new section 43B(4).
- A landlord must not attach any unreasonable conditions to the consent - Refer to clause 24 of the Bill which will provide for new section 43B(4).
- If a tenant makes a written request for the landlord's consent to an assignment and the request identifies, and includes contact details for, the proposed assignee, the landlord must respond in writing to the request within a reasonable period of time - Refer to clause 24 of the Bill which will provide for new section 43B(3A).
- A tenant engages in an unlawful act if the tenant assigns the tenancy without the prior written consent of the landlord - Refer to clause 24 of the Bill which will provide for new section 43B(3) and new Schedule 1A ('Amounts for unlawful acts').
- **Penalty on tenant - \$750**

Tenancy Tribunal jurisdiction

- Tenancy Tribunal can hear cases and make awards up to \$100,000.
- Civil pecuniary penalties, higher maximum infringement fees and higher infringement fines for landlords with six or more tenancies, including boarding house landlords

Privacy and access to justice

- The Tribunal, on the application of any party or on its own initiative, can order that names and

⁴<https://www.hud.govt.nz/assets/Residential-Housing/Tenancy-and-Rentals/Residential-Tenancies-Act-Reform-Frequently-Asked-Questions-August-2020.pdf>

identifying details be suppressed.

- Where a party has been wholly or substantially successful in their case, identifying details can be removed from published Tribunal orders - Refer to clause 51 of the Bill which will provide for new section 95A.