

Overview of Changes to the Residential Tenancies Act



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This presentation is a broad overview of the changes to the Residential Tenancy Act which were given Royal Assent on 12 August 2020. There have been more than 100 amendments and new sections to the RTA ; not all are covered in this presentation due to time constraints.

The Government made it clear when passing this legislation that the reforms are about creating a more even playing field in the rental market – balancing the need for landlords to continue in the market with the need for tenants to feel more secure in their housing. They acknowledged that more people are becoming life long renters and thus need to be able to feel a sense of home in the places they live.

Regulatory Framework

- More resources for ensuring compliance
- Infringement Notices
 - Fees
 - Fines
 - Increased Exemplary Damages
 - Civil Pecuniary Penalties up to \$50,000
- Improvement Notices
- Enforceable Undertakings
- 52 Unlawful Acts, 23 New Offences



MBIE have been given great powers to deal with non-compliance. More staff are being taken on in the Investigation and Compliance team and there are new penalties that can be applied.

Infringement fee notices can be issued by compliance officers. The Compliance unit can take landlords to the Tribunal and ask for infringement fines to be levied against them. These will work like speeding tickets with the money going to the crown.

Exemplary damage amounts have been increased significantly as have civil pecuniary penalties. The Tenancy Tribunal can now hear matters up to \$100,000.

Improvement notices and Enforceable undertakings have been added giving MBIE the right to force landlords to carry out remedial work on properties.

Regulatory Framework

Failing to Provide Healthy Homes Information:

- Infringement Fee = \$1,000
- Infringement Fine = \$2,000
- Exemplary Damages = \$750

Failing to Provide Information to the Chief Executive:

- Infringement Fee = \$1,000
- Infringement Fine = \$3,000
- Exemplary Damages = \$1,500

Failing to Maintain Property:

- Exemplary Damages = \$7,200



Although there are now three separate penalties available for many offences, only one penalty can be applied to any instance of wrongdoing.

Some offences will not attract fees or fines.

Came into Force 12 August

- Rent increases limited to 12 monthly
- Emergency and Transitional housing which is funded by the Special Needs Grant Programme or by any other government department can be excluded from the RTA



The rent freeze ended on September 25. From that date landlords can increase rents. They still need to give 60 days notice to do so and any rent increase that came into effect after 12 August 2020 will be subject to the new law and will not be able to be increased again for 12 months.

Emergency and Transitional housing can be excluded from the RTA. Providers can choose what to opt in or opt out of. This has serious implications and needs to be considered carefully to ensure providers do this in a lawful way, do not exploit tenants as a result, and are aware of the various clauses which could raise issues.

From the Select Committee

“The Act exempts certain transient and temporary housing, and only limited provisions apply to short-term tenancies for fixed terms. We note that the Government administers various transitional and emergency housing assistance schemes, such as the Emergency Housing Special Needs Grant. The grant was originally intended to be provided for up to seven days, and transitional housing for up to twelve weeks. However, due to pressures in the housing market, lengths of stay in transitional and emergency housing are increasing, so there is a real risk that the Act’s provisions could apply to these types of housing.”



The Select Committee made it clear that removing Transitional and Emergency Housing from the RTA was to ensure there was no great exodus of providers from the market. They wanted to make things easier for social housing providers however some providers are now concerned they have no protection from the RTA, no access to the Tenancy Tribunal and no framework for dealing with tenants.

MHUD is developing a code of practice for the sector which they expect to present to cabinet for approval in April 2021.

What the new act will say

Section 5: Act Excluded in certain cases:

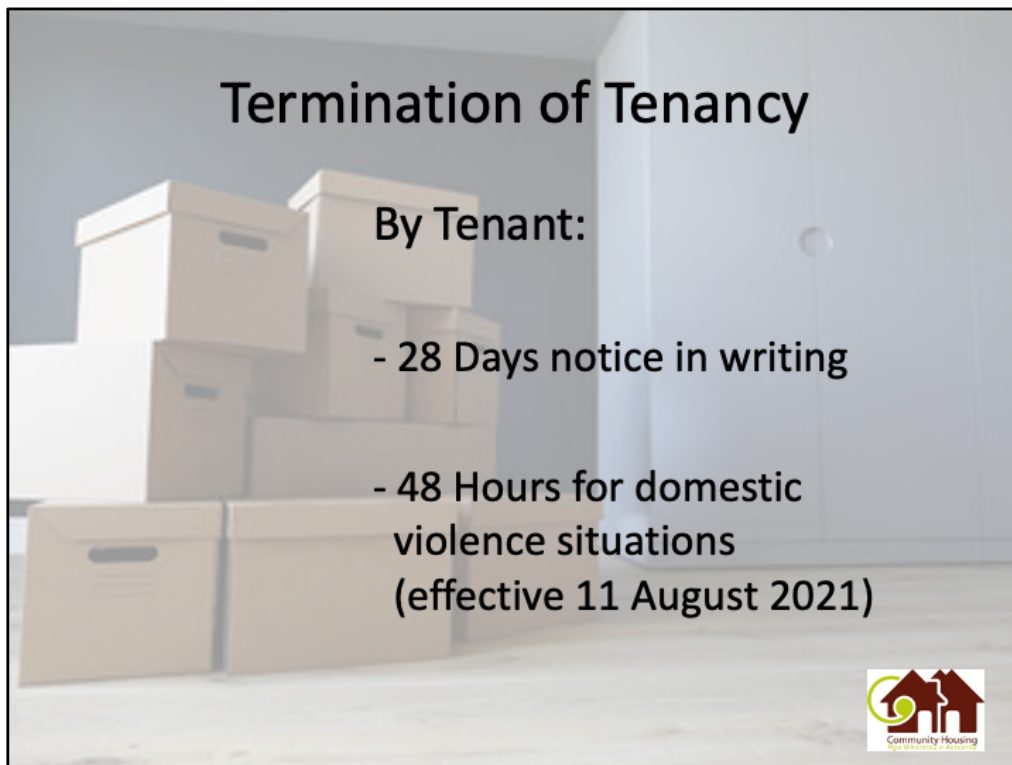
After section 5(1)(x), insert:

- (y) if the premises are used to provide emergency or transitional accommodation and—
- (i) the provision of the accommodation is funded wholly or partly by—
- (A) emergency housing assistance paid to or for the credit of a person under the Special Needs Grants Programme; or
- (B) any other payment made by a government department for the provision of emergency or transitional accommodation to people in need of housing; or
- (ii) the provider of the accommodation is a person, or kind or class of person, prescribed by regulations for the purposes of this paragraph.



Providers do not have to opt out of the act, however if they do opt back in they must be very clear which sections they are opting into.

Care needs to be taken that opt in or opt out action does not unfairly advantage landlords over tenants.



From 11 February 2021 Tenants will need to give 28 days notice to end a periodic tenancy.

From 12 August 2021 people experiencing domestic violence will be able to leave their tenancies giving only 48 hours notice. They will need to provide a declaration that domestic violence is the reason for leaving. Regulations around who can sign these declarations are still being formulated however it has been proposed that a wide variety of people be able to do this including social workers, whanau ora navigators and staff from emergency and transitional housing providers.

Termination of Tenancy

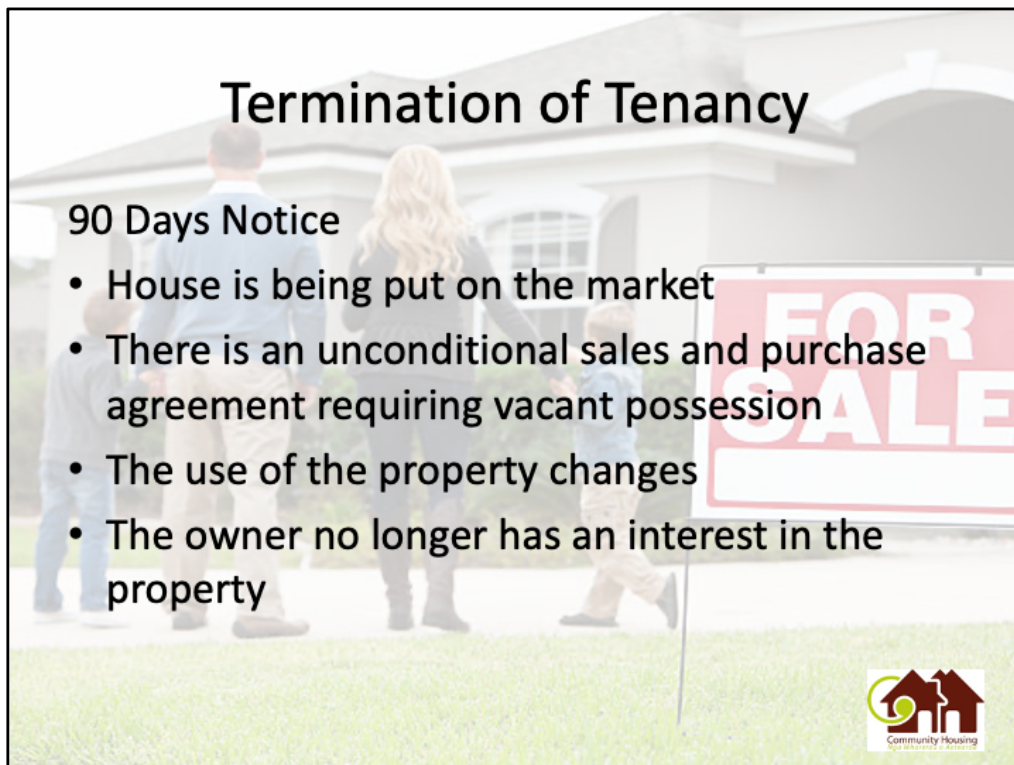
63 Days Notice

- A family member is moving in
- The owner needs it for employees



There are two very specific cases where a landlord can give 63 days notices. In both of these instances the new use has to happen within 90 days of the termination of the old tenancy.

When a family member is moving in this must be as the primary residence for that family member and they must be occupying the dwelling full time for a period of longer than 90 days.



In order for 90 day notice provisions to apply, the qualifying action must take place within 90 days of the termination of the previous tenancy.

Landlords who fail to comply with these provisions will be subject of exemplary damages of up to \$6,500. These are not infringement notice offences.

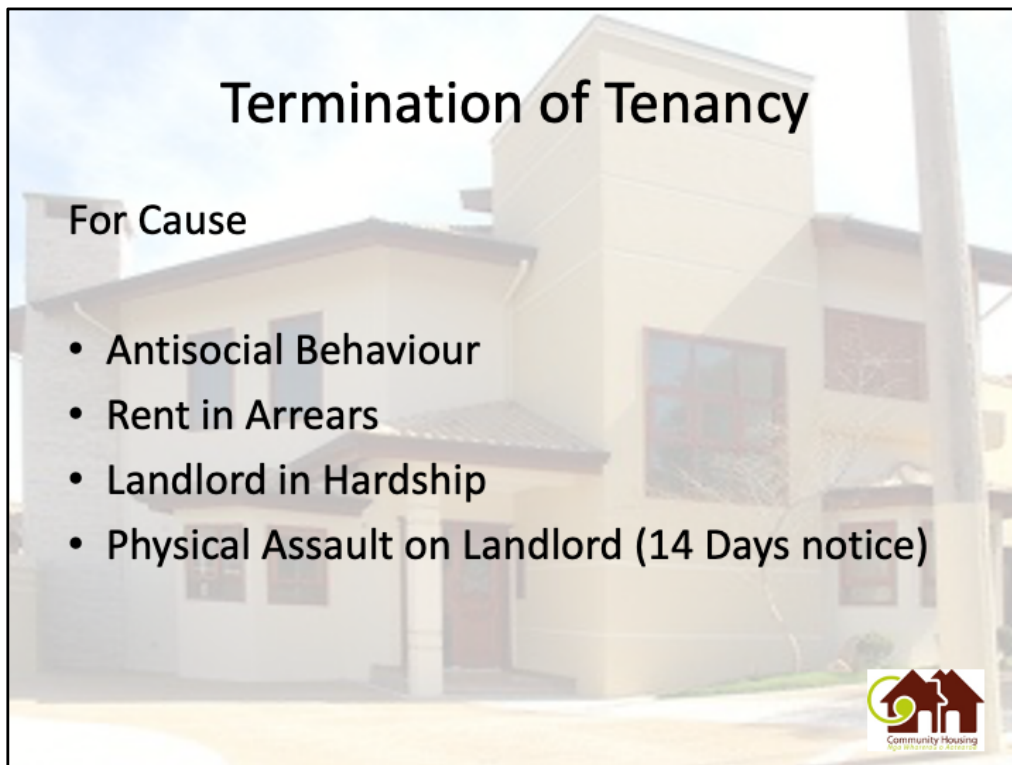
Termination of Tenancy

90 Days Notice

- Extensive Renovations
- Demolition
- Social Housing
 - Tenant is no longer eligible
 - Property is no longer funded
 - Transfer is required



Social Housing providers wishing to transfer tenants must place them in homes which are suitable according to their most recent housing assessment.



Where landlords wish to terminate a tenancy due to anti-social behaviour they will need to provide specific evidence of the particular behaviour for each instance. There will need to give details of the date and time along with proof the behaviour happened. Where there has been three instances of anti-social behaviour notified in a 90 day period the landlord can apply to Tenancy Tribunal to have the tenancy terminated. Tenants can contest any notice given under these provisions by applying to TT.

Landlords can still apply to TT for termination if the rent is more than 21 days in arrears and a 14 day notice to remedy has been issued. In addition to this, if a tenant is in arrears by 5 days they can be issued a notice alerting them to this fact. The notice does not need to ask them to remedy the situation. If 3 such notices are issued in a 90 day period the landlord can apply to TT for termination of the tenancy.

Where the landlord can prove they are in greater hardship by continuing a tenancy that the tenant would be by ending it the TT can terminate.

Fixed Term Tenancies

- Tenant and landlord must agree to end the tenancy at the end of the fixed term
- Tenancies can end if any of the reasons for ending a periodic tenancy apply
- Otherwise the tenancy becomes periodic



Landlords can no longer end fixed term tenancies by giving notice. BOTH parties must agree to ending a fixed term tenancy so a tenant who wishes to stay in a property beyond the end of the fixed term is able to do so.

Critically for Social Housing providers is the need to be aware that 90 day fixed term tenancies are captured by this provision if they are extended at any period beyond 90 days. These agreements can no longer be rolled over indefinitely.

Landlords will need to be aware of duress. Any tenants forced or pressured into agreeing to end a fixed term tenancy will be subject to penalties in the TT.

Minor Changes

- Tenants need to get written permission
- Landlords must respond to requests in 21 days
- Landlords must not withhold permission
- If a change is more than minor, landlords must have reasonable reasons for declining
- Tenants need to return the property to original condition at the end of the tenancy
- Maximum penalty for landlords of \$1500



Social Housing providers are not exempt for the provisions that allow tenants to make minor changes to their homes. Providers will need to establish policy and procedure for dealing with these requests as the penalties can be up to \$1500 for not dealing with requests in a timely and reasonable manner.

Even changes which the landlord does not consider to be minor need to be considered and can only be refused if very good grounds for refusal exist.

Access to Justice

- Successful tenants can apply for name suppression
- Tenancy Tribunal can give name suppression on their own initiative



In order to make it fairer for tenants and to end the practice of blacklisting tenants who take their landlords to TT, name suppression will be available to tenants who are successful in their actions against their landlords. This comes from a belief that people who enforce their rights should not be marginalised for doing so.

What's Next

How will your organisation respond to the changing environment?

What support will enable you to successfully navigate this new landscape?



Organisations need to carefully consider their next steps and formulate a plan to deal with these changes. There has been significant change in this space over the past two years and a compliance framework is recommended to ensure all providers are meeting their obligations.

CHA is available to support providers through this process. We would like to know what support you need so we are able to formulate our work plan accordingly.

The Changing Environment of Residential Tenancy Law

One Day Workshop

An in-depth look at changes to the RTA since
2018 with a particular focus on how these
impact Social Housing providers and tenants

Available on demand around New Zealand

Contact: kathrynburton@xtra.co.nz



A professional Development workshop is available to providers who would like an in-depth look at these changes and a chance to ensure their compliance framework meets all of the requirements in the RTA. This workshop is not funded by CHA but we can assist in the organisation if requested.

This Presentation has been brought
to you by



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