

**RTA and tenancy management community of practice 13<sup>th</sup> May 2021**

The second Tenancy Management Community of Practice was held via zoom on 13<sup>th</sup> May 2021.

A community of Practice is a way of bringing together people and organisations working on the front line so that they can share knowledge and good practice, discuss issues and work out how best to collaboratively overcome them. The idea is that we are all experts in the work we do so we all have something to contribute and, by working together, we are strong and able to make more progress towards our collective goals.

The views and opinions discussed as part of the session are not definitive – it will still be up to each individual / organisation to determine the appropriate interpretation and / or practice for them. Community Housing Aotearoa (CHA) will seek to provide additional guidance and more information where questions are raised and gaps identified, including raising with our colleagues in government.

Participants briefly met in breakout rooms to introduce themselves and to identify current issues and questions for discussion.

It was noted that there was a benefit for organisations needing to update CHRA policies and procedures – particularly in relation to the latest changes in legislation.

[Healthy homes standards](#) (introduced by the [Residential Tenancies \(Healthy Homes Standards\) Regulations 2019](#)) and the on line heating calculator were again a focus of discussion. CHA has reached out to others including NZ Green Building Council, Beacon, EECA, and Kainga Ora about their experience / feedback received. CHA's general observation is that the tool seems appropriate for existing stand-alone units. However, there is growing concern that the calculation over specifies for multi-unit developments. For multi-story buildings, the issue of roof loading limits for installation of Heat Pump units has also been raised. Email Chris Glauzel at [projects@communityhousing.org.nz](mailto:projects@communityhousing.org.nz) with your organisations experience. We will organise a workshop if more focus on this is confirmed. CHA will engage with MHUD and MBIE based on provider input.

Issue of tenants being cold in some new developments – panel heating inadequate. There are likely to be cases in the Tenancy Tribunal for non-compliance and seeking compensation for high power bills. It was also noted that many tenants may choose not to use heating due to cost.

Landlords issuing 90 day notices for extensive repairs (S51 (f)):

“The landlord plans extensive alterations, refurbishment, repairs, or redevelopment and it would not be practical for the tenant to remain in occupation while the work is done, and the work is to begin in not less than 90 days or material steps taken.”

What are extensive repairs and how can the true intentions of landlords be determined? Verbal notification is insufficient. Tenants entitled to ask for written details of the work planned.

***Transitional and Emergency Housing*** is now exempt from the RTA. Confusion remains about what, if any legal protections exist for tenants and providers. Example where District Court referred application back to Tenancy Tribunal – vacation subsequently resolved so issue of possession and enforcement still not tested. Discussion continued about the use of the term tenant – an additional viewpoint is that the term has more general application and that its use (in relation to TH) would not imply that a tenancy existed. If Provider has referred to the original (pre 12 Feb 2021) agreement

they may have contracted back in to the RTA. Community Law centres are receiving lots of queries from TH clients – some are now advising them to go through MSD complaints / escalation process. A code of Practice is to be developed by government.

**Fixed term tenancies** clarification. New provisions only apply to fixed term tenancies signed after 11 February 2021.

Kathryn Burton provided her regular update on the evolution of tenancy law in relation to Tenancy Tribunal cases:

What is a reasonable standard when it comes to cutting the grass? The lawn and garden does not need to be perfect or prize winning but it needs to give the impression that the house is occupied. If the condition of the lawn suggests the property is vacant this would be seen as not a reasonable standard by the Tribunal.

The Tribunal has clarified that cleaning external windows is the responsibility of the landlord.

Section 55A – Termination for Antisocial Behaviour. The first cases have been heard with direct experience by the Community Housing Sector. See NZ TT Waitakere 4295633 for a termination because of antisocial behaviour.

- Three strikes rule. A landlord can apply for termination in a periodic tenancy if, on three separate occasions within a 90-day period, a tenant or a person associated with the tenant on the premises engages in antisocial behaviour.
- Be detailed. Wording and numbering of notices in the correct format – including that the tenant has the right to challenge immediately.
- Tenants have the opportunity to object to each notice with a full hearing of the Tenancy Tribunal.
- Include date, time and nature of incidents.
- Make sure everything lines up.
- Evidence needs to be clear and robust (also protects tenants from unsubstantiated action) – records e.g. from the Police or noise control
- Where visitors involved need clear evidence connecting to the tenant.
- Timeliness important although not explicit within the act
- Adjudicator will consider whether the landlord's application is motivated by retaliation.

Latest information on the Tenancy Services website:

<https://www.tenancy.govt.nz/assets/Uploads/Tenancy/anti-social-behaviour-factsheet-a3.pdf> and an anti-social or unacceptable tenant behaviour decision [tool](#).

On methamphetamine contamination a reminder of this recent case - NZ TT Manukau 4281668 – which could be helpful for those designing policy and procedures for their organisations. It outlines the Tribunal's current thinking on Methamphetamine levels and provides clarity about how they are reaching decisions.

Link to the Justice website with the tribunal orders online. [Tribunal orders | New Zealand Ministry of Justice](#)

Tenancy Tribunal decisions are not binding on subsequent cases although Adjudicators will be informed by them. Practice notes may be issued by the Principal Adjudicator and training is provided

**Overcrowding** for instance 2 people sharing a bedsit when only one occupant specified in tenancy agreement. Human right lens on who to live with and composition of relationship. Any enforcement should be guided by maximum number of occupants. Prevailing shortage and expense of alternative accommodation may result in a reluctance to uphold in all but exceptional cases.

How would additional occupants impact on IRR paid by the tenant? MSD require notification of any additional occupant over 28 days duration. Responsibility lies with tenant. CHP landlord should bring this to the attention of the tenant where they are aware.

Information on tenant's obligation to advise of a change in circumstances can be found here: <https://www.workandincome.govt.nz/map/social-housing/duty-to-advise-of-changes-in-circumstances/introduction.html>

Information on how work and income assess the permanence of a change in circumstances can be found here: <https://www.workandincome.govt.nz/map/social-housing/income-related-rent/deciding-if-changes-are-permanent-or-temporary-01.html>

**Please join us for the next RTA and Tenancy Management Community of Practice on Thursday 8 July 2021 from 2pm to 3.30pm using the following link: <https://us02web.zoom.us/j/84636387026>**

Contact: [DavidZ@communityhousing.org.nz](mailto:DavidZ@communityhousing.org.nz)