**RTA and tenancy management community of practice 8th July 2021**

The third Tenancy Management Community of Practice was held via zoom on 8th July 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 is still 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.

[Residential Tenancies (Healthy Homes Standards) Regulations 2019](https://www.legislation.govt.nz/regulation/public/2019/0088/latest/whole.html)) apply from 1st July (Kainga ora and registered CHPs have until 1st July 2023). The online heating calculator issue discussed at the last meeting has also been raised in the media by a wider group of stakeholders. <https://www.rnz.co.nz/news/political/445934/healthy-homes-significant-heating-problem-found-as-standards-take-effect>

**Healthy Homes Standards** – MBIE offered to do a presentation at the next meeting on compliance standards and minimum requirements.

<https://www.tenancy.govt.nz/healthy-homes/ventilation-standard/>

**Name suppression** – current decisions indicate that the Tribunal are agreeing to name suppression whenever it is asked for. Providers should consider requesting name suppression where employees are named as part of a hearing – for instance giving evidence in relation to an anti-social behaviour hearing. Name suppression can be requested when applying to the tenancy tribunal and it would appear during the Tribunal hearing.

**Methamphetamine** contamination– District court ruling, upheld the Gluckman report standard of 15..

**Summary taken from recent Tenancy Tribunal decisions:**

The NZ Standard provided that the level at which habitation of residential premises was considered safe, was a level of 1.5 μg/100 cm2. The expectation of landlords was therefore to remediate premises contaminated with methamphetamine, to a level of less than 1.5 μg/100 cm2.

In 2018, the Prime Minister’s former Chief Science Advisor, Professor Sir Peter Gluckman, produced a report (the Gluckman [Report](https://www.pmcsa.org.nz/wp-content/uploads/Methamphetamine-contamination-in-residential-properties.pdf)) which determined that there was little evidence supporting health risks from exposure to residue from methamphetamine consumption.

The Gluckman report concluded that any levels below 15 μg/100 cm2 were unlikely to present adverse effects. The following is an excerpt: “Taken together, these factors indicate that methamphetamine levels that exceed the NZS 8510:2017 clean-up standard of 1.5 μg/100 cm2 should not be regarded as signalling a health risk. Indeed, exposure to methamphetamine levels below 15 μg/100 cm2 would be unlikely to give rise to any adverse effects. This level still incorporates a 30-fold safety buffer on a conservative estimate of risk.”

When the Gluckman report was made public, this left landlords in a difficult position, because of the conflict between the NZ Standard and the conclusions of the Gluckman report.

The issue as to which test to apply was considered in 2019 by the District Court in Full Circle Real Estate Limited v Danielle Piper. [2019] NZDC 4947 Judge Kellar found: “The Tenancy Tribunal was in a difficult position. The best state of knowledge of risk to human health from methamphetamine contamination available to the adjudicator was the Gluckman Report. It would have been bold for the adjudicator to have ignored that report in favour of the New Zealand Standard given that the Gluckman report represents the current scientific knowledge on the risk to human health from methamphetamine contamination in dwellings.”

The Tenancy Tribunal has accepted that this decision now confirms the level to be applied is the level expressed in the Gluckman report, namely, that there is no risk when the standard of contamination is below 15 μg/100 cm2. [2021] NZTT Manukau 4281668

It follows that if the level of contamination is below that level, no damage has been suffered and remediation is not required.

**What are the implications for practice?**

The contradictory nature of the conflict created by the NZ Standards vs the levels deemed acceptable by the Tenancy Tribunal has created a void where the departing tenant has used meth but it is below 15ug and then another tenant moves in and no clean has taken place remediating the level down to 1.5ug

MBIE website

*Once relevant regulations are in place, landlords will not be able to knowingly rent premises that are contaminated above the prescribed level (as set out in the regulations), without decontaminating in accordance with the regulations. They will be liable for a financial penalty of up to $4,000 if they do so.*

The standards that they refer to are the NZ standards. 1.5ug, but since TT is operating to 15ug there is a safety margin that one could assume it allows the right to rent out a dwelling that has levels under that level. The RTA mandates that this is not the case. I have heard of a case, but have not been able to confirm, that there was a TT ruling applied that said the L/L had a responsibility to advise the incoming tenant that there was meth present thereby giving the incoming tenant full transparency and the right to refuse.

In this case it would appear that the TT has created a scenario of their own doing in that a L/L will by their standards be able to rent a dwelling that is under 15ug, since they ( TT)won’t act on levels under that.

What landlords and providers want when properties are taking on board or given back is a limit of 1.5. Landlords and providers are still looking at NZ safety standards. In addition company testing is not consistent.

Link to the Justice website with the tribunal orders online. [Tribunal orders | New Zealand Ministry of Justice](https://www.justice.govt.nz/tribunals/tenancy/orders/)

Further guidance (updated regulations) is expected from HUD / Government – timeframe is uncertain.

**Arson and insurance –** proving difficult to house people with a history or charge of arson, insurance issues, particularly through private rentals. Retrofitting sprinklers – throughout property or for individual rooms. Suggested to check in with the Insurance council [Home - ICNZ](https://www.icnz.org.nz/)

**Family Violence** **and landlord assault**– Phase 3 of changes under amended RTA were expected in August 2021 but this has changed to “once new regulations have taken effect”

**Update from MBIE on the Residential Tenancies Amendment Act 2020.** There are two remaining provisions that are due to come into effect on 11 August 2021 (12 months after the date of Royal Assent).

However, these changes rely on regulations that are currently being developed by the Ministry of Housing and Urban Development (HUD). These regulations will not be in place by 11 August 2021. It’s important that the Government takes time to consult with relevant organisations and make sure the regulations are appropriate.

This means that landlords and tenants won’t be able to use these provisions under the Residential Tenancies Act 1986 until the associated regulations come into effect.

The two provisions affected by this are summarised below.

Please get in touch if you would like any further information.

**Summary of changes under Residential Tenancies Amendment Act 2020**

**Physical assault**

The regulations will provide more detail on the clauses currently in the Act. Once the regulations come into effect:

* if a tenant physically assaults:
  + the landlord or owner
  + a member of the landlord or owner’s family, or
  + an agent of the landlord,

the landlord can issue a 14-day notice to end the tenancy. A formal charge must be laid by the Police. The landlord will not need to apply to the Tenancy Tribunal.

* The landlord must advise the tenant of their right to apply to the Tenancy Tribunal to challenge the notice. If the tenant challenges it, the tenancy won’t end unless there is a Tenancy Tribunal order.
* The regulations will specify the information that landlords must include in the 14-day notice for termination in this situation.

Before the regulations are developed, landlords in this situation can still apply to end the tenancy through the Tenancy Tribunal.

**Family violence**

The regulations will provide more detail on the clauses currently in the Act. Once the regulations come into effect:

* A tenant who experiences family violence during a tenancy can withdraw from that tenancy by giving the landlord at least two days’ notice. The tenant will need to provide evidence of the family violence.
* The regulations will outline what the tenant must include in a family violence withdrawal notice and the acceptable forms of evidence.
* The tenant must also notify any remaining tenants within two days of withdrawing. The remaining tenants will receive a rent reduction for two weeks following the withdrawal. The law outlines how this should be calculated. This won’t apply if they are paying income-related rent. In this case, the remaining tenants should talk to their landlord.
* If the person experiencing family violence is the only tenant, the tenancy will end.

**Where to go for help**

The below organisations can support people experiencing family violence:

* **Family Violence Information Line:** 0800 456 450. Available seven days, from 9am to 11pm.
* **Women’s refuge:** email [info@refuge.org.nz](mailto:info@refuge.org.nz) or call the free crisis line available 24 hours: 0800 733 843. [Find your local women’s refuge.](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwomensrefuge.org.nz%2Fcontact-us%2Ffind-your-local-refuge%2F&data=04%7C01%7CGreg.Rowe%40mbie.govt.nz%7Cb1df93c881f54e0137bb08d94a4d868d%7C78b2bd11e42b47eab0112e04c3af5ec1%7C0%7C0%7C637622519094456475%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=5iCYQ6l%2Bt86ie3H0raqMd8L7x13u3NVXVAO7s1Gfono%3D&reserved=0)
* **Shine (Safer Homes in New Zealand Everyday):** email [enquiries@2shine.org.nz](mailto:enquiries@2shine.org.nz) or call their help line on 0508 744 633 (9am to 11pm). [Visit the Shine website.](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.2shine.org.nz%2F&data=04%7C01%7CGreg.Rowe%40mbie.govt.nz%7Cb1df93c881f54e0137bb08d94a4d868d%7C78b2bd11e42b47eab0112e04c3af5ec1%7C0%7C0%7C637622519094456475%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=%2F%2FXGHeA%2FI4sVWUZCj6F1dRrswdUpPpVo6cuDU2MjJ3Q%3D&reserved=0)
* **Shakti:** culturally specialist, confidential support services to women of Asian, African and Middle Eastern origins and their children. Email [crisisline@shakti.org.nz](mailto:crisisline@shakti.org.nz) or call their 24 hour multilingual help line on 0800 SHAKTI (0800 742 584). [Visit the Shakti website.](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fshaktiinternational.org%2F&data=04%7C01%7CGreg.Rowe%40mbie.govt.nz%7Cb1df93c881f54e0137bb08d94a4d868d%7C78b2bd11e42b47eab0112e04c3af5ec1%7C0%7C0%7C637622519094466468%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=R%2FMjJJTgALG8NFYKN9hiD01Wn5f0Hl7mJp5HYlQKym0%3D&reserved=0)
* **Oranga Tamariki:** If there are concerns about the safety and wellbeing of a child or young person, contact Oranga Tamariki confidentially on 0508 326 459 (24 hours a day, seven days a week). You can also email [contact@ot.govt.nz](mailto:contact@ot.govt.nz).

Anyone in immediate danger should call 111 and ask for the Police.

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

Evidence required to prove property damage. Invoice and verbal evidence from the landlord were not sufficient,

Anti-Social Behaviour – if the notices are not correct the case will not succeed. Need to include specific information in each notice – including that the tenant has the right to appeal. Use the notice [template](https://www.tenancy.govt.nz/disputes/breaches-of-the-residential-tenancies-act/dealing-with-anti-social-behaviour/#related-content) provided by Tenancy Services.

**Please join us for the next RTA and Tenancy Management Community of Practice on Thursday 9th September 2021 from 2pm to 3.30pm using the following link:**

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

**Prioritize Single Maori women -** Mahi Tahi in Otara new Papakainga looking to Prioritize Single Maori women off the register however there are not a lot of Maori women on the register. Fiona confirmed that they are not on the register, because they are living with whanau and if they are living with whanau then they are not eligible to be on the housing register… alluded to research in Auckland.