NEW ZEALAND LAW SOCIETY

NZLS EST 1869

Residential Tenancies Amendment Bill

25/03/2020

Submission on the Residential Tenancies Amendment Bill

1 Introduction

1.1. The New Zealand Law Society (**Law Society**) welcomes the opportunity to comment on the Residential Tenancies Amendment Bill (**the Bill**) which amends the Residential Tenancies Act 1986 (**the Act**).

1.2. The Bill "makes a range of changes to make the Act fit for modern renting situations in New Zealand" and "aims to modernise the Act while appropriately balancing the rights and obligations of tenants and landlords".[1] The Law Society does not comment on the policy objectives of the Bill and the brief comments below focus on the practical workability of some amendments and drafting issues.

1.3. The Law Society does not seek to be heard.

2 Commencement date (clause 2)

2.1. The Bill comes into force 6 months from the date of Royal assent. This period seems short compared to the lead-in of other recent amendments to the Act and related regulations, particularly given the significant additional and new penalties and infringement fines. The select committee may wish to consider whether a longer lead-in period is appropriate to allow time for education and adjustment to the proposed changes.

3 Requiring key money prohibited (clause 12)

3.1. Proposed new section 17(2), which replaces existing section 17(2),[2] appears to leave the Tenancy Tribunal with the responsibility of consenting to a requirement for key money but removes the criteria for granting consent. This is presumably unintended. It would be preferable to insert the proposed new subsection as a new subsection (1A) and to retain the existing section 17(2).

4 "Inviting or encouraging" bids for rent (clause 17)

4.1. Proposed new section 22G states that landlords "must not invite or encourage" bids for rent. This does not encompass more active, unwelcome pressure that might be placed on prospective tenants. The committee may wish to consider amending new section 22G to include the terms "invite, encourage, *pressure or cajole*".

5 Consent for tenant's fixtures, etc (clause 23: new section 42A)

5.1. Proposed new section 42A provides a process by which landlords may consent for a "fixture, renovation, alteration, or addition". Under subsection (3), a landlord has 21 days within which to respond to a tenant's written request. However, where the landlord considers the tenant's request is not "minor", new subsection (6) provides that "A landlord who extends the time for

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1 Residential Tenancies Amendment Bill 218-1, Explanatory Note, p1.

2 Existing s 17(2) provides that "The Tribunal shall not give its consent under subsection (1) unless it is satisfied that, having regard to the special circumstances of the case, including the nature of the premises and any matters personal to the landlord or the tenant or the proposed assignee or the proposed subtenant, it would be fair and reasonable to allow the requirement of key money".

responding … must respond to the request in writing within *a reasonable amount of time*." The phrase "a reasonable amount of time" in subsection (6) will be open to interpretation and may create uncertainty. A maximum period of, for example, 90 days would provide more certainty for tenants.

6 "Minor changes" to premises (clause 23: new section 42B)

6.1. The definition of "minor change" in proposed new section 42B(2)(g) is "any fixture, renovation, alteration, or addition of or to the premises that— … (g) 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)".

6.2. The examples given ("a bylaw, a planning or body corporate rule, or a covenant") may not cover obligations in a lease, unless that is pursuant to a "covenant" in a lease. For clarity, it would be helpful to include leases in the list of examples – "bylaw, planning or body corporate*, lease* or a covenant" – of "minor changes". That would ensure, for example, that in the case of a cross-lease property, any fixture, renovation, alteration, or addition does not materially change the Flats Plan outline.

7 Permitting installation of fibre connection in certain circumstances (clause 28: new section 45B)

7.1. Proposed new section 45B(2)(c) enables a landlord not to permit a fibre connection if the landlord "intends to carry out extensive alterations, refurbishment, repairs, or redevelopment of the premises and the installation would impede that work". To provide more certainty, a maximum period could usefully be added to subsection (2)(c), so that a landlord is not required to permit fibre installation because of planned extensive alterations etc, within (say) a calendar year of the tenant's request.

8 Landlord to give notice to tenant of intention to sell (clause 29: amending section 47)

8.1. Clause 29(2)(b) amends section 47(1) of the Act, replacing the requirement to inform the tenant "forthwith" if premises are put on the market, with a requirement to inform "as soon as practicable". This is a subjective term and may require application to the Tenancy Tribunal to determine (with flow-on consequences in terms of the Tribunal's time and resources). Setting a clear timeframe for the notice to be given (such as 10 working days of the premises being put on the market) would provide certainty for landlords and tenants and would be in keeping with the notice period provisions in other sections of the Act. Proposed new subsections 47(3) and (4) make a breach of section 47 an unlawful act and/or an infringement offence. These are serious consequences, and it would be appropriate that landlords have a set timeframe within which to comply and avoid these penalties.

8.2. The same point can be made in relation to clause 45 (amending section 66J), regarding other obligations of landlords: the requirement to inform in new section 66J(2) must be undertaken "as soon as practicable" and failure to comply carries serious consequences. Again, it would be appropriate that landlords have a set timeframe within which to comply.

9 Termination for anti-social behaviour (clause 37: new section 55A)

9.1. Proposed new section 55A enables a landlord to apply to the Tribunal for an order terminating a tenancy on the basis of "anti-social behaviour", defined in subsection (6) as meaning "(a) harassment; or (b) 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". The term "harassment" is not defined in the Bill or the Act. It would be helpful to add a definition or insert a cross-reference to the definition in section 3 of the Harassment Act 1997.

10 Landlord acting to terminate tenancy without grounds (clause 38: new section 60AA)

10.1. The explanatory note to the Bill suggests that proposed new section 60AA would apply when notice is given or when an application is made to the Tribunal. However, the section includes where the landlord "purports" to apply or "purports" to give notice to terminate.

10.2. The term "purport" is not defined and it is unclear what the concept would encompass. The term would be open to interpretation and may encourage applications to the Tribunal to determine if a "purported" act has occurred. If a suggestion by the landlord that they will give notice to apply or terminate is intended to be an unlawful act, the Law Society recommends the term "purport" should be replaced with a clearer term, such as "threaten".

10.3. It might also be helpful to clarify whether the purported act could be undertaken via a verbal statement or if it would have to be undertaken as a threatened action in writing. Without this clarification it is likely that casual comments could be taken by the tenant as the landlord purporting to give notice or purporting to apply to the Tribunal.

11 Minor drafting corrections

11.1. There is a minor drafting error in clause 31 (Circumstances in which tenancies are terminated), which amends section 50. Clause 31(2) inserts a new subsection 50(2) into the Act, so the existing section 50(a) – (f) should be renumbered as new section 50**(1)**(a) – (f).

11.2. In proposed new section 53B (clause 35), the word "but" in the final sentence of section 53B(1)(a)(ii) should be replaced with "and", because the circumstances in both subsections (1)(a) and (b) must occur for notice to be given under this section.

Andrew Logan
NZLS Vice President
25 March 2020