

Date: 19 October 2018

To: Ministry Business, Innovation and Employment

From: Birthright New Zealand

SUBMISSION: Residential Tenancy Act Reform

1. About Birthright New Zealand

Birthright New Zealand is a registered charity. Birthright has been operating in New Zealand as a national organisation for over 60 years. We work to strengthen and enrich the lives of children and families. We specialise in working with families led by one person. Our vision is for nurtured, resilient, inspired children and families.

Birthright New Zealand is a charitable trust with 11 affiliate organisations throughout NZ who deliver a variety of social services to children and their families. These organisations work with families with a wide variety of needs. They assess needs, provide social work services, and in some locations, counselling services and early childhood education. We work closely with other community service providers to ensure children and families who need support can access appropriate services.

2. Introduction

This submission does not attempt to provide a detailed question by question response on the proposed changes. Instead it focusses on particular areas of interest based on the stories and concerns we hear expressed by our clients in relation to tenants receiving fair rights for the rent they are paying.

We support reform of the legislation to enable stronger tenants' rights. A family renting a property should be able to call this place their home; they should be able to continue to live in the home assuming they meet their responsibilities and avoid unnecessary moving and disruption to their children's lives.

We are particularly interested in:

- improving tenants' security and stability
- ensuring the law appropriately balances the rights and responsibilities of tenants and landlords and helps renters feel at home

We particularly support:

- Periodic tenancies that can only be ended under strict requirements.
- The only reasons a landlord should be able to end the lease are the non-payment of rent, serious illegal or anti-social behaviour, or significant damage to the property.

- A landlord selling a property should not be able to terminate the tenancy unless mutually agreed between the landlord and the renter.
- Rental bidding should not be allowed, rents should be set based on the worth of the property and the rental price must be made clear at the outset.
- Rents should not be able to be increased more than once a year, and by no more than the inflation rate unless the landlord has significantly improved the property beyond what is required by the law.
- The government should have power to fine landlords for breach of the law.
- Landlords should be required to pay renters for any breaches of the law, at a level that deters landlords from breaching the law.

Included in our submission are quotes from our social workers outlining situations they have encountered multiple times in relation to the Residential Tenancy Act.

3. Why Reform Matters to the Families Birthright Supports

We take a particular interest in families led by one person, over 25 percent of New Zealand families. In 2013, around 90% of sole-parent families had incomes below the median household income for all households, with or without children. For two-parent families the proportion was 50%. (Perry, B.)¹ The poverty rate for children in single-parent households is high at 69%. (Perry, B.) Income and housing are the two most prevalent disadvantages faced by sole parents. (Superu 2018). Sole parents are less likely to own their own home than coupled parents and are more likely to experience poor housing conditions or overcrowding (Families Commission, 2010). Among renters, sole parents are more likely to pay more than a quarter of their weekly household income on rent than coupled parents (Crothers, von Randow, & Cotterell, 2013).

We believe children have a “birth-right” to the same opportunities regardless of their family circumstances. These statistics suggest major reform is necessary to ensure children of families led by one person achieve the same rights to an affordable and safe place they can call home.

4. Specific Comment

4.1. Modernising tenancy laws so tenants feel more at home

Periodic Tenancy

The consultation document states that “the government is committed to improving the sense that a tenant has choice and control over their housing options; that they can stay

¹ Perry, B. (2017). *Household incomes in New Zealand: Trends in indicators of inequality and hardship 1982 to 2016* Ministry of Social Development Wellington. Retrieved from <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/monitoring/household-income-report/2017/2017-incomes-report-wed-19-july-2017.pdf>

in their home for as long as they decide to, as long as they are meeting their obligations as tenants”. We believe the best mechanism for achieving this is periodic tenancy with the removal of a landlord being able to terminate the tenancy for “no cause”. Fixed Term agreements should be removed provided a landlord can only end the tenancy if the tenant is:

- not paying the rent,
- causing or threatening to cause significant damage,
- assaulting or threatening to assault specified persons including neighbours.
- using the premises for unlawful activity,
- breaching the RTA or the tenancy agreement in another way when the Tenancy Tribunal finds that:
 - the breach cannot be remedied and
 - it would not be inequitable to end the tenancy.

In all circumstances the landlord should first be required to notify the tenant of their concerns and give them the opportunity to explain/rectify their circumstances. The landlord should be able to provide documented evidence supporting their claims; this is especially important in the situation where the claim might be subjective and based on opinion such as threatening to damage and/or threatening to assault. Documentation could include letters of concerns from neighbours, evidence of call outs to police and/or noise control

If the tenant fails to rectify the reason for tenancy outlined above, then they should be given 90 days notice to end the tenancy. This ensures support can be put in place to hopefully avoid homelessness for the tenant.

We do not support landlords being given other grounds to end the tenancy. Granting the landlord to end the tenancy due to factors such as a family member wanting to live in the house or if the rental property is sold, would mean the tenant has lost their choice and control and right to stay in their house as long as they choose. If other reasons were granted, then a minimum of 90days notice should be provided.

Responsibilities tenants and landlords

Tenants often feel disempowered to challenge a landlord who is not meeting their responsibilities or are often not sure of the landlord’s responsibilities. People may have a distrust of the system and not feel comfortable that their voice will be heard by the authorities. Knowing where to go and express your rights as a tenant is difficult. Often families we support rely on their social worker to support them through this process. However, due to their fear of their tenancy potentially being ended if they challenge the landlord about not meeting landlord responsibilities, people will avoid raising any issues.

“A single parent with 12 month old daughter lives with her mother (multiple health issues, bedridden, morbid obesity), sister (also a single parent, hearing and visual impairment, 6 year old daughter with Intellectual and Developmental Disability), and brother (hearing and visual impairment). The family are unable to use the toilet properly as floorboards around the toilet are rotting. The basin is sinking in the floor and whanau members "stand over the toilet bowl" when using, in case the toilet falls through the floor. Carpeting in the hallway has not been renewed since the house was built (the carpet has been worn down to the black lining where carpet fibre is attached to). House is very cold in winter and there is no appropriate heating in the house, not sure whether it is insulated. When asked by social worker why they haven't followed up with real estate agent, family said that the agent told them that, "this is why the rent is cheap" and family are worried that if they insist on having the maintenance fixed, that the rent would be increased so they "just manage" with the issues.”

“Landlords often avoid contact, despite repeated attempts to inform them about maintenance issues. They choose to ignore the requests or property managers do not pass on the requests. This is especially highlighted when the rental market is tight.”

“Maintenance issue repeatedly go unresolved, landlords getting cranky at repeated attempts to talk about it, tenant doesn't want to bring it up again or go to tribunal for fear of not being able to renew lease when lease expires. This is a real fear for many! “

Ability tenants to make alterations to property

Tenants should be entitled to make minor modifications to a rental property that will allow them to feel more at home and safe. For example, fixing furniture to a wall such as a shelving unit, is a basic safety requirement in homes. Tenants should not need to ask or make repairs to these minor alterations when they leave as this is normal use of a house.

“We have seen many experiences of tenants seeking agreement to make modifications, then being told at the end of the contract it's being taken out of the bond.”

Ability to keep pets

Pets are an important part of people's families therefore it is important they are not unfairly treated in gaining a rental property due to having a pet. A landlord should not be able to refuse a tenant's request to keep a pet without a very sound reason that is linked to the unsuitability of the property to certain pets.

We support option one: specify in law when landlords could decline a request to keep a pet. This makes landlord obligations clearer, making it is easier for the tenant to challenge a landlord as they know the law is on their side.

“I’ve seen many listed properties that say no pets, it’s rare to find properties listed as pet’s negotiable. Majority of Landlords would not take wellbeing into consideration.”

4.2. Setting and increasing rents

Rental Bidding

Rental bidding should be banned. The rental price of a property should be clearly stated upfront, avoiding the opportunity for rental bidding to occur. Rental bidding will disadvantage those with the least financial means or potentially entice people who are desperate for a house into a precarious financial situation. We support Option two: prohibit the request and acceptance of rental bids. Option two offers the most transparency and hopefully leads to appropriate market rents. Tenants should be able to bring a complaint to the Tenancy Tribunal if the property is rented for a price higher than advertised

“We see examples of rental bidding wars, it is both encouraged by landlords and actively run through websites. This is the curse of living in a University city without adequate accommodation for the number of people that want rental accommodation.”

Setting rent at market rate

We believe it is highly unlikely that tenants know they can apply for their rent to be adjusted to market rent through the Tenancy Tribunal. They are also likely to be extremely hesitant in challenging the rent due to fear of having their tenancy agreement ended or of not securing the rental property. The RTA should provide guidance on what constitutes “substantially exceeding market rent” to help clarify a tenant’s rights. Factors that should be taken into account when determining market rent include the houses size and condition.

“One housing experience endured was a house on the terrace that never saw the sun. It was built on the side of a retaining wall with only the top story of the building being at road level (used by the property management company) on The Terrace and the lower flats below the road level looked out onto Boulcott St. The Boulcott St side was blocked off by the office building in front of us so we got zero sun at all. Despite this and the mould on our clothes, no insulation, the holes in the walls and (judging by the smell) the dead rat in the hole behind the sink wall, we still paid premium rent purely for the location. The landlord didn’t care that we were cold, sick constantly and couldn’t heat the place because the heat was sucked out of the walls faster that we could produce it. The house was not fit to be inhabited and should never have been on the market, but we needed somewhere to live, and we didn’t have much choice, so we paid.”

Frequency rent increases

Rent increases should only be allowed annually and should only be allowed at a rate of CPI increases unless the landlord has made significant alterations to the house that exceed legal requirements. This provides more budget certainty to tenants and the ability to feel secure in the property and therefore make it their family home.

“Tenancy agreement contracts often stipulate rent can be increased every 6 months from lease, and at end of fixed term contract when it comes up for renewal in a years’ time.”

4.3. Enforcing Tenancy Laws

Power of government to enforce

The government should be given the power to fine a landlord if they have breached the law. MBIE should have the power to audit a landlord or property manager to help uncover systemic issues and promote approaches that encourage compliance.

5. Conclusion

Birthright New Zealand is please to see the Government is considering serious reform to the Residential Tenancy Act. Renting a home is becoming the new norm for families. We need to ensure tenancy legislation enables a good life for families in rental properties. A good life for a tenant is one in which their family can feel the house they rent is “home”. A home is so much more than a roof over our heads; it is a place where we can feel safe and secure, where memories are made, where pictures are pinned to the wall.

We hope the reforms are brave enough to enable every child, regardless of their family circumstances, to have a home.

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