

Submission on Proposed Changes to the Residential Tenancies Act 1987

Preface to the Submission

I have been a lessor for over ten years with a portfolio of up to ten properties, all of which my wife and I self-manage. This is our superannuation hence we are very serious in managing our assets effectively and conscientiously. Therefore we have a keen interest in legislation that affects our ability to do this.

We do not have any formal legal training and we are not connected in any way, apart from owning property, with the real estate industry.

Our tenants are, and have been, predominantly good but there have been a few bad ones that slip through the checking and filtering process or become bad due to some turmoil in their lives. I believe I am a reasonable and responsible lessor and I support this with the fact I have many long term tenants.

Obviously when everything is satisfactory between a lessor and tenant there is not any need to resort to the Courts, therefore most of my comments are based on the experience gained over these years in dealing with the occasional bad tenant.

The following submission is divided into two parts:

- (1) specific comments on the proposed changes that are to be incorporated into the Residential Tenancies Amendment Bill 2011
- (2) General comments and suggestions.

I wish to appear before the committee to support this submission.

Part 1: Specific Comments

In general I recognise that many of the amendments are administrative and therefore my comments are restricted to the clauses that in my opinion cause significant changes.

Clause 12 (Section 13A. Magistrates Court's jurisdiction)

The existing act allows the parties to agree on the jurisdiction prior to going to court. This allows the parties to a lease to agree on the Magistrates Court's jurisdiction that would be most convenient for themselves when signing the lease. I have a clause in my leases that allows this to be defined.

This amendment appears to require a magistrate to change the jurisdiction, i.e. you have to go to court before you can get the jurisdiction changed.

When lessors go to court they want a rapid court date and a rapid resolution. If you want to exercise this option it will introduce an additional delay into the process.

Why is this amendment required?

If the parties agree to a jurisdiction prior to applying for a court hearing why can't this still be an option?

Clause 16 (Section 17, Application to vary or set aside an order)

This section has been an open invitation for tenants not to attend a court hearing and then to seek to set aside an order made in their absence, hence buying them more time to stay in premises without paying rent; i.e. an additional 14 days plus court hearing time. This could easily amount to another six weeks.

Some form of definition of a legitimate reason for not attending in the first place is needed to prevent vexatious use of this section.

Clause 19 (Section 22, Presentation of cases)

In the existing Act I could assist or represent my daughter who owns a rental property. Now it would appear I can't unless I am the property manager.

This appears to be written to favour Real Estate Agents and to disadvantage private lessors.

Clause 22 (Part IV)

Section 27A

The lease is fundamental to an agreement between lessor and tenant yet there is not any information given as to what is the prescribed form.

Who has written/defined it, what does it contain?

My lease, originally based on the REIWA standard form, has had many clauses added based on bitter experience and the shortcomings of the REIWA standard form.

Am I going to be precluded from including additional conditions to my leases?

Is a template going to be available on the web or do we have to buy it?

My lease is computerised: easy to fill in and print. Are we going back to the dark ages of carbon copies?

Section 27C paragraph (1)(b)

Why is it necessary to give two copies of the property condition report to the tenant?

Section 27C paragraph(4)

I can understand the need for this if there is a dispute about the property condition and hence the amount of the bond to be with-held. If there is not a dispute and the bond release form is signed off, why introduce unnecessary extra paperwork?

Clause 25 (Section 29 Security bonds)

Paragraph (1) (b) (ii)

The reasoning for the pet bond appears to completely misunderstand why a lessor requires a substantial pet bond. The need to fumigate to eliminate parasites is the least of the possible problems with pets. Lessors problem with pets is the potential damage they can do to the property and gardens, e.g. damaged paintwork, carpets, plants dug up, reticulation damaged. The bond (\$260) may cover the cost of fumigation but is woefully inadequate to cover other potential damage.

With such a minimal pet bond why would a lessor contemplate allowing a tenant to have a pet?

Clause 27 (Section 30, Variation of rent)

It is proposed that a rent increase has to be in a form approved by the Minister. What is this form? Sixty days notice is also required. My leases include a clause specifying when the rent will be reviewed (not necessarily increased) so the tenants have this information at the start of a tenancy. It is unclear from this amendment if I can still do this.

Clause 28 (Section 31B Increase in rent after renegotiating lease)

When contemplating a new lease the lessor and tenant need to sign off on an agreed rent at least 30 days prior to commencement of the new lease to ensure payment of the new rent at the start of the new lease. To give a tenant reasonable notice, say 14 days, (or perhaps 60 days if the notice in section 30 is applicable) a new lease, or invitation to sign a new lease, will have to be sent out about 6 weeks before expiry of the old lease. What if the tenant refuses (or procrastinates) to sign a new lease before expiry? You can't evict them because the rent is being paid and you do not have any reasonable grounds for eviction as you have offered to renew the lease. If the tenant then signs a new lease on the expiry day of the old lease the tenant can get an extra 30 days at the old rent. The tenant can do this at every lease renewal. Alternatively if the tenant does not sign a new lease before the expiry of the old lease, the lease automatically reverts to a periodical lease and it could be interpreted that another 60 days notice of a rent increase has then to be given. The lessor is being disadvantaged and may have to increase the rent by an additional amount to cover this possibility.

Clause 49 (Section 52 Failure to pay rent with intention it be recovered from security bond)

A statement is needed to the effect that if the rent is not paid up to the termination date then it is deemed that the tenant has intentionally done this to run down the bond. This can be challenged by the tenant in court if necessary.

How many times has a tenant been fined under this provision in the existing Act? My guess would be never although running down the bond by non payment of rent is a frequent occurrence.

A bad tenant will run down the bond with the knowledge that no action will be taken against him/her.

Clause 50 (Section 53 Tenant's name, place of employment and forwarding address)

The problem with this amendment is compliance. How is it going to be monitored and enforced?

The lessor could telephone the stated place of employment of the tenant every two weeks but this seems impracticable (the employer could probably refuse to give any information citing privacy requirements). If the tenant is self employed it would also appear difficult to enforce.

As far as the tenants forwarding address is concerned this will not be known to be false unless the lessor chooses to take court action against the tenant and discovers the forwarding address is false. What if the tenant states he/she is going on a camping holiday for a year and will not have any fixed address?

If an address is given then it should be deemed to be correct by the courts as far as it concerns court proceedings.

Clause 68 (Section 70A inserted)

A lessor having to give 30 days notice that a lease will not be renewed is an invitation to some tenants to not pay the rent for this period. The tenant can then apply to the court for an extension (unjust termination) which will take more time even if the case is without merit. A lessor could be looking at another 30 days to get to court and then even if the court agrees with the termination a lessor still has to get a possession order and get it executed (if necessary by a bailiff), possibly another 30 days. All up the tenant can live rent free for another 90 days knowing that it will be very unlikely that any penalty will be imposed.

Why can't there be a statement that non payment of rent is a predetermined justification for termination? This would eliminate misunderstanding for lessors, tenants and magistrates.

Clause 74 (Section 76A to 76C, Termination of agreement by lessor if premises abandoned)

Section 76A(1)

How is the notice to be delivered if the tenant has abandoned the premises? Tenants in this situation don't usually give a forwarding address (even with the proposed penalties for not doing this).

Section 76A(3) and 76B(2): 76A(3)

This states that if the tenant does not take action within 7 days the tenant is to be taken as having abandoned the premises. However section 76B(2) states that the tenant has 28 days to dispute this. A lessor acting under the provision of 76A(3) could easily have released the property within 28 days and should endeavour to do this to mitigate any loss (see section 78(1)). The previous tenant can then reappear and dispute the assumed abandonment. A situation then exists where the property has new tenants and the lessor may be facing claims of compensation from the previous tenant. Section 76B(3)(b) recognises this but why have such a contradiction?

Section 88A (Infringement notices)

My understanding of this amendment is that an authorised person can issue infringement notices (i.e. fines) on lessors and tenants if there is evidence of a breach of the Act. Is this correct?

One would assume, if this is correct, a lessor could apply to this person to issue a fine if, for example, a tenant has deliberately run down the bond by not paying the rent. I would welcome this change if this interpretation is correct.

Section 88A(10)

What ever happened to plain English writing!

Should : 'they would be prevented' read: 'would have been applied'

Part 2: Other Comments

Recovering unpaid rent and damages.

Situations occur when a tenant has left, or been evicted from, a premises owing more than the amount of the bond. Two courses of action are currently available to a lessor:

1. If the forwarding address for an ex-tenant is known an application for a court order can be made for the full amount of expenses and damages. In the court order application a request can be made to release the bond as part payment of the debt. The ex-tenant can then be pursued for the remaining balance as part of this court order.
2. If a forwarding address for the ex-tenant is unknown an application for release of the bond can be made. **Once the bond is released other claims cannot be made on the tenant** even if they are subsequently found and their address is ascertained.

Item 2, above, is inequitable as tenants who have defaulted to the extent that more than their bond is owing very rarely leave a forwarding address and I am sure this will still be the case regardless of Section 53. It is not clear to me if the proposed changes concerning forwarding addresses (section 53) will negate the inequity of item 2 above. Section 85 appears to address the situations where it is possible to have documents sent to the last known address but does this section apply to situations where a lessor wants to get a court order for more than the amount of the bond?

Data base changes.

Currently I use an agency to carry out, with the lease applicant's permission, simple credit history checks.

Private lessors will not be able to easily comply with the new requirements so they will only consider prospective tenants that have continuing, stable employment and can demonstrate a responsible rental history, i.e. from data that can be easily checked by a few phone calls to employers and real estate agents. Lessors will not take any chances with anyone who can't show this. I suspect real estate agents will also take this view. The self employed and new entrants to the rental market will find renting from private lessors increasingly difficult. This may increase the demand for State Housing.

A great help to lessors would be for the Government to operate a data base that is compiled from court orders on individuals. In this way there would not be any doubt on the veracity of the information. As a lessor I would happily pay a small fee for access to such a data base.

Water Consumption

Lessors need to make the Water Corporation bill the tenant directly for water usage just as the electricity and gas companies do. At present the lessor is billed and the lessor has to then bill the tenant. Some tenants don't pay this charge at the end of a lease knowing full well it will be taken out of their bond, assuming there is any bond left.

Compensation for Lessors

If the lessor has followed the correct legal procedure to evict a tenant and the tenant has not complied with a court order to vacate the premises resulting in a need to use a bailiff why can't the compensation fund reimburse the lessor for the losses incurred by the additional delay caused by the tenant's non-compliance?

Overall Impression of the Proposed Changes

In general I am left with the impression that the proposed changes very much favour the tenant and lessors are viewed as potential rogues who will take advantage of tenants at every opportunity. I don't dispute there are bad lessors as there are bad tenants but some of the changes to the penalties on lessors who transgress the regulations are draconian, even though they are maximum (not mandatory) penalties.

The penalties on tenants have also been increased but I don't see any mechanism to effectively apply them and based on my experience with the existing Act they won't be enforced. Bad tenants know this and will ignore these provisions.

It's little wonder that lessors have a jaundiced view of the present Act and the Court system enforcing the Act. There will come a point when lessors will take the view that leasing property is too difficult and will invest elsewhere. The consequence of this will be a dire shortage of rental property.