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Reform of the Residential Tenancies Act 1986 Discussion Document

Local Government New Zealand's submission to the Ministry of Business, Innovation and Employment

19 October 2018

Contents

Contents	1
We are. LGNZ.	3
Introduction	3
What is included and excluded in this submittal	3
Reasons to terminate a tenancy	4
Tenancy agreements	4
Modifications	5
Pets	5
Rent bidding	5
Setting and increasing rent	6
Boarding houses	6
Conclusion	6

We are. LGNZ.

Local Government New Zealand (LGNZ) is the national organisation of local authorities in New Zealand. All 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This submission was endorsed under delegated authority by Mayor Dave Cull, President, Local Government New Zealand.

Introduction

Thank you for the opportunity to submit on the Reform of the Residential Tenancies Act 1986 discussion document. It is our understanding that the reform aims to:

- Improve tenants' security and stability while protecting landlords' interests;
- Ensure the law appropriately balances the rights and responsibilities of tenants and landlords and helps renters feel at home;
- Modernise the legislation so it can respond to the changing trends in the rental market; and
- Improve the quality of boarding houses and the accountability of boarding house landlords.

LGNZ has interest in providing general overview and comment on the above-noted issues. However, it anticipates councils that act as or work more closely with landlords and tenants would have greater clarity and useful comment on engagement. As such, it intends to leave it to those stakeholders to provide more specific and operational review and comment on the operational outcomes of the proposed reform.

What is included and excluded in this submittal

LGNZ recognises there are several areas in this review where its understanding is limited or does not have applicability. As such, LGNZ will not comment on:

- Types of tenancy agreements;
- Specific tenant and landlord responsibilities; and
- Enforcement.

LGNZ, through its Housing 2030 project, associated projects, and working groups, has interest to comment on several topic subjects, including:

- Reasons to terminate a tenancy;
- Tenancy agreements;
- Modifications to occupancy;
- Pets;
- Rental bidding;
- Setting and increasing rent; and
- Boarding houses.

Reasons to terminate a tenancy

LGNZ believes in most cases that tenants and landlords have a congenial relationship, and that extending the notice period would provide a measure of security and confidence with increased search time for tenants if required to move. Though the 42-day notice period appears random, LGNZ has little evidence that extending the notice period up to the suggested 90 days creates an optimum security opportunity. Regardless, it supports extending the notice period.

LGNZ also supports removal of the “no cause” termination of periodic agreements for tenants who meet their obligations. Again, increased security in residential tenure is important to the fabric of a community and the exposure to rapid economic fluctuation. Further, abrupt changes have potential unexpected impacts on demand for local resources including parks, roads and schools.

Also, in the interest of social and economic security, LGNZ does agree that tenants – if they are meeting their obligations – should have the right to extend a fixed-term agreement provided the tenants can meet the market rate and the rental property would otherwise go back to the market.

In general, LGNZ agrees with the proposed grounds to end a period tenancy by a landlord, with the caveat that specific definitions should be applied to terms including “unreasonable”, “significant” and “extensive”.

Tenancy agreements

In general, LGNZ supports the key objective of providing renters greater choice and control over their tenancy in order to stay in their home for as long as they decide to, providing they meet their obligations. As such, LGNZ supports removing the ability of landlords to end a tenancy at any time without reason. Access to affordable housing is currently paramount in New Zealand. However, housing security – due to the current increase in rental demand – is important to the social, community and economic well-being that underpins community wellbeing, connection to employment, education and health services, and ability to thrive. LGNZ does not believe that there should be a minimum length for a fixed-term agreement and this should be a subject negotiated between the landlord and tenant for the best outcome for both parties.

Modifications

LGNZ has a limited view with regard to minor modifications of a residential unit, but does believe that if they improve the ability to comply with (either directly or in the spirit of) the Healthy Homes Act then this should warrant recognition. Homes that are cold and wet heavily influence the quality of life for New Zealanders, and ultimately affect the well-being of many. Increased hospital visits and reduced performance in education and employment are the tip of the iceberg in terms of outcomes. Perhaps a more significant impact is a culture of acceptance of poor housing quality standards, with negative impacts across multiple generations.

Additionally, initiatives that allow tenants to make minor adjustments to improve comfort and quality of their indoor environment (eg affixing pictures to walls) and improves communication – particularly with regard to landlords “unreasonably withholding consent” would be supported by LGNZ. Setting a deadline of 21 days for a response by a landlord for a modification is reasonable.

Pets

LGNZ has little experience to comment on the specifics of landlord acceptance of pets in a residential unit. It generally views each rental circumstance unique and varied across the country. However, as has been noted by MBIE, in a general outline of the context of demographics and ownership, there are an increasing number of elderly choosing to rent. Many elderly own pets for companionship, something which has shown benefits including better health outcomes.

LGNZ would encourage a balanced approach by both renters and tenants to consider properties that may or may not be appropriate to keep a pet. If a pet cannot be accommodated, the reasons should be evident or premised on documented precedence. Overt reasons to exclude a pet should be made in the advertising of a residence.

Rent bidding

LGNZ has only limited comment on rental bidding and as always, is interested in supporting and sustaining conditions that underpin a transparent and fair market. We would however urge caution before considering policies to control bidding in the market. Firstly, it is not clear how extensive the practice is beyond the anecdotal, and comprehensive evidence would need to be established in order to assess the extent of the problem. Secondly, the economic literature on rent controls clearly shows that these policies have the opposite effect than those intended, and drive up rental prices. We are concerned that any controls of bidding, would in effect become rent controls. LGNZ does not have a specific view on rent stabilisation, other than to suggest that promoters of these policies would need to establish the benefits of the policy relative to the costs.

Setting and increasing rent

In the first instance, LGNZ supports every measure for strong communication between tenants and landlords in setting rents. Dialogue can enhance timely response to market changes, required improvements to a property, and security of tenure. If communication does not exist, response to market fluctuations can create owner and renter insecurity. LGNZ supports the measure to ensure a minimum three-month window as a period for review of rent in a fixed-term tenancy.

It does however, reserve some question about whether further research should investigate the term “substantially exceeds market rents”. Every home in every community is different, and provided the variables of occupancy (eg pets vs. no pets), assessing and determining a common definition will likely overstate one home condition and understate another. Further, this information may require additional data (and maintenance of data) as well as cost to regulate and manage.

Boarding houses

Though boarding houses appear to represent a very limited number of buildings and rooms across New Zealand, it is important to maintain consistency with the quality of other available rental accommodation. Further, those in boarding houses, statistically, appear to represent a high proportion of vulnerable people. As such, the Healthy Homes standards, along with several other requirements, must be adequately enforced in boarding houses to ensure safe, warm and dry homes. LGNZ supports registering boarding houses to document all standards and management practices are upheld.

Conclusion

LGNZ supports the Reform of the Residential Tenancies Act 1986 to reach stated the aims for improved outcomes. It recognises that housing is a complex space with variability across the country; climate, demography, economic and social circumstances vary widely. LGNZ believes that generally landlords and tenants have amicable relationships, but there are extreme circumstances that predicate baseline rules to ensure continuity of expected behaviour and quality of service that support both an owner’s and a renter’s ability to prosper.