

Residential Tenancies Amendment Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

5 July 2024

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Residential Tenancies Amendment Bill (**Bill**), which amends the Residential Tenancies Act 1986 (**RTA**).
- 1.2 This submission has been prepared with assistance from the Law Society's Property Law Section Ngā Rōia Ture Rawa.¹
- 1.3 The Law Society does not wish to be heard in relation to this submission.

2 Definition of "pet" (clause 4(1))

- 2.1 This clause, which amends the interpretation section of the RTA, states that "pet" does not include a disability assist dog (within the meaning of section 2 of the Dog Control Act 1996).
- 2.2 We consider a more detailed definition of the term "pet", which, for example, differentiates between livestock and domestic pets, would be helpful. The definition should also clarify that a "pet" can only be an animal permitted in New Zealand (noting that, for example, under the Dog Control Act 1996, there are certain breeds of dogs that cannot be imported or bred in New Zealand).

3 Address for service (clause 6)

- 3.1 The Law Society welcomes the change to modes of service to include different forms of electronic address.

4 General bonds (clause 7)

- 4.1 If a landlord decreases the amount of the rent, new section 18(3) requires the chief executive to make a bond refund payment to the tenant "on application by the person who paid the general bond". We recommend inserting a new subsection which requires landlords to advise the chief executive of a decrease in rent within a set time period (for example, 10 working days).

5 Pet bonds (clause 8)

- 5.1 New section 18AA requires the payment of a pet bond in relation to a "pet". The use of the singular term "pet" raises questions as to whether this section refers to a single or specific pet. As a result, it is unclear whether a tenant will need to obtain their landlord's consent if they subsequently wish to keep additional pets on the premises, or replace their original pet with a new pet. These concerns also extend to clause 16, which contains further amendments relating to when a tenant may keep a pet.
- 5.2 The Bill also fails to address circumstances where:

¹ See the Law Society's website for information about the Property Law Section: <https://www.lawsociety.org.nz/branches-sections-and-groups/property-law-section/>.

- (a) A tenant decides that they would like to keep a pet after their tenancy has commenced, as new section 18AA(1) does not explicitly provide that the pet bond can be requested after the commencement of the tenancy; or
- (b) A pet dies, or the tenant stops keeping the pet on the premises, partway through a tenancy, noting the Bill does not provide for processes to refund the pet bond to the tenant in such circumstances.

These matters should be clarified if the Bill is to proceed.

- 5.3 New section 18AA(2) states that a landlord must not require payment of more than one pet bond for a tenancy. We suggest amending this subsection to clarify that a pet bond can be charged on more than one occasion during the tenancy if a pet bond is paid, subsequently refunded and the tenant later informs the landlord of their intention to keep a new pet.
- 5.4 We also note that the systems and processes for collecting and administering bonds would need to be revised if pet bonds are to be implemented. In addition to educating landlords, tenants and property managers about their rights and obligations, a new system would need to be introduced to collect and manage pet bonds.
- 5.5 At present, bonds are collected at the commencement of a tenancy and retained by Tenancy Services for the duration of the tenancy. The Bill should clarify whether pet bonds would also be held and administered following the same processes and timelines, or whether the two types of bonds are to be held and managed separately (and if so, what processes and timelines would apply to pet bonds).
- 5.6 The Regulatory Impact Statement for the Bill states that these changes will result in set up and on-going administration costs for Tenancy Services.² It is therefore essential that Tenancy Services is adequately resourced to deal with the additional demand for its services.

6 When tenants may keep pets (clause 16)

- 6.1 Clause 16 of the Bill inserts new sections 42C to 42F of the RTA, which:
 - (a) Require the tenant to keep a pet in accordance with any “reasonable conditions” set out in the tenancy agreement or attached to the consent;³
 - (b) Permit landlords to impose “reasonable requirements” relating to the characteristics of the pet or pets;⁴ and
 - (c) Set out a list of “reasonable grounds” for prohibiting a tenant from keeping a pet on the premises, or for refusing consent.⁵
- 6.2 We make the following recommendations in relation to this clause:

² Ministry of Housing and Urban Development *Regulatory Impact Statement: Residential Tenancies Act 1986 amendments to introduce pet bonds and address other pet related matters* (February 2024) at page 2.

³ New section 42C(b).

⁴ New section 42E(3)(b).

⁵ New section 42F.

Dispute resolution

- 6.3 We suggest amending clause 16 to clarify that the Tenancy Tribunal should be able to conduct a hearing on the papers if the tenant disputes the landlord's conditions, requirements or grounds (outside of the grounds set out in new section 42F) as not being reasonable. Alternatively, a bespoke dispute resolution mechanism could be better-suited and more feasible for dealing with such issues.

Express provision in tenancy agreement

- 6.4 New section 42C allows a tenant to keep a pet on the premises "if the tenancy agreement provides" that the tenant may keep the pet. We recommend amending this sentence to state "if the tenancy agreement *expressly* provides", for consistency with other parts of the RTA, and to clarify that it is not intended that consent can be implied.

Reasonable grounds for prohibiting pets or refusing consent

- 6.5 While the list of grounds in new section 42F is expressed as not being exhaustive, it could be helpful (for increased guidance and certainty) to include the following additional grounds:
- (a) Memorials on the registered title for the premises prohibit the pet or pets from being kept on the premises;
 - (b) Operational rules of incorporated societies or similar structures (for example, those typically used for townhouse-type developments) prohibit the pet or pets from being kept on the premises;
 - (c) The tenant has not complied with the landlord's conditions and requirements in respect of other pets on the premises (i.e., previously consented pets);
 - (d) The premises are not suitable for the number of pets for which consent is being sought.
- 6.6 The select committee may also wish to consider if there should be other reasonable grounds for prohibiting pets or refusing consent – for example:
- (a) In relation to new section 42F(d), where animal welfare issues arise because a dog needs to be tied up all day, and/or because the dog has a propensity for constant barking, which can constitute a nuisance in the neighbourhood. It is unlikely that such dogs would be classified as dangerous or menacing under the Dog Control Act 1996.
 - (b) Where the tenant is disqualified from owning or exercising authority over animals (for example, under section 25 of the Dog Control Act or under section 169 of the Animal Welfare Act 1999).
 - (c) Where the landlord would be non-compliant with other legislative obligations if they permit a pet. For example, a residential landlord will have duties under the Health and Safety at Work Act 2015, and there will be certain situations where permitting a pet may put that landlord in breach of those duties – so a landlord who owns multiple townhouses and permits one tenant to have a pet/pets, may

also have to consider their health and safety obligations to the other tenants on the premises.

- 6.7 The reference to body corporate operational rules in new section 42F(b) should be deleted as it is not settled law that the rules can be utilised for this purpose. We note there is a lack of clarity with Tenancy Tribunal case law as to the ambit of pet operational rules, and it is unclear how new section 42F(b) will operate in bodies corporate. Generally it has been held to be ultra vires to completely prohibit pets in body corporate operational rules. In any case, issues around whether body corporate operational rules can prohibit tenants from having pets, and whether this should also extend to unit owners, should be addressed via amendments to the Unit Titles Act 2010 (**UTA**) and the Unit Titles Regulations 2011.
- 6.8 Landlords should also be able to take into account any previous issues with pets which resulted in a successful claim against the pet bond.

Ability to terminate tenancy

- 6.9 It is unclear if landlords will have the ability to revoke their consent to keep a pet on the premises, and if so, if they would be able to terminate a tenancy once they revoke consent. We invite the select committee to seek advice from officials on these matters, and to consider if it would be appropriate to amend the Bill to extend the application of section 55A of the RTA to cover certain pet behaviour (such as behaviour which causes harm to a person or the premises, or behaviour which constitutes a significant disruption or nuisance to others in or near the premises).

7 Amendments relating to smoking (clause 17)

- 7.1 Clause 17 inserts new section 43AA, which clarifies the extent to which a tenancy agreement may prohibit a tenant from smoking in rented premises. We recommend expanding new section 43AA(1) to also include circumstances where unit title body corporate operational rules, rules of incorporated societies (or similar structures typically used for townhouse-type developments), and memorials on titles ban smoking even in outdoor areas and outbuildings.
- 7.2 The Law Society queries the inclusion of garages as spaces where a tenant may be permitted to smoke tobacco products.⁶ Many garages have internal access into the remainder of the property, and smoking within garages will have a similar impact on the condition of the property and its residents as smoking within other habitable spaces. We recommend that new section 42AA(1)(b) be amended to provide that smoking may be prohibited within any enclosed space, including garages with internal access to the dwelling itself.
- 7.3 We note these issues are also likely to arise in unit title/body corporate buildings which are intended to be smoke free, or prohibit smoking in enclosed carports.

⁶ New section 43AA(1)(b).

8 Termination of tenancies (Part 2 of the Bill)

- 8.1 The Law Society does not seek to express a view on policy matters, including whether the notice periods required for the termination of a tenancy, or the reinstatement of the 90-day no-cause termination procedures, will remove barriers to rental supply. However, we note the proposed changes in the Bill will impact landlords, tenants and property managers, as well as real estate agents, lawyers and conveyancing professionals dealing with conveyancing transactions. Therefore, any changes to termination procedures will require education and guidance, as the reforms between 2018 and 2020 were only implemented relatively recently.

9 Termination for assault (clause 25)

- 9.1 Clause 25 of the Bill amends section 55 of the RTA, which sets out the provisions relating to termination for non-payment of rent, damage, or assault.
- 9.2 We invite the select committee to consider if section 55AA of the RTA should be amended to expressly cover physical assaults against other people in a unit title/body corporate community, including staff, contractors and other building occupants. Section 55AA is presently drafted to deal with individual tenancies, rather than viewing tenancies that are part of a community, often in high density, where assaults on other people in the community cannot trigger this section, leaving those in that community to live in fear.

10 Tenancy Tribunal (clauses 32 and 33)

- 10.1 Clauses 32 and 33 enables some decisions in the Tenancy Tribunal to be made on the papers, without holding an oral hearing. The Law Society welcomes any measures that would facilitate the speedy resolution of disputes (noting the scope of the Tenancy Tribunal extends beyond determining matters under the RTA, as its remit also includes matters under the UTA).
- 10.2 However, the right balance must be struck between the desire to deal with matters expeditiously and preserving access to justice. The Tenancy Tribunal deals with landlords and tenants, usually without the assistance of legally trained professionals. These parties may struggle to articulate in written submissions the nature of the dispute and the remedies sought. Guidance should therefore be included in the Bill to clarify which types of decisions can or should be made on the papers, and adjudicators should be able to call for more evidence or to hear from the parties (including via audio-visual link) to clarify the matters in dispute. As we have noted, complainants do not always identify the specific issue that needs to be addressed.
- 10.3 We also note that new section 91AB in clause 33 will be particularly useful for debt collection, and we recommend developing standard forms to assist with such applications.

11 The interface between the RTA and the UTA

- 11.1 The RTA does not presently connect with the UTA in any meaningful way, aside from providing that tenants must abide by the body corporate operational rules.⁷ There is a real need for regulatory attention to the link between the RTA and UTA, particularly:
- (a) Where work is required to give effect to Healthy Homes Standards, which impacts other owners or the building itself (for example, when a heat pump needs to be added to the external building); and
 - (b) Due to uncertainty about the application of body corporate rules (and issues around what the RTA covers, versus what body corporate rules can cover).
- 11.2 The RTA remains designed for standalone houses, whereas tenancies are often in buildings where tenant rights need to be balanced against a ‘whole of building’ approach. This can be enhanced by a tenant voice. In situations where buildings are fully occupied by tenants, or where there is a large number of tenants and small number of owners within a building complex, tenants should at least have a voice and representation on a body corporate committee dealing with repairs and maintenance (particularly in relation to Healthy Homes Standards).
- 11.3 It would be useful to include a requirement in the UTA for landlords in apartment buildings to comply with the Healthy Homes Standards when tenanting their units. This would enable tenants to seek enforcement of those Standards under the UTA.
- 11.4 Where there is a sufficiently large tenant population within a complex (for example, over 50%), tenants should have the right to receive reports from the body corporate committee relating to ongoing repairs and maintenance within the complex (including any health and safety measures, and compliance with Healthy Homes Standards). Tenants should also have a right of reply, as well as a right to seek a hearing at body corporate committee meetings of any particular grievances that tenants may have, or indeed any thoughts on improving the culture of an apartment complex.
- 11.5 A Code of Conduct between landlords and tenants in unit title developments would also be a step forward in addressing some of these matters.
- 11.6 While these matters are beyond the scope of this Bill, we invite the select committee to consider whether policy work could be done in this area to address the issues we have raised.



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⁷ Unit Titles Act, s 105(4).