

Residential Tenancies Amendment Bill (No 2)

23-Aug-2019 by Harcourts NZ

New tenancy legislation was passed on 30 July 2019 which will affect landlords and tenants. These changes take effect on 27 August 2019. The bill amends the Residential Tenancies Act 1986 (RTA) and addresses tenant liability for damage, unlawful residential premises and contamination of rental properties.



Tenant liability for damage (and insurance)

There has been confusion in the property management industry since 2016 when a Tenancy Tribunal decision found that a tenant who damaged a rental property ‘carelessly’ could not be expected to pay the cost to repair. Prior to this, the expectation was that if a tenant caused the damage, they paid for the repair.

This amendment addresses a tenant’s liability for a careless act that causes the destruction of, or damage to, a property but limits their liability to a maximum of four weeks rent or the landlord’s insurance excess, whichever is lower.

Tenants get the benefit of a landlord’s insurance claim if they carelessly damage a property.

From 27 August 2019, a landlord must include information about the insurance for the premises in every new Tenancy Agreement. If they do not, this is deemed to be an unlawful act and they can face a penalty of up to \$500.

The information must stipulate whether or not the property is insured and if so, what the excess amount is. This statement must also advise a tenant that a copy of the insurance policy is available for them to review upon request.

For existing tenancies, insurance information and/or a policy document must be provided within a reasonable time frame if requested.

Harcourts recommends:

- An insurance excess for landlords of no more than four weeks rent. If an insurance excess is higher, then the landlord is effectively ‘self-insuring’ for the difference, as a tenant’s liability will only extend to four weeks rent.
- Landlords provide their property manager with a copy of their insurance policy. Note that landlords must advise tenants (or property manager) within a reasonable time frame if there are any changes to their

insurance policy, particularly any change to the amount of the excess and/or whether or not the property is insured.

- Redact any personal information from an insurance policy before sending to a tenant or property manager.
- Landlords should consider insuring against malicious or intentional damage. A policy such as this may also cover loss of rent. Speak to your property manager or insurance broker.

What a landlord can expect from a Harcourts Property Manager:

- A request for a copy of the insurance policy.
- Insurance information to be recorded on all new Tenancy Agreements from 27 August 2019.
- A Variation of Tenancy is prepared for future rent increases so that the four weeks rent is calculated on new rent and not limited to the lesser amount.
- Educate tenants that the landlord's insurance may cover damage they cause, but they should inform the landlord as soon as an incident occurs, rather than wait until the end of the tenancy. This awareness for tenants may help prevent insurance companies from claiming multiple excesses for multiple events at an end of a tenancy, when the Act limits a tenant's liability to four weeks rent or insurance excess, whichever is lower.

Note that this change does not cover any intentional or malicious damage that a tenant may cause. Insurance companies are unable to pursue tenants for the cost of damage unless it was intentional or resulted from an act or omission that constitutes an imprisonable offence.

Unlawful residential premises

Prior to 27 August 2019, tenants living in unlawful premises such as sleep-outs or garages were not always protected by the Residential Tenancies Act. Under the new Act, the definition of 'residential premises' has been revised. Now, regardless of whether the premises can be legally resided in, they will be under the jurisdiction of the RTA, giving the Tenancy Tribunal full jurisdiction over cases concerning unlawful premises.

It is important to note that under the RTA, landlords must comply with all legal requirements that relate to buildings and health and safety before the start of a tenancy.

At Harcourts, we do not manage properties that do not meet the relevant laws and bylaws, however, if landlords are in doubt about any obligations under an Act, or as to whether a property is lawful, they should take immediate action to investigate and remedy any breach.

Contamination of rental properties

The Government will develop new regulations to prescribe the acceptable level for methamphetamine contamination over the next 12-18 months.

Since the Gluckman report was released in May 2018, Harcourts Property Managers have been operating

under a great deal of uncertainty with regards to testing residential rental properties for methamphetamine. Prior to the Gluckman report, methamphetamine levels that exceeded the NZS 8510:2017 standard of 1.5 µg/100 cm² (micrograms per 100cm squared) were considered a health risk. However, the Gluckman report stated that exposure to methamphetamine levels below 15 µg/100 cm² would be unlikely to give rise to any adverse effects.

New regulations will also prescribe the process for testing for contaminants, including when to test and the decontamination process. Once these regulations are in place, it will be an unlawful act to knowingly rent contaminated premises above the prescribed level.

Until then, it is business as usual and Harcourts recommends that, in many cases, testing for methamphetamine should continue between tenancies or as otherwise recommended by a property manager.