

Submission on the Reform of the Residential Tenancies Act 1986

The proposed reform of the Residential Tenancies Act is a much-needed opportunity to improve the rights for tenants to enjoy security, fairness and safety in their tenancy arrangements.

As a national network of community-based mental health and addiction support services, Platform has a particular interest in ensuring that appropriate settings exist in legislation to protect the rights of tenants who experience mental health or addition issues. Platform also has an interest in the proposed changes as a network that includes community housing providers.

Our submission focusses on the renting environment for people who experience mental health and addictions issues and the fairness of processes available to tenants and landlords when issues arise.

While we acknowledge that rent tenure, rent price setting, the keeping of pets and the ability for tenants to make modifications to properties are all contributing factors for tenants to feel 'more at home', we have focussed on the wider system issues and processes that affirm or undermine the rights of tenants and/or landlords.

We want to expressly make the observation that people who are home owners, landlords and tenants can all experience mental health and addictions, but that this submission will focus on tenants who experience mental health and addiction issues as a specific group who face higher levels of discrimination¹.

The rental environment

There are a number of pressures throughout the country that contribute to make finding safe and secure housing a difficult prospect for people who experience mental health and addiction issues. In this environment, tenants' ability to negotiate the terms of their housing is, in most cases, hugely undermined.

A pressured market

In the space of 27 years in New Zealand, we have moved from a quarter of households renting to a third of households renting, and currently 43 percent of children live in a rental home².

There has been wide commentary on the pressured rental markets around New Zealand that make it difficult for tenants to secure appropriate rental accommodation, let alone to have a choice in housing type or rental price. Housing New Zealand signalled to the incoming Minister in 2017 that affordability issues were resulting in increasing demand for state housing³ and this has proven to be a continued trend. As at 30 June 2018, 8,704 individuals and families were waiting for a house on the Social Housing Register.⁴

There is also a segment of New Zealanders not represented in the general rental data who are living in a variety of other housing situations, including homelessness. Of those who joined the Social Housing Register as at 30 June 2018, the second most common reason was 'homelessness'⁵. Auckland's recent homeless count estimated there were 800 people living without shelter in the region.

¹ Pere, L., Gilbert, H. and Peterson, D. (2001). *Issues Paper 2: Discrimination in Housing*. Like Minds, Like Mine and Mental Health Foundation. Auckland, New Zealand.

² Ministry of Business, Innovation and Employment, (2018). *Reform of the Residential Tenancies Act 1986 discussion document*. Wellington, New Zealand.

³ Housing New Zealand. (2017). *Briefing for the Incoming Minister of Housing and Urban Development*. pp. 21-22. Wellington, New Zealand.

⁴ Ministry of Social Development. (2018). *Housing Quarterly Report June 2018*. Wellington, New Zealand.

⁵ Ministry of Social Development. (2018). *Housing Quarterly Report June 2018*. Wellington, New Zealand.



The effect of discrimination

In a competitive rental environment, people who experience mental health or addiction issues experience discrimination,⁶ further diminishing their opportunities to find appropriate housing. The effect of unsatisfactory housing for all renters is double-edged with evidence to show that: *'unsatisfactory housing can lead to the development of mental health problems for some people (as well as physical problems for even more people), or can be a factor in deteriorating mental health for people already experiencing mental health problems. The second message from the literature is that having a serious mental illness is very likely indeed to result in the experience of unsatisfactory housing conditions, because of the effects of compounding disadvantage flowing from the experience of mental illness.'*⁷

It can be both more difficult for people who experience mental health and addiction issues to secure appropriate housing, including because of discrimination from landlords, and harmful to their mental health if they cannot.

A difficult right of reply

Where tenants are able to secure rental accommodation, they often do not feel comfortable to raise any problems with the landlord because of a fear of losing their tenancy and consequently needing to return to the pressured rental market.

*'...several tenants indicated they would avoid going to the Tenancy Tribunal because they did not want to negatively impact their relationship with the landlord and risk their tenancy; a situation which suggests better knowledge of the RTA alone will be of limited benefit if tenants do not feel empowered to act.'*⁸

Tenants can feel dissatisfied with their living situation, which may be harming their physical and/or mental health, but feel disempowered to do anything to rectify this.

Due process for all

The proposed reform suggests some positive changes that will better support due process when it comes to remedying or ending a tenancy. Limiting the options for termination of tenancies to the Tenancy Tribunal means that this service needs to be bolstered to adequately support tenants.

Ending 'no cause' evictions

We support the removal of 'no cause' 90 days' notice terminations for periodic tenancy agreements. We believe it is in both the landlords' and tenants' best interests to seek a resolution to any problems by giving the tenant an opportunity to remedy the situation. Usual practice for non-government social housing providers is to issue tenants with a notice to remedy the situation, to work with the tenant to remedy the situation, and then to apply to the Tenancy Tribunal if the situation is not resolved as an option of last resort.

The Tribunal

Renters should be supported to retain their tenancy while giving landlords a pathway through the Tribunal to address any concerns or breaches of tenancy agreements, with sufficient time for a resolution other than the termination of the tenancy to be explored.

The majority of cases brought before the Tenancy Tribunal are brought by landlords, and anecdotally these mainly relate to rent arrears. When the cause of a termination for the landlord is unpaid rent, we support the FastTrack Resolution services model. At times, people who experience mental health and addiction issues may benefit from additional support through services such as sustaining tenancies or home rescue type services. If tenants could

⁶ Miller, C. (2017). *Landlords refuse tenants with assistance dogs and mental health issues*. NZ Herald. Retrieved from https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11900788

⁷ Kell, S. and Peace, R. (2002). *Mental Health and Independent Housing Needs*. P. 7. Ministry of Social Development. Wellington, New Zealand.

⁸ Witten, K., Wall, M., Carroll, P., Telfar-Barnard, L., Asiasiga, L., Graydon-Guy, T., Huckle, T., and Scott, K. (2017). *The New Zealand Rental Sector*. P. 57. Massey University SHORE and Whariki Research Centre with the University of Otago.

evidence that they are receiving such support, a grace period could exist to suspend any Tribunal action.

Additionally, when a tenant experiences a mental and addiction issue and has a period of time away from the property, tenants and Community Housing Providers should have the ability to secure and maintain a tenancy, protected by potential Residential Tenancy Act amendments. For example, if a tenant stayed in a hospital for a period of time, the Ministry of Social Development could continue to cover rental costs while the tenant is away from the property. In cases where tenants have disclosed to the landlord that they are using mental health and addictions services, it would be helpful for landlords to be required to seek input from those services or other support services before any termination or consideration of breach through the Tribunal.

Currently we understand that mediation and tenant advocacy services are not sufficient and tenants are demonstrably not often comfortable to take action through the Tribunal. More resources put toward tenancy advocacy services could support tenants to feel more protected in the event of issues arising with their tenancy.

Unfair play

Anecdotally, the reason often given for termination of a tenancy is that family need to use the property when this is flagrantly not the case. We support measures to make false reasons for termination of tenancies an unlawful act. If the 90 day 'no cause' option is removed, we would envisage further abuse of this mechanism to end a tenancy.

In addition, we note that penalties for landlords are usually awarded by the Tribunal at the minimum amounts, meaning that tenants are not fairly compensated. We would recommend the usage of the minimum penalties by exception.

About Platform

Platform Trust is the national network of community organisations providing a wide range of services that respond to the mental health and addiction needs of individuals, families and communities in New Zealand. Some examples of the work our members undertake are:

- Social housing, housing brokerage
- Employment support
- Healthy lifestyle intervention programmes
- Advice and advocacy
- Vulnerable child, child and youth services
- Peer support
- Education and training
- Family support
- Suicide prevention
- Arts programmes
- Addiction counselling, clinical support and methadone treatment
- Whanau ora services
- Respite and crisis services
- Intellectual disability services
- Specialist services such as eating disorders, refugee and migrant, trauma support
- Residential services
- Strategic sector workforce development
- Social services
- Software solutions for the sector

Platform's membership provides information and intelligence about mental health and addiction service delivery across the country, which in turn drives the strategic vision of the Trust. Access to the perspective and experience of Platform's membership has proved critical in a dispersed health purchasing system, and Platform is one of the few agencies able to provide a national overview across DHB areas.

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