

Renters United Submission to the Residential Tenancies Amendment Bill 2015

Wellington Renters United is an organisation founded in 2014 to organise renters and campaign to make renting better for everyone in Wellington. The majority of our members are private renters in the Wellington region, we also have supporters around the country.

Wellington Renters United welcomes the Government's attention to issues of quality in the private rental sector. The right to live in a safe and healthy home is one of our eight key demands. Poor quality housing is a key issue affecting our members. Our appendix contains some of their stories, which relate the effects of poor quality housing on health, social relationships, and education.

We believe that the proposed legislation could be improved in a number of ways. In this submission, we outline some of the problems and our proposed solutions.

We wish to have the opportunity to present an oral submission to the Select Committee to provide further information in support of this written submission, including allowing the committee to hear directly from renters about the quality of homes in the private rental market.

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Summary

Regarding new requirements for smoke alarms and insulation requirements

Problems

- The standard for insulation is too low.
- The standards do not include standards for safety and heating.
- The enforcement regime is flawed

Recommendations

- That landlords be obliged to insulate homes to current Building Code standard.
- That all houses should be insulated to the required standard.
- Where introducing floor and/or ceiling insulation is structurally impossible landlords should be required to make other improvements to the dwellings equivalent to the benefit that would be realised by the installation of insulation e.g. draft-stopping, thermal curtains, double-glazing, dry-lining, damp-proof membrane, heating
- That homes are brought up to standard with minimum disruption to tenants, either between tenancies or by phasing the work with fair compensatory reduction in rent based on any disruption to the tenant's right to quiet enjoyment of the property; that tenants' are informed of this right and their right to redress via the Tenancy Tribunal
- That standards for fixed-heating and safety also be introduced, as per the rental WOF recently tested by five councils, the Green Building Council, and Otago University, Wellington (Bennett et al. 2014)
- That the Act provide for a more effective enforcement regime, such as the "tax compliance" and "motor vehicle WOF" approaches tested by Blick & Davies (2014).

Regarding empowerment of the chief executive to instigate Tenancy Tribunal proceedings

Problems

- There is a danger that government will not use its powers to chase up landlords
- There is a danger that even in such cases a poorly performing landlord will continue to exploit tenants.

Recommendations

- That the chief executive is required to publicly report on the instances in which he or she has investigated and taken cases to the Tenancy Tribunal in cases of alleged or severe breaches of the Residential Tenancies Act.
- That there is a clear process through which tenants, former tenants, councils, non-governmental organisations, public health bodies, and others interested can ask the chief executive to take action in cases of alleged or severe breaches of the Residential Tenancies Act; that the chief executive is obliged to respond to such requests.

- That the chief executive is empowered to publicly declare a landlord unfit for a specified period of time; that in such cases the chief executive is empowered to arrange any Tribunal-ordered repairs, improvements and relocation costs for tenants and recovering these costs from the landlord.

Regarding retaliatory notice provisions

Problems

- Protection against retaliatory notice does not ensure that the lease is renewed or that the tenancy is ended for other reasons
- Tenants who assert their rights may be discriminated against in looking for housing in the future.

Recommendations

- That the Residential Tenancies Act be amended and policies implemented to ensure that tenants have more secure tenure.
- That the Residential Tenancies Act be amended so that a landlord must provide a reason in writing for the termination of a tenancy (either via notice on periodic tenancies or non-renewal of a fixed term tenancy) and the validity of that reason can be tested in the Tenancy Tribunal if the tenant believes that the reason is not justified or unfairly disrupts their tenancy.
- That tenants who have not acted unlawfully (for example, have claimed retaliatory notice) be anonymised in the Tenancy Tribunal decision database, and that asking prospective tenants about such rulings be made unlawful. This will prevent them being discriminated against in searching for housing in the future.

Regarding work order vs compensation provision

Problem:

- This section is drafted in a way that excludes important existing housing standards.

Recommendation

- That Sec 78 be reworded so that it includes all relevant requirements relating to the condition of a rental house.

Full submission

1. New requirements for smoke alarms and insulation requirements

We support the Government's intention to require landlords to comply with new regulations in respect of smoke alarms and insulation.

However there are a number of problems with the regulations.

a) *The standard for insulation is too low.*

We understand the precise standards will be set under regulation, rather than under this Bill. However we wish to note that the draft regulations currently require landlords to install insulation to a standard set in 1978, rather than the much thicker standard required for new housing under the Building Code. The Building Code is set at this level so that people living in new homes experience the health, safety, and environmental benefits of a properly-insulated home. Setting the standard lower than this creates a two-tiered system in which people living in older homes have fewer rights. People living in older homes would be more likely to be cold, experience ill health, and pay high energy costs as a result. Rental housing is disproportionately drawn from older housing stock. Setting a low standard also means that the full benefits of insulation to the public purse, through savings on hospitalisation costs, will not be realised (Blick and Davies 2014; Telfar-Barnard et al. 2011; Grimes et al. 2012).

In light of this, we propose:

- That landlords be obliged to insulate homes to current Building Code standard.

The Bill proposes that the standard will not apply to more than 100,000 houses due to the difficulty of adding floor and/or ceiling insulation due to the design, construction or materials used in the house. We do not accept this limiting of the obligations of landlords.

In light of this we propose:

- That all houses should be insulated to the required standard.
- Where introducing floor and/or ceiling insulation is structurally impossible landlords should be required to make other improvements to the dwellings equivalent to the benefit that would be realised by the installation of insulation e.g. draft-stopping, thermal curtains, double-glazing, dry-lining, damp-proof membrane, heating
- That homes are brought up to standard with minimum disruption to tenants, either between tenancies or by phasing the work with fair compensatory reduction in rent based on any disruption to the tenant's

right to quiet enjoyment of the property; that tenants' are informed of this right and their right to redress via the Tenancy Tribunal

b) *The standards do not include standards for safety and heating*

The Bill does not include standards for safety and heating. A recent analysis has found that making low-cost repairs to improve home safety prevents people becoming injured (Keall et al. 2014). Based on this research, an MBIE-commissioned analysis found that the safety-related aspects of a WOF would result in \$456.5 million benefits over 20 years due to a reduction of hazards in the home (Blick and Davies 2014). In addition, the installation of fixed-heaters has been shown to improve health outcomes (Howden-Chapman et al. 2008).

With this in mind, we propose

- That standards for fixed-heating and safety also be introduced, as per the rental WOF recently tested by five councils, the Green Building Council, and Otago University, Wellington (Bennett et al. 2014)

c) *The enforcement regime is flawed*

The Bill requires landlords to provide information to new tenants about whether or not properties meet the new standards for smoke alarms and insulation. The MBIE-commissioned analysis of different ways of enforcing rental housing standards found that under this sort of “market forces” enforcement regime, about a third of landlords will not comply. Under other enforcement models, such as an audit of a sample of properties or a universal inspection “WOF” approach, compliance increased to 80-90% (Blick and Davies 2014). It is not surprising that Treasury found that the proposed regulations failed to meet quality assurance because they were “not confident that the range of potential options has received adequate analysis, particularly for enforcement” (Cabinet Social Policy Committee 2015).

Although it might be argued that tenants, with enough education, will not rent homes where the landlord cannot provide proof that the property meets standards, this is unrealistic and ignores the unequal power balance. The difficulty for many tenants, particularly people on low incomes or those subject to discrimination, in finding homes in tight rental markets, suggests that many tenants will be forced to rent such homes. Under the enforcement regime proposed under this legislation, we can expect many people to miss out on any benefits.

To address this problem, we propose:

- That the Act provide for a more effective enforcement regime, such as the “tax compliance” and “motor vehicle WOF” approaches tested by Blick & Davies (2014).

2. Empowerment of chief executive

We support the new powers that enable the chief executive to investigate and take cases to the Tenancy Tribunal on behalf of tenants in cases of alleged or serious breaches of the Residential Tenancies Act.

However, we do not consider that the powers of the Tenancy Tribunal extend far enough to protect tenants in these serious cases.

We note that throughout history the New Zealand government empowered councils or government departments to take action to improve housing quality, yet in practice those responsible have failed to enforce this regulation and legislation (Ferguson 1994). However:

a) **There is a danger that government will not use its powers to chase up landlords**

In light of this, we propose.

- That the chief executive is required to publicly report on the instances in which he or she has investigated and taken cases to the Tenancy Tribunal in cases of alleged or severe breaches of the Residential Tenancies Act.
- That there is a clear process through which tenants, former tenants, councils, non-governmental organisations, public health bodies, and others interested can ask the chief executive to take action in cases of alleged or severe breaches of the Residential Tenancies Act; that the chief executive is obliged to respond to such requests.

b) **There is a danger that even in such cases a poorly performing landlord will continue to exploit tenants.**

In light of this, we propose

- That the chief executive is empowered to publicly declare a landlord unfit for a specified period of time; that in such cases the chief executive is empowered to arrange any Tribunal-ordered repairs, improvements and relocation costs for tenants and recovering these costs from the landlord.

3. Retaliatory notice provisions

We support the Government's proposal to increase the amount of time available to tenants (from 14 to 28 days) to apply to the Tenancy Tribunal for a declaration that a tenancy termination motivated by the fact that the tenant sought to exercise a right or make a complaint against the landlord is of no effect.

However, we disagree that this will "increase tenants' confidence in exercising their rights" (Office of the Minister of Finance, Office of the Minister of Housing, and Cabinet Social Policy Committee 2014) as a number of problems remain for tenants living in substandard housing who must assert their rights to housing in reasonable repair. The two-week protection against retaliatory notice has not persuaded many tenants living in substandard conditions to ask for repairs, and even with extra time under this protection, many will continue to choose against asking for repairs. There are a number of problems with the Bill as currently drafted.

a) *Protection against retaliatory notice does not ensure that the lease is renewed or that the tenancy is not ended for other reasons*

New Zealand research has shown, that even when insulation is subsidised, some tenants prefer not to assert their rights to housing in a reasonable condition. This is for a variety of reasons, including concern for the landlord's financial situation, experience that the landlord will not take action, and fear that this will mean they cannot ask for more important repairs in the future (McDonald 2014; Smith 2010). In addition, tenants are aware that asking for repairs can sour the relationship with the landlord, which can making a living situation uncomfortable (Bierre 2007).

Tenants under periodic tenancies (under which a landlord only needs give 90, or in some cases, 42 days notice) are aware that if the relationship sours, the landlord may choose to give notice for a different reason, some time after the risk of being seen as having given retaliatory notice dissipates. In the case of tenants under fixed-term tenancies, the landlord may choose against renewing their lease, preferring a less demanding tenant. These risks are disincentives for tenants to assert their rights even with the extended period for protection against retaliatory notice.

In order to address this situation, we propose:

- That the Residential Tenancies Act be amended and policies implemented to ensure that tenants have more secure tenure. Longer, more secure leases, a first-right-of-refusal for renewing leases, and removing the option of a 42 notice period, would encourage tenants to ask for repairs as they would know that the landlord could less easily end their tenancy for reasons that the landlord claims are unrelated to their requests for repairs. Possible ways of improving security of tenure have been discussed recently by, Equb (2015) and MBIE, Auckland Council and the Auckland Co-design Lab (2014).

- That the Residential Tenancies Act be amended so that a landlord must provide a reason in writing for the termination of a tenancy (either via notice on periodic tenancies or non-renewal of a fixed term tenancy) and the validity of that reason can be tested in the Tenancy Tribunal if the tenant believes that the reason is not justified or unfairly disrupts their tenancy.

b) Tenants who assert their rights may be discriminated against in looking for housing in the future.

If a tenant chooses to ask for repairs, gets evicted, is successful in claiming retaliatory and compensated for this, she will still have to spend time and money finding a home in what is, in many parts of New Zealand, is a tight rental market. In doing so, she is unlikely to have a positive reference from her previous landlord, and prospective landlords may look her up in the Tenancy Tribunal database and, with evidence that she is a tenant that stands up for her rights, may decide to rent the home to somebody else. In some cases landlords and letting agencies explicitly ask prospective tenants if they have been named in a Tenancy Tribunal finding. The situation is worse for a tenant with children, on a benefit, or who is a migrant, Pacific, or Maori, as such tenants experience discrimination in the private rental sector (Harris et al. 2006; Saville-Smith and Fraser 2004).

In order to address this situation, we propose:

- That tenants who have not acted unlawfully (for example, have claimed retaliatory notice) be anonymised in the Tenancy Tribunal decision database, and that asking prospective tenants about such rulings be made unlawful. This will prevent them being discriminated against in searching for housing in the future.

4. Work order vs. compensation provision

If the Tenancy Tribunal finds that a house is below standard, the landlord should bring the house up to standard. The current situation, where a landlord can compensate the tenant and then put the house back out for rent, without bringing it up to standard, is unacceptable. We support the government taking action on this situation but note that the Bill as currently drafted provides a loophole.

In order to address this situation, we recommend:

- That Sec 78 be reworded so that it includes all relevant requirements relating to the condition of a rental house. At present it is limited to sec 120c of The Health Act 1956. We support the wording suggested by Lyndon Rogers from Anglican Advocacy in his submission. He suggests that section 78 (2) AA be reworded as follows:

(2AA) Subsection (2) does not apply if the work order, or any part of the work order, relates to any of the following:

(a) Smoke alarms:

(b) Insulation:

(c) a failure to comply with a standard of fitness or other requirement applying by virtue of section 45 [1][a] to [ca] Residential Tenancies Act 1986.

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Appendix: stories from our members

(available at our website, www.rentersunited.org.nz)

Life in a damp home: Kayla's story **By Kayla Healey**

This is my open letter to everybody who has found themselves living in an unsafe home.

You are not alone and people care.

I want to share my experience with unsafe damp and mouldy housing with the world for two reasons.

The first reason is to send a message to people living in undesirable rented housing at the moment. I want you to know that you have rights, that you are not alone and that it will end. No matter how hopeless it all seems your situation is not forever, it will end and you will learn from it.

The second reason is to spread awareness. There are two types of Wellingtonians: people who have had their own bad renting experience and people who have not. If you are one of the "have nots" this story is for you too. The negative effects of a bad housing environment can seep into every corner of your life. I hope that my story will encourage people to rethink how they view renting and renters' rights even if poor housing does not affect them directly.

The story that I have to share with you is one of unsafe housing and the impacts of unsafe housing on both physical and mental health.

I want to begin with a quick background to my story.

Last year was the final year of my Bachelor's degree. Five friends and I found ourselves scrambling to find a flat in late January. When the summer holidays end and students flock back to Wellington in their thousands, there begins a kind of "Hunger Games – flat edition". Losers end up homeless, or alternatively, in a flat like mine.

When things get desperate you take whatever you can get, and what we found didn't seem so bad. A six bedroom place at the bottom of an old apartment complex in the CBD. As our property manager showed us around our future home no warnings were given. As far as we knew the flat was in great shape, nothing to worry about. We hastily signed the lease and the deal was done.

It didn't take long to realise something was not quite right with this new home of ours.

Immediately after moving in, I noticed a strong mouldy smell in my room. Even though it was still summer, the room would become extremely damp during the night, so much so that the walls in my room would drip with condensation, from the roof to the floor.

So I got in contact with my property manager. The next day the apartment's maintenance man and my property manager both came around to see what all the fuss was about. I was informed by both of them that in fact the room did not smell at all and that such levels of condensation were totally normal. They even shared a laugh and recalled times where they too lived in damp flats, just to reassure me that everything was fine and normal. When they left they almost had convinced me I was making a big deal out of nothing.

So I bought a dehumidifier and tried to move on. This sufficed for a short time. But when winter hit, an unwelcome guest began to creep into my room. Mould began to grow, rapidly and relentlessly. Black mould on the walls, blue mould on my furniture and green mould on my clothes. My room displayed a colour spectrum of mould, and despite all efforts, there was nothing I could do about it. My dehumidifier was taking out anything between one to two litres of water a day, yet the thick, cold air in my room never quite seemed to lift.

So once again I got in contact with my property manager, a little more desperate and a little more determined this time. I explained both my attempts to combat the problem on my own and the severity of the issue. Again to no avail.

I have asthma and at this stage I was experiencing a very noticeable decline in my respiratory health. It was during the winter that my room really began to take a toll on my mental health, as well.

Home is where you go home at the end of a long day, a sanctuary away from the rest of the world. Living in this house, I no longer had that place. Going home became a chore and I can speak from experience that getting into a damp bed at the end of the day does not make for a happy student.

To get an idea of just how bad things had become, imagine going to turn on your dehumidifier to find the dehumidifier covered in mould. Bad? Well, try finding that the spacer prescribed to you because you no longer had the respiratory capability to use your asthma inhaler also has mould on it. This was my predicament.

Eventually I sought outside help. With the help of the Victoria Student Advocacy Service and a letter from my doctor at Victoria Student Health, the property managers reluctantly agreed to let me out of my fixed term lease early. They insisted that they were doing me a kindness by letting me out of the lease, and it really was all my fault for not scrubbing and wiping down all

walls and surfaces daily.

Although I was able to end my lease early, it took months of waging a one-woman campaign against a team of property managers, and threats of Tenancy Tribunal action, before any action was taken.

The real problem is right now there is another tenant in that room. Maybe facing a similar battle as me.

Maybe our organisation, Renters United, could give them the validation they need to fight their own battle. And maybe one day, with your support, we could stop nightmare homes like this being a reality here in our city.

Being close to my son means living in an unhealthy home: Glen's story

by Glen (anonymous)

I moved into my house in April 2013. It is a two bedroom house and I pay \$360 a week. My son stays with me three nights a week.

That first winter was cold and damp, and I started a long series of emails to the property manager requesting improvements. There was no action until last winter, when the landlords fitted four panel heaters.

This was a welcome improvement, but only a partial solution. The house haemorrhages heat. The windows are single pane sash windows and the wind howls through the gaps in the frame. If the outside temperature is eight degrees, the hall, kitchen and bathroom temperature is eight degrees.

In winter the house is effectively a single bedroom house. My six year old son sleeps with me because his bedroom is too cold and damp. On very cold nights I sleep in the living room in my three-season down sleeping bag. I sleep well, but it feels a little extreme to bivouac in the living room.

An inspection by the Sustainability Trust, ten days ago, revealed that insulation underfloor and in the roof is up to current standards.

The real problem seems to be inadequate ventilation. Condensation is endemic and mould continues to accumulate on the inadequate canvas blinds in my bedroom. Mildew accumulates on beds and all furniture, including my stereo speakers. I have two dehumidifiers running almost full-time and I turn the futons back each morning to combat mildew. I do not cook or shower at home in order to minimise condensation. The clothes in the built in wardrobes go mouldy within two weeks and my son has a permanently snotty nose.

Damp Rid, dehumidifiers and the panel heaters cannot keep pace with the moisture, and the electricity bills are alarmingly high.

I have shared all this with my property manager. I do not wish to be confrontational. It is not my style. I am a careful occupant and I care for the property for the landlords. Four property managers have been and gone during my tenancy. The current incumbent seems sympathetic but action is frustratingly slow.

The best solution to the problem of dampness, condensation and constant mildew would be to fit a proper ventilation system in the loft space, with a heater unit for cold weather. The owners are unwilling to invest in such a system. They have committed to installing temporary double glazing, which sounds rather like cling film. Additionally, thermal curtains are promised, and maybe even a heat pump, but there is a suggestion that the heat pump may be a step too far for the landlords. They have opted for a cheaper, Bandaid approach, which may be satisfactory, but I have reservations.

Yesterday the property manager's maintenance man turned up to water blast thick moss from the outside steps, which had become very slippery. He also cleared some of the roof gutters, which I requested two years ago. It has taken such a long time to get action.

I have refused to re sign the lease contract until all work is completed, which seems reasonable to me.

Unfortunately, there are very few properties for rent in my price range in Karori, Northland or Kelburn (\$360/week is my max). I am self employed and my income has slipped to \$43,000 before tax in the year to 31 March 2015.

I want to stay near to my son, whose home is about one mile away.

END