

Submission to the Ministry of Business, Innovation and Employment

Reform of the Residential Tenancies Act 1986

Auckland Council, October 2018



Mihimihi

Ka mihi ake ai ki ngā maunga here kōrero,

ki ngā pari whakarongo tai,

ki ngā awa tuku kiri o ōna manawhenua,

ōna mana ā-iwi taketake mai, tauiwi atu.

Tāmaki – makau a te rau, murau a te tini, wenerau
a te mano.

Kāhore tō rite i te ao.

*I greet the mountains, repository of all that has been
said of this place,*

*there I greet the cliffs that have heard the ebb and
flow of the tides of time,*

*and the rivers that cleansed the forebears of all who
came those born of this land*

and the newcomers among us all.

*Auckland – beloved of hundreds, famed among the
multitude, envy of thousands.*

You are unique in the world.

Submission on the Reform of the Residential Tenancies Act 1986

Introduction

1. This submission is from Auckland Council (the council) and has been approved by the Environment and Community Committee.

Executive Summary

2. As housing has become less affordable, home ownership rates have declined, and renting has increased. Renting is no longer a short term step towards home ownership.
3. The council supports the Ministry of Business, Innovation and Employment's intent to reform the Residential Tenancies Act 1986 (the Act) because:
 - the intent of the document aligns to the outcomes set out in the Auckland Plan 2050;
 - the Act seeks to balance the needs of tenants for stable and secure homes with the needs of maintaining adequate protection of landlords' interests;
 - the number of households renting in Auckland is increasing as home ownership rates decline;
 - renting is no longer a short term step towards home ownership, and as it becomes a long term housing solution for many, the number of lifelong renters is likely to increase; and
 - legislation governing tenancies is in need of reform to reflect changes in housing tenure and to meet the needs of renting households, which include families with children, seniors and those with living with disabilities.

Ngā tūtohunga / Recommendations

4. Auckland Council supports:
 - a) Extending the notice period landlords must give under a periodic tenancy from 42 to 90 days.

- b) Removing the ability for landlords to end periodic agreements without providing the tenant with a reason.
 - c) Modifications option one: A landlord has 21 days to consider a request, after which they are deemed to have agreed to reasonable modifications.
 - d) Pet ownership options one and three:
 - i. Option 1: Specify in law when landlords could decline a request to keep a pet: prohibiting landlords from declining a pet request or from including a “no pets” clause in the tenancy agreement, unless doing so was aligned with specific grounds such as the suitability of the property; and
 - ii. Option 3: Pet bond or carpet cleaning requirement: landlords could agree for the tenant to keep a pet and the tenant provides a pet bond lodged with tenancy services.
 - e) Rental bids option two: Prohibit the request and acceptance of rental bids
 - f) The government’s commitment to limiting rent increases to once every 12 months.
 - g) The Government’s objective to improve the quality of boarding housing and increase accountability for operators:
 - i. Option one: Power of entry into boarding houses.
 - ii. Option two: Introduce a compulsory Warrant of Fitness / licensing scheme for boarding houses and their operators.
5. Council also recommends that ambiguous or subjective terms (such as ‘substantially more than market rent’) be clarified so both tenant and landlord understand their rights.

Horopaki / Context

- 6. By international standards, the Act is weak and provides tenants with few rights in comparison with other OECD nations. Nations such as Germany, the Netherlands and Sweden have well developed rental sectors with high levels of legislative protection for tenants¹.
- 7. Reform of the Act provides an opportunity for legislation governing tenancies to catch up with the growing rental sector.

¹ OECD (2011) Housing and the economy: Policies for renovation. In Economic Policy Reforms 2011: Going for Growth. Paris: OECD

8. Auckland has some of the highest housing costs in New Zealand. Finding affordable housing for rent or purchase is increasingly challenging.
9. Home ownership rates are decreasing in Auckland. Renting is no longer a short term option and has become a life-long proposition for many households, not just those with lower incomes. The profile of renters has expanded to include higher income professionals, families with children, seniors and those with disabilities.
10. The 2013 census showed:
 - a) The percentage of households who rented their home was higher in Auckland than in any other region of New Zealand, at 35 percent in 2013 (154,347 households), an 18 percent increase since 2006. The majority of renting households (81 percent) rented privately².
 - b) That since 2001, home ownership has dropped significantly for Aucklanders aged in their thirties, forties and fifties. Māori and Pacific peoples have the lowest levels of home ownership in Auckland at 40 percent and 32 percent respectively³.
11. The ability for life long renters to make a home of their own is usually restricted. Security of tenure and the quality of housing is typically poorer than that of owner-occupiers. Renting households are typically unable to make minor alternations, redecorate, hang pictures or have pets, which can all be important in creating a sense of home.
12. Housing is a basic need and poor housing outcomes undermine the aspirations of the Auckland Plan 2050. Lack of access to good quality, secure and affordable housing may impact on health, education, and employment outcomes, and create barriers for full participation in society. Improving housing outcomes help to address disparities, especially for those most in need.

Tātaritanga me ngā tohutohu / Analysis and Advice

Renting Aucklanders need greater control and security of tenure

13. The council supports the government's proposals to modernise tenancy law to give tenants who are meeting their obligations more choice and control in their tenancy. In particular, it supports:

² Goodyear, R & Fabian, A (2014). Housing in Auckland: Trends in housing from the Census of Population and Dwellings 1991 to 2013.

³ Goodyear, R & Fabian, A (2014). Housing in Auckland: Trends in housing from the Census of Population and Dwellings 1991 to 2013.

- a) Extending the notice period landlords must give under a periodic tenancy from 42 to 90 days
 - b) Removing the ability for landlords to end periodic agreements without providing the tenant with a reason
14. The Auckland Plan 2050 includes tenure security, particularly for those most in need, as a focus area. Secure housing is crucial to people's wellbeing providing stability, continuity and control over their living arrangements. Frequent moves affect people's ability to build community connections and feel established.
 15. Renting households in Auckland are more likely to have moved in the past year (35 percent) compared to owner occupied housing (14 percent)⁴.
 16. There are particular challenges for seniors and children. For seniors, moving to new areas without connections can lead to isolation and security concerns. The ability to age in place is important. It allows people to feel safe in their surroundings, and to be part of a community. Declines in home ownership mean more older people are likely to retire in the private rental sector in coming decades. Finding new rental accommodation late in life can cause significant stress.
 17. A lack of stable, affordable housing may disadvantage children. Of children in rented homes, 28 percent of five to nine year olds and 25 percent of 10 to 14 year olds had moved at least once in the last year⁵. Transience can make it more difficult for children to stay in the same school, build friendships and social relationships, which can impact on their sense of belong and levels of participation and success in education⁶.
 18. Fear of retaliatory action and eviction, combined with lengthy searches to find a new tenancy in desired locations, can mean tenants are unwilling to complain or raise maintenance issues with landlords.

Renters do not currently have the same opportunities to create a home of their own

19. Auckland Council endorses:
 - a) option one relating to modifications: a landlord has 21 days to consider a request, after which they are deemed to have agreed to reasonable modifications.

⁴ Goodyear, R & Fabian, A (2014). Housing in Auckland: Trends in housing from the Census of Population and Dwellings 1991 to 2013

⁵ Goodyear, R & Fabian, A (2014). Housing in Auckland: Trends in housing from the Census of Population and Dwellings 1991 to 2013.

⁶ Bull, A and Gilbert, J. (2007) Student movement and schools – what are the issues? Report prepared by the New Zealand Council for Educational Research for the Centre for Research, Evaluation and Social Assessment

- b) options one and three relating to pet ownership: option one - specify in law when landlords could decline a request to keep a pet: prohibiting landlords from declining a pet request or from including a “no pets” clause in the tenancy agreement, unless doing so was aligned with specific grounds such as the suitability of the property; and option three - pet bond or carpet cleaning requirement: landlords could agree for the tenant to keep a pet and the tenant provides a pet bond lodged with tenancy services.
 - c) removing ambiguities by clarifying what the term “reasonable modifications” includes, with any further disputes being heard by the tenancy tribunal.
20. The Auckland Plan 2050 says secure, healthy and affordable housing is fundamental to the health and wellbeing of Aucklanders. As noted previously, insecure tenure restricts the ability for renters to make a home.
 21. There is a shortage of rental properties suitable for people living with physical disabilities, or that can be modified to sustain or enable tenancies. Current regulations do not provide rights to make alterations to suit their needs, such as handrails or level access showers. Those living with disabilities and the elderly may experience higher levels of stress trying to find suitable properties or landlords which will allow such modifications to take place.
 22. Where such modifications have been made, tenants look for greater levels of security and may not be able to secure a suitable alternative tenancy even with a 90 day notice period⁷.
 23. Modifications which support a warmer, healthy home or help to mitigate climate change should be incentivised. At present, tenants are reluctant to make improvements they see as benefiting the landlord, and may require permission. The landlords may also be unwilling to make the investment in upgrades.
 24. Reasonable modifications could include non-structural changes such as the right to decorate, secure furniture and make minor alterations for accessibility reasons, such as handrails. Structural changes would require landlord consent.
 25. The tenant could be responsible for returning the property to a pre-modified state at the end of the tenancy unless by agreement with the landlord where they inherit the modification. Additionally, the tenant would be responsible rectifying any damage caused by pet ownership.
 26. Pet ownership can have positive effects such as providing companionship and helping people to feel at home. Tenants have no current rights to keep a pet in their rental property and ownership is at the discretion of landlords. For tenants with pets, finding

⁷ Joynt, J L R (2017). Renting in Auckland: tenant, landlord and property manager perspectives. Auckland Council technical report, TR2017/032

new rental accommodation which allows pets at short notice can be challenging and many may be forced to give up their pets.

27. Auckland Council encourages responsible pet ownership and registering dogs with the council.

Updating the Act is an opportunity to clarify rights and responsibilities to fit the modern renting environment

28. The council welcomes changes to the Act which clarify the rights and responsibilities of landlord and tenant and help to address power imbalances.
29. The shortfall of housing, declining rental affordability and competition to secure housing can prevent tenants raising maintenance or other issues with landlords or the tenancy tribunal for fear of retaliatory action, including losing their home. The most vulnerable Aucklanders are more likely to be in poor quality or sub-standard housing.
30. There is evidence that exploitative landlord – tenant relationships exist in Auckland, visible in substandard accommodation such as unhealthy or derelict housing, illegal practices and informal arrangements⁸.
31. The property management sector impacts on private renters. Property managers are not currently required to register or to be licensed. At present, they can charge uncontrolled fees for services which may result in increased charges to the tenants and/or remove profits from landlords. With little regulation, property managers can also dictate terms such as timeframes for maintenance, repairs and even blacklist potential tenants at their discretion⁹.

Aucklanders experience some of the highest housing costs in New Zealand - finding affordable housing is increasingly challenging

32. The council:
 - a) Supports option two: Prohibit the request and acceptance of rental bids
 - b) Supports the government's commitment to limiting rent increases to once every 12 months
 - c) Recommends ambiguous or subjective terms (such as 'substantially more than market rent') be clarified so both tenant and landlord understand their rights.

⁸ Otter, J (2017) Exploitative landlord-tenant relationships in Auckland. Auckland Council discussion paper

⁹ Otter, J (2017) Exploitative landlord-tenant relationships in Auckland. Auckland Council discussion paper

33. Affordability of housing has important implications for Auckland. Attracting and retaining skilled workers, including key workers, are aspirations of the Auckland Plan 2050 which are challenged by unaffordable housing.
34. Those on the lowest income are the most affected by high housing costs. In a tight and competitive rental market, many lose out to higher income earners with greater ability to pay more and secure higher quality accommodation.
35. In a constrained housing market, landlords can be more selective about who they rent to, and at what cost. It is not uncommon for prospective tenants to be asked to state the maximum that they are prepared to pay. Additionally, competition among tenants means some may offer more rent to secure a tenancy.
36. In search of affordable housing, many are pushed to Auckland's periphery with poorer transport connections and amenities. Many households may accept poor quality housing due to a lack of affordable alternatives.
37. Overcrowding is a common response to unaffordable housing and high rental costs. In 2013, over 36,000 households and 200,000 Aucklanders lived in crowded conditions¹⁰.
38. Restricting rent increases to once a year may provide greater security and ability to plan ahead financially for both tenant and landlord.
39. The Residential Tenancies Act allows tenants to challenge rents which are 'substantially more than market rent' through the tenancy tribunal. What constitutes market rent, or its application in the tenancy tribunal, is not defined.
40. A clear formula or mechanism needs to be established in the Act to determine rent increases. To avoid an excessive, annual rate increase, the government could consider linking rent increases to the consumer price index (inflation) or median wage increase. A trusted source of rental information could be cited¹¹ with market rent determined to be within a certain percent of this total based on similar typology, quality and the area.

Greater oversight and improved accountability of boarding houses is needed to protect the most vulnerable residents

41. The council supports the overall objective of improving the quality of boarding houses, and to increase accountability for operators. In particular, council supports:

¹⁰ Goodyear, R & Fabian, A (2014). Housing in Auckland: Trends in housing from the Census of Population and Dwellings 1991 to 2013.

¹¹ Sources of data could include Ministry of Business, Innovation and Employment's lodged rental bond data or core logic rental analysis data

- a) Option two: Introduce a Warrant of Fitness / licensing scheme for boarding houses and their operators, and charging operators a license fee to help cover administration costs
 - b) Option one: power of entry into boarding houses
42. Boarding houses provide essential tenancy services for vulnerable, low income people. The council recognises the difficulties people face to find accommodation when they are in tenuous or challenging circumstances. The council also acknowledges that the quality of boarding houses varies widely across Auckland, and that there are many examples of people living in very poor conditions.
 43. The current Housing Improvement Regulations Part 3: Register of Houses provides for local authorities, if they deem fit, to prepare and maintain a register of all boarding houses in their districts. The council has not exercised this option but does maintain a register. This is difficult to verify and keep up to date without formal registration requirements.
 44. A graduated enforcement model is used to work with owners to raise the boarding house standards to a practical solution and conduct regular monitoring visits.
 45. Auckland Council is working with MBIE to monitor identified boarding houses. MBIE currently has no powers of entry to inspect boarding houses without the owner's permission. They need to be accompanied by warranted council officers who have entry powers under the Health Act.
 46. The council also works with the Ministry of Social Development to identify boarding houses in which vulnerable tenants who are supported by financial assistance reside.
 47. The council can monitor the physical and environmental conditions of known boarding houses through powers granted under the Health Act, Building Code, Housing Improvement Regulations 1947, Resource Management Act, and Auckland Unitary Plan along with Residential Tenancies Amendment Act 2010. Non-compliance is assessed on the basis of significant risk and harm to tenants.
 48. The definition of boarding houses across existing legislation should be clarified.
 49. The council undertakes a programme of proactive boarding house inspections, which was implemented in July 2015.
 50. Compliance has been achieved through issuance of statutory notices rather than prosecution. Observed breaches have included unauthorised changes to the use of buildings, unauthorised building work, safety issues, poor cleanliness, mould growth, overcrowding and poor maintenance.
 51. The discussion document presents two options for improving the quality of boarding houses: self-certification and the Warrant of Fitness model. These are noted in Table

1 below. The discussion document does not specify the “relevant authority” which would be responsible for administration. Table 1 considers the potential role for council if it were the “relevant authority” and estimates the associated costs based on information set out in a report commissioned by MBIE: Sapere (2014) *Cost benefit analysis for a minimum standard for rental housing*.

Table 1: Options for improving the quality of boarding houses, with possible role and costs for council

Options	Possible council role	Estimated enforcement costs
1. Self-certification system	The “relevant authority” could (1) enforce penalties against boarding house operators who didn’t register or made false declarations; (2) ban an operator from certification for severe/persistent breaches.	Not included in Cost Benefit Analysis.
2. Warrant of fitness	The “regulatory authority” would assess premises and operators to determine if the standards were met. Costs would be partly/wholly off-set by charging licence fees.	Estimate of annual Auckland costs is \$9.94 million less licence fees. ¹²

52. The council supports the introduction of a Warrant of Fitness and licensing scheme for boarding houses and their operators. This approach allows for registration and monitoring of boarding houses including enforcement action if necessary. A regime of compulsory registration for boarding house operators recognises that operators of poorer quality houses are unlikely to participate in a voluntary self-certification scheme
53. A risk based incentive approach should be considered for any licensing scheme, where compliant premises are inspected less frequently than non-compliant high risk, high harm premises.
54. Council supports provision of power for government officials power to enter common areas without invitation provided sufficient notice has been given to the landlord.
55. Gaining certification under a Warrant of Fitness programme should involve meeting minimum standards and a more rigorous application of the ‘fit and proper person’ operator requirement. For example people with a past conviction under the Residential

¹² Based on Sapere’s Cost Benefit Analysis estimate of \$27million annually and nationally. Pro rating the costs, based on the proportion of rental properties in Auckland in 2013, the estimated annual cost in Auckland would be approximately \$9.94million.

Tenancies Act should be excluded from continuing to operate a boarding house business.

56. An appropriate funding mechanism for the monitoring of boarding houses could be an annual fee paid by the operators as part of the registering process. If council was the “relevant authority”, it would not be able to meet any residual costs through current baselines.
57. Should the Residential Tenancies Act require registration and a Warrant of Fitness, costs for these could be deducted from any Ministry of Social Development direct payments. Additionally, the Ministry of Social Development could sanction payments only to registered boarding houses that are fully compliant with a current Warrant of Fitness.
58. The council recommends that this process consider the recommendations of the Social Services Committee ‘Inquiry into boarding houses in New Zealand and briefing into long-term caravan park and motor camp accommodation’ August 2014.

Ngā koringa ā-muri / Next steps

59. The council would like to remain connected to the reform of the Residential Tenancies Act 1986. We welcome discussion on our submission to enable reform that considers the impacts on local government and the communities we serve.
60. Council is committed to its leadership role in Auckland and as an employer and will continue to work with central government and others to improve the lives of Aucklanders.