

July 2024

Submission to: Social Services and Community Select Committee

### **Residential Tenancies Amendment Bill 2024**

Citizens Advice Bureau New Zealand | Ngā Pou Whakawhirinaki o Aotearoa (CABNZ) welcomes the opportunity to comment on the Residential Tenancies Amendment Bill 2024. Please contact us if you have any questions or want any clarification about our submission.

Please note that we wish to appear before the Committee to speak to our submission.

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## Introduction

1. We are opposed to many of the amendments proposed in the Residential Tenancies Amendment Bill 2024 ('the Bill'). In particular, we oppose the reintroduction of 'no cause' terminations of tenancy and see this as a regressive step in our tenancy laws, undermining the progress that was being made in improving security of tenure for renters.
2. We are unconvinced that the amendments presented will support the stated policy goal of increasing the housing supply in Aotearoa. Conversely, we are concerned that it will return us to the detrimental position experienced by many clients of the CAB prior to the 2020 law changes. The return to landlords having the right to terminate a tenancy without giving a reason amplifies the power imbalance between landlords and tenants. It has flow on impacts for tenants who may be reluctant to raise issues of concern and to assert their rights for fear of losing their home.
3. Following is a summary of the key points in our submission:
  - We strongly oppose the reintroduction of a landlord's ability to terminate a periodic tenancy without being required to give the tenant a reason.
  - We oppose the application of no cause terminations to social housing tenancies and believe the special provisions relating to terminations of social housing tenancies should be the only additional grounds available for social housing tenancies.
  - We support the inclusion of situations where the tenant's dependant is a victim of family violence for allowing a tenant to withdraw from a tenancy with 2 days' notice.
  - We are opposed to the reintroduction of a landlord's ability to unilaterally end a fixed-term tenancy by giving notice between 90 and 21 days before the end of the tenancy.
  - We are opposed to the reduced notice periods for terminations of tenancy.
  - We support measures that enable tenants to keep pets. We are concerned that the 'reasonable grounds for refusal' that relate to suitability of the pet or the premises insufficiently clear to support an objective assessment.
  - We are unsure whether a pet bond is needed in addition to the general bond and question whether it will introduce additional administrative costs and barriers for low-income tenants. We oppose the removal of the cap for liability for damage by pets.
  - We support changes that enable online bond lodgements and efficient dispute resolution, with the proviso that online services are always alongside non-digital options, and that system-efficiencies are not used in a way that diminishes people's rights or denies access to justice.
  - We are concerned about the retrospective application of this legislation and the detrimental impact on the rights of tenants under existing tenancies.



## About the CAB

4. CAB is a nationwide, and locally based, community organisation that provides a free, confidential, and independent service of information, advice, and advocacy. We work to empower people to resolve their problems, and we use the insights gained from our work with clients to advocate for fair policies and services for all New Zealanders.
5. Our service is provided from over 80 locations around Aotearoa New Zealand by our 2,000 trained CAB volunteers. In the past financial year, CABs helped with around 300,000 client interactions across the range of issues that affect people in their daily lives, including relationship issues, tenancy rights, employment problems, immigration processes, and problems relating to faulty goods or poor service. Our aim is to help people know their rights and feel empowered to act on them.
6. CABs assist with numerous residential tenancy enquiries each year. Enquiries about residential tenancy issues accounted for over 12,000 in-depth client interactions in the last 12 months, with the significant majority of these clients being tenants (approximately 90%). We also provide assistance to landlords, generally those who are managing their property directly and not through property managers.

## Termination of tenancies

### Clause 22 – Reinstatement of ‘no cause terminations’

**We strongly oppose the reintroduction of a landlord’s ability to terminate a periodic tenancy without being required to give the tenant a reason.**

7. Prior to the 2021 amendments that removed no cause terminations, lack of security of tenure was a significant and recurring issue raised by our clients. Client enquiries highlighted the distress people experienced in having to move from their home without any reason being required to justify this substantial disruption to their lives. A return to this uncertain and tenuous situation for tenants is a significant backward step in human rights and natural justice. Reasons we are opposed to the reinstatement of no cause terminations follow.
8. Security of tenure for tenants allows people to make a rental property their home, put down roots in their community and experience the beneficial impacts on their wellbeing that come from having a place of belonging. The importance of security of tenure and research backing this up is clearly set out in the Regulatory Impact Statement relating to tenancy terminations (RIS2024 terminations)<sup>1</sup>. Removing the safeguard that terminations of tenancy must be ‘for cause’ denies people the reassurance that they can make their tenancy their home.
9. It is not unreasonable to have to give a reason to bring a contract to an end. It is a relative anomaly in contract law to have a mechanism to end a contract without cause. In the situations that are exceptions to this practice there are generally still constraints, for example, where there is the option of exiting a contract during a trial or cooling off

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<sup>1</sup> See above note 1, RIS2024 terminations, pp 6-8, paras 13-18.



period. Allowing a landlord to end a residential tenancy agreement with 90 days' notice without reason negates a good faith relationship and shows a lack of respect for natural justice where decisions should be fair and transparent.

10. There are already sufficient, justifiable reasons that allow a landlord to end a periodic tenancy 'for cause'. These are:
  - The premises are to be put on the market.
  - There is an unconditional sale agreement for the premises requiring vacant possession.
  - The landlord is not the owner and their interest in the premises is due to end.
  - The premises are required to facilitate the use of nearby land for a business activity.
  - The premises are to be converted into commercial premises.
  - Extensive renovations are to occur, and it would not be reasonably practicable for the tenant to remain in occupation while the work is undertaken.
  - The premises are to be demolished.
  - The tenant has committed anti-social behaviour.
  - The tenant owes 21 days of rent or more or doesn't remedy the overdue rent.
11. If the reason for termination does not fall within one of these grounds, then we are left with categories like 'because I want to' and 'because I don't like you'. The law should not be used to facilitate this kind of unfair, unreasonable and unjust decision-making, especially in a context where the implications have such a significant impact on people's lives.
12. If landlords are finding it difficult to navigate the termination options in the current legislation, then the emphasis should be on providing information and support to ensure the steps are understood and able to be acted on. Landlords also have the option of using a property manager to deal with such matters. Ideally that property manager would be regulated.<sup>2</sup>
13. There is a lack of evidence to suggest that the reintroduction of no cause terminations will achieve the policy objectives indicated by the Government, as set out in the RIS2024 terminations.<sup>3</sup> These are:
  - *"To increase rental supply."*Which it is stated will be achieved by delivering on a second objective:
  - *"To incentivise landlords into the private rental market by addressing their concerns with existing regulatory settings."*
14. There is a lack of evidence that the availability of no cause terminations will mean property owners who might otherwise leave the market, will be encouraged to stay in

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<sup>2</sup> <https://www.cab.org.nz/assets/Documents/About-us/Social-Policy/Tenancy/FINAL-CABNZ-Sub-Residential-Property-Manager-Bill.pdf>

<sup>3</sup> See above note 1, RIS2024 terminations, p 17, paras 82-85.



the market and rent their properties out because they have ready access to a remedy for 'problem' tenants. Similarly, we have seen no evidence that property owners will be more willing to take on 'risky tenants' that they might not otherwise be willing to give a chance. The suggestion that this will be the case is totally inconsistent with our experience of how the rental market operates and is unrealistic in our current reality where the demand for housing far exceeds supply.

15. Reversing legislation that was intended to improve security of tenure is a regressive measure in the context of our commitments under the International Covenant on Economic, Social and Cultural Rights (ICESCR). It is also a backtrack in the one area of progress identified in Te Kāhui Tika Tangata | the Human Rights Commission's Inquiry into the Right to a Decent Home between 2021 and 2023 – this being the steps taken to improve security of tenure for tenants through the removal of no cause terminations in the 2020 changes to the RTA.

## **Clause 23 – Repeal of provisions for notice terminating social housing tenancies**

**We oppose the application of no cause terminations to social housing tenancies and believe that the special provisions relating to terminations of social housing tenancies should be the only additional grounds available for social housing tenancies.**

16. We strongly oppose the application of no cause terminations to social housing tenancies. We think the need for transparency in relation to exiting someone from social housing is an essential aspect of being a responsible social housing provider. While these tenants are diverse, they generally more marginalised and socioeconomically disadvantaged than other households and may face greater challenges in accessing housing through the private rental market.
17. Section 53B allows for terminations based on the tenant no longer being eligible for social housing, or in the case of a community housing provider (CHP) ceasing to be a registered CHP, or because there is a need to transfer the tenant to alternative appropriate social housing. These grounds, in addition to the various grounds set out above at point 10, should cover all the justifiable reasons why a social housing provider would terminate a person's tenancy.
18. We consider that no cause terminations should never be applied to social housing tenancies, and if additional grounds are required, then section 53B should be sufficient to address any of the issues that are specific to social housing tenancies.

## **Clause 26 – Withdrawal from tenancy due to family violence**

**We support the inclusion of situations where the tenant's dependant is a victim of family violence for allowing a tenant to withdraw from a tenancy with 2 days' notice.**

19. We support the amendments to section 56B of the RTA to enable a tenant to withdraw from the tenancy with 2 days' notice if their dependant is a victim of family violence while residing at the premises with the tenant, and not just if the tenant is subject to family violence. This is a positive change that will support survivors of family violence,



and those who are caring for others who are subject to family violence, to leave their tenancy quickly without concern about ongoing liability for rent.

## **Clause 27 – Landlord’s power to unilaterally end a fixed-term tenancy**

**We are opposed to the reintroduction of a landlord’s ability to unilaterally end a fixed-term tenancy by giving notice between 90 and 21 days before the end of the tenancy.**

20. The 2021 law changes that enabled an automatic roll-over from a fixed-term tenancy to a periodic tenancy have had significant positive impacts for tenants who have previously been caught going from one fixed-term to the next. It has meant that once tenants are beyond the initial fixed term period they have both the benefits of increased security of tenure as well as greater flexibility to exit a lease if their circumstances change.
21. Our preference is that fixed-term tenancies should only be allowed on the basis that there is a genuine reason for the fixed term, as is the case with a fixed-term employment agreement – for example, the landlord has renovations scheduled over the summer period which cannot be carried out with the tenants in the property. This means both parties go into the relationship with an understanding of the need for the fixed term and the reasons why the agreement will come to an end on a particular date. The tenant would also retain the right to give the usual period of notice to exit the fixed-term tenancy. This is not about setting a maximum or minimum term but ensuring that the reasons justifying a fixed term are genuine. The emphasis is on the landlord having a justification to bring the tenancy to an end through a fixed-term agreement, rather than an obligation for the tenant to remain for the fixed term.
22. We are concerned by the notion that people in permanent, secure housing are in some locations being seen as a barrier to having adequate supply to meet tourism demands at certain times of the year.
23. We are also concerned that the proposed change allows for an effective 21-day notice period by the landlord to end a fixed-term tenancy. By removing any control tenants have over whether the fixed-term tenancy will be renewed or will convert to a periodic tenancy, this leaves tenants in an uncertain and precarious position. The fact that a landlord could give only 21 days’ notice that the tenancy will come to an end gives insufficient time for a tenant, which may in fact mean a whole whānau, to find new housing.
24. The Regulatory Impact Statement on these tenancy termination amendments reflects with regard to periodic tenancies that prior to the 2020 changes *“Providing tenants with only 42 days’ notice to leave their tenancy was considered to limit control and choice over future housing, increase the likelihood of being forced to settle for options that would not suit their needs or risk tenants being unable to secure new housing in time.”*<sup>4</sup> We argue that the same applies here.

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<sup>4</sup> See above note 1, RIS2024 terminations, p 12, para 44.



25. In lieu of a change that requires a genuine need for a fixed term, we are in support of maintaining the status quo. The status quo still allows a fixed-term tenancy to be brought to an end when it expires: by agreement between the parties, by the tenant with the appropriate period of notice, or by the landlord if they have grounds for bringing the tenancy to an end.

## **Clauses 22, 27, 28, 29 – Reinstatement of shorter notice periods**

### **We are opposed to the reduced notice periods for terminations of tenancy.**

26. We have not seen any evidence of the need to change the extended notice periods that were introduced in 2020. Tenants have generally been accepting of the need to give 28 days' notice, and the issue for landlords in our client enquiries has been more about whether the grounds for termination are being properly applied.
27. There is also a lack of evidence that increased notice periods have had any negative impact on the 'policy problem' of housing supply.
28. A reduction in notice periods by landlords creates greater stress and uncertainty for tenants, with reduced time to find a suitable new home and to navigate all the resulting impacts across all aspects of the life of the tenant and their whānau. The very real challenges here are further exacerbated in the context of our tight rental market.
29. We support the preferred option in the 2019 RIS that terminations by landlords for cause relating to sale, renovations and use for family, should consistently require 90 days' notice.

## **Pets**

### **Clause 16 – Amendments relating to when a tenant can have a pet**

#### **We support measures that enable tenants to keep pets. We are concerned that the 'reasonable grounds for refusal' that relate to suitability of the pet or the premises insufficiently clear to support an objective assessment.**

30. We support the commitment to improve tenants' opportunities to have pets in their home. Pets can contribute significantly to the wellbeing of individuals, whānau and households and increase the sense of a house as a home.
31. Current rules about whether tenants can have pets in rental properties are unclear, however some recent Tenancy Tribunal decisions have ruled that blanket 'no pets' clauses in tenancy agreements are unenforceable because this may breach a tenant's right to quiet enjoyment. While the proposed changes help shift the culture towards one where having pets is more normalised in rental housing, we are concerned that the use of pet bonds and the uncapped liability for pet damage may in fact diminish people's rights.
32. In a tight rental market, people with pets may still face the barrier of securing a rental property as their rejection for a tenancy is likely to be hidden in the tenant selection process. The proposed law change will not necessarily change this, though over time





we would hope to see increased acceptance of ‘tenants with pets’ as part of the providing rental accommodation.

33. We are pleased to see that the landlord will have to provide a written response to the tenant’s request to keep a pet, and where consent is refused, will have to provide written reasons for the refusal. We are anxious however, about the workability of proposed section 42F *Reasonable grounds for prohibiting a tenant from, or refusing tenant consent for, keeping a pet*. The broad categories of: ‘the premises are not suitable for the pet’ and ‘the pet is not suitable for the property’ invite subjective assessment by the landlord. The legislation, as drafted, already deems these to be ‘reasonable grounds’ for refusal, but there is no requirement that the decisions about suitability are on reasonable, objective, evidence-based grounds. This could lead to more disputes that require the involvement of the Tenancy Tribunal.
34. It would also be important to ensure that refusal on the basis that the ‘premises are not suitable for the pet’ could be revisited if the tenant has a proposal for reasonable modifications to the property that address any concerns that have been raised – for example, the installation of a cat door or fencing an area of the property.

## **Clauses 8 and 20 – Pet bonds and liability for damage by pets**

**We are unsure whether a pet bond is needed in addition to the general bond and question whether it will introduce additional administrative costs and barriers for low-income tenants. We oppose the removal of the cap for liability for damage by pets.**

35. We recognise that some landlords and property managers may be anxious about the impact of pets, particularly any damage to or degradation of the value of the property, and the costs associated with any repairs. This appears to be the basis for establishing a new system for pet bonds. However, it is unclear whether a separate pet bond is justified. The Tenancy Tribunal data provided in the *Regulatory Impact Statement: Residential Tenancies Act 1986 amendments to introduce pet bonds and address other pet related matters*<sup>5</sup> indicates that current bonds of up to 4 weeks’ rent appear to be sufficient to cover typical pet damage costs.
36. We are not convinced that a pet bond is necessary and are concerned about the additional administrative costs and the barrier this will be for low-income households who may already be reliant on MSD for support to pay their tenancy bond. (Will MSD help with pet bonds too?)
37. If pet bonds are introduced, we support the separation of general bonds from pet bonds, so that tenants can seek an inspection and refund of their pet bond during the

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<sup>5</sup> *Regulatory Impact Statement: Residential Tenancies Act 1986 amendments to introduce pet bonds and address other pet related matters* (RIS2024 pets), para 4-5  
<https://www.hud.govt.nz/assets/Uploads/Documents/Cabinet-papers/Regulatory-Impact-Statement-Residential-Tenancies-Act-1986-amendments-to-introduce-pet-bonds-and-address-other-pet-related-matters-REDACTED.pdf>





tenancy if their circumstances change and a pet bond is no longer required – eg, the pet is rehomed or dies.

38. Our primary concern in relation pets is the proposal to remove the cap on liability for damage that applies generally in tenancy law – this being that the tenant is liable for the cost of repairing careless damage up to 4 weeks' rent or the landlord's insurance excess (if applicable), whichever is lower. We believe that the rationale for applying a cap on liability is relevant whether it is the tenant who causes damage, their guest, child, or pet. There shouldn't be an assumption that damage will be done, just as there shouldn't be an assumption that tenants with young children present a greater liability. If damage is done, it should be able to be dealt with in the same way as any other damage to property.

## Tenancy Tribunal and administrative matters

### Clauses 10, 12, and 13 – online bond lodgement and clauses 32 and 33 – decisions on the papers

**We support changes that enable online bond lodgements and efficient dispute resolution, with the proviso that online services are always alongside non-digital options, and that system-efficiencies are not used in a way that diminishes people's rights or denies access to justice.**

39. We support the amendments to facilitate online bond lodgement. We think this is a useful and sensible change. However, we caution that the ability to lodge online must always be provided alongside other options so that people who are digitally excluded do not face barriers carrying out these processes.
40. We support the capacity for the Tribunal to decide a proceeding on the papers but think this should only be an available option if it is agreed to by both parties. If either party prefers to be heard in-person, then this option should be available to them. The Tenancy Tribunal is not designed as a place for professional representatives, so participants should always be given the right to choose how they can best express their case. We support the limitation in the legislation that clarifies that a decision on the papers is not an available option when the matter relates to the termination of a tenancy or a landlord's rights of entry to the premises.

### Concern about retrospective effect

**We are concerned about the retrospective application of this legislation and the detrimental impact on the rights of tenants under existing tenancies.**

We do not support the retrospective application of changes that diminish the rights of tenants. Legislation changes are seldom retrospective, and with good reason. *"The starting point is that legislation should not have retrospective effect. It should not interfere with*



*accrued rights and duties.*”<sup>6</sup> Those who have already entered a tenancy agreement should be able to rely on the beneficial terms that applied at the time. This is of particular concern in relation to the application of no cause terminations, removal of the tenant’s right to shift from a fixed-term agreement to a periodic one, and reduced notice periods.

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Thank you for the opportunity to provide a submission on the Residential Tenancies Amendment Bill.

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<sup>6</sup> Legislation Guidelines: 2021 edition, Chapter 12. Affecting existing rights, duties and situations and addressing past conduct <https://www.ldac.org.nz/guidelines/legislation-guidelines-2021-edition/issues-relevant-to-all-legislation-2/chapter-12>