Timaru District Council

Submission on reform of the Residential Tenancies Act 1986

To Ministry of Business, Innovation & Employment

Introduction

1. The Timaru District Council welcomes the opportunity to comment on the proposed reform of the Residential Tenancies Act.

2. This feedback is provided by the Timaru District Council, 2 King George Place, Timaru. The contact person is Mark Low Corporate Planning Manager. I can be contacted at Timaru District Council, phone (03) 687 7200 or PO Box 522, Timaru 7940.

3. The Timaru District Council is a local authority in the South Island serving over 46,000 people in South Canterbury. The main settlement is Timaru, with other smaller settlements of Geraldine, Pleasant Point and Temuka. The Council is made up of a Mayor and nine Councillors serving three wards. Three Community Boards also exist in the District.

Timaru District Council's Social Housing

4. Timaru District Council owns and manages 236 social housing units that provide quality but affordable housing, to compliment the central government rental housing available in the district.

5. The Council provided rental units are either one bedroom or bedsit units. There is no provision for family housing. Units are part of a communal property, with between 6 – 18 units on any one site. Access ways and outside space are not fully fenced or private for individual units.

6. The social housing activity is self-funding, without any rates input. Rentals are set at a level that enables the necessary maintenance and improvements to be undertaken. Rental increases are kept at a modest level – typically $5-$10 per annum to enable these improvements to be carried out.

7. All social housing tenancies are open ended.

Response to Proposed Reforms

8. Termination Provisions

Removing the ability for landlords to end periodic agreements for any reason and without needing to tell the tenant the reason.

Question 2.1.1 – Discussion Document

In the case of anti-social behaviour it is fair and reasonable for a landlord to issue a notice to the tenant to improve their behaviour; however, this should be on a case by case basis. If there is a risk that the notice may cause victimization and other tenants are worried about verbal or physical harassment, the landlord should be able to take the case directly to the Tenancy Tribunal with a view to terminating the tenancy.

Question 2.1.2 – Discussion Document

The examples listed in paragraph 38 are a fair example of the kinds of behaviour that would interfere with the reasonable peace, comfort, or privacy of other tenants or neighbours, however, the reasons are not exhaustive. Certain mental illnesses create situations (e.g. yelling at night at things the tenant cannot see – not directed at other tenants) that interfere with the quiet enjoyment of other tenants and cause fear and trepidation for those living alone, particularly the elderly.

Question 2.1.3 – Discussion Document

Kinds of evidence a landlord could produce to prove a tenant was behaving in an anti-social way if affected people such as neighbours did not want to speak out include the examples given, i.e. photographs, letter, affidavit, audio recording, and video recording. There are some disadvantages with photographs, audio and video recording in that these may only capture a retaliation, or part of the picture rather than the complete picture of what has been happening. A landlord has to be aware that there is a risk that the "anti-social" tenant is being victimized by other tenants. In the past we have asked neighbours to record dates and times when anti-social behaviour has been observed or they have been intimidated. We have also suggested that if they are frightened they should ring the police. This gives the landlord access to a police report as proof of anti-social behaviour.

Generally extending the notice periods landlords must give tenants under a periodic agreement from 42 to 90 days.

Question 2.1.4 – Discussion Document

The impact of extending the notice period from 42 to 90 days if a property has been sold may impact that the final sale does not go through. Not only does the landlord have to wait 90 days for vacant possession but they will then have to clean and possibly make repairs before the purchaser can take possession. If the purchaser has to wait too long they may decide that another property would be less inconvenient.

When a tenanted property is to go on the market for sale, it would be prudent for a landlord to give written advice of this so that the tenant is aware early that when the sale is unconditional they will have 42 days to vacate. If the property is required for an employee, a family member, or for the landlord, 42 days should remain applicable. In the case of an employee, it may be the clincher to attain/retain the employee. If it is a 90 day wait the employee may be lost to the landlord. It is the landlord's property and if it is required for personal use or the use of the landlord's family, 42 days is sufficient. In all cases, the premises will have to be inspected, cleaned, and, if necessary, repairs completed before anyone can move in.

Question 2.1.5 – Discussion Document

When a property is sold, the new owner should be able to require vacant possession to do what they wish with the property, within the terms of the relevant local government planning and consenting process. Tenants should only be able to remain in place if the new owner bought the property as a rental and agreed with the vendor to leave the tenants in place. If the ability to have vacant possession is taken away, the property may not sell.

Question 2.1.6 – Discussion Document

If a landlord wishes to sell the property and requires vacant possession before the property is advertised for sale, the ability to terminate the lease with 90 days notice is reasonable.

Question 2.1.7 – Discussion Document

Landlords should give evidence of the reason for terminating a lease only if it is required by the Tenancy Tribunal. In the case of termination for anti-social behaviour, some evidence may leave other neighbouring tenants vulnerable. In other cases, some evidence may only be verbal, i.e. threats to damage the landlord's property, or to assault the landlord or other tenants. This should be treated on a case by case basis.

Question 2.1.8 – Discussion Document

It would be difficult to quantify a "false" reason for termination. At the time and to the best of the knowledge of the landlord, the reason for termination should be correct ("true") and in accordance with the Residential Tenancies Act 1986. For example, the landlord wishes to fully renovate/upgrade the premises and terminates the tenancy in expectation of doing so. Once the premises are empty, the landlord asks contractors for quotes of work, discovers it is not viable, and so completes just a general cosmetic tidy up before either re-letting or selling.

Question 2.1.12 – Discussion Document

The impact of removing the 90 day "no cause" terminations is that landlords will be much more circumspect about who they allow to rent their premises. If there is any sign, no matter how small or circumstantial, real or perceived, that a prospective tenant may cause problems, they will not be offered the chance to rent the premises.

Questions 2.1.13 & 2.1.14 – Discussion Document

We consider the 90 day "no cause" termination provision is appropriate and should remain, as it meets the needs of public housing providers needing to terminate a tenancy for any justifiable reason.

Question 2.1.15 – Discussion Document

Not all landlords would necessarily be inclined to enter into fixed term tenancies. It would depend on the number of premises the landlord has to rent. By putting a fixed term tenancy in place, rather than periodic or open ended, the extra administration required to regularly review the tenancy would mean rents would have to increase to cover the extra costs.

9. Tenancy Agreements

Providing tenants with a right to extend their fixed-term tenancy agreement.

Specifying a minimum length for fixed-term agreements.

Council does not have fixed-term tenancies for social housing.

Making all tenancies open-ended and only able to be terminated by landlords when certain criteria apply.

Question 2.1.20 – Discussion Document

The landlord should have the option of providing fixed-term, periodic, or open-ended. In some circumstances a fixed-term is relevant, e.g. if selling/ upgrading/strengthening is programmed for a future date. Landlords may be put off if they are only allowed to rent their premises on open-ended tenancies.

10. Tenant and Landlord Responsibilities

Tenant Responsibilities

Question 2.2.3 – Discussion Document

A tenant's responsibility to keep a property "reasonably clean and tidy" doesn't spell out exactly what is required by a landlord. Some tenants do not understand that a bathroom window should be opened after showering so that the steam can escape and thus prevent the growth of mould on ceilings and walls. The mould would also be stopped if a bathroom was cleaned at least once a week. Tenancy Agreements need to be more robust and spell out exactly what "reasonably clean and tidy" means, e.g., opening windows to air the premises regularly, cleaning the bathroom once a week, no hoarding permitted.

Question 2.2.6 – Discussion Document

In some cases there are sufficient repercussions for tenants not meeting their obligations. It is very difficult to remove tenants who do not keep the property as clean and tidy as we would like and we cannot force them to clean the property. The

tenancy agreement would need to be more robust and spell out exactly what the landlord requires so that those that do not look after the property as expected may be served notice but this could then frighten off those who as a matter of self-respect keep their homes tidy and clean.

Landlord Responsibilities

Question 2.2.9 – Discussion Document (Landlord response)

Current obligations as to what a tenant may expect from the landlord in the way of maintenance are not entirely clear. It should be spelt out in the agreement, e.g. Landlord will maintain the electrics and plumbing. The application for Council social housing should also spell this out so that tenants are aware of obligations when they are applying for accommodation.

Question 2.2.12 – Discussion Document (Landlord response)

In the first instance, the tenant should be responsible for keeping heating equipment and ventilation operationally effective (e.g. cleaning). In the case of ventilation, this should be used on a regular basis to ensure the reduction of moisture related problems within the property. Rangehoods should be included in this and they should be cleaned often by the tenant. As to any maintenance of the equipment itself, as a landlord we prefer to attend to this but the tenant should be obligated to contact the landlord as soon as there is a problem so that it does not become worse.

Question 2.2.13 – Discussion Document (Landlord response)

If a landlord makes improvements to a property to make it warmer or drier, the tenant should be obligated to use those improvements simply because it makes their home warmer, drier, and healthier. If they think there is a problem with the improvements and they are worried about using them, they should discuss with the landlord.

11. Modifications

Tenants have the right to make specified modifications

Question 2.3.2 – Discussion Document

Most tenants have only asked for smallish modifications, e.g. shelves on wall, gardens, sheds. We try to accommodate the majority of these requests but it is not always possible because of, for example, space in the grounds of our communal properties.

Question 2.3.3 – Discussion Document

Yes, a tenant should be under an obligation to reverse any modifications they make in rental properties, unless the landlord agrees to take on the modification. The modification may have been purpose built for the tenant and may not be suitable for other tenants. The landlord may not wish to keep the modification in his property.

Question 2.3.4 – Discussion Document

Yes, if the landlord does not wish to take on a modification at the end of a tenancy and the tenant does not reverse it, this should be an unlawful act with a potential financial penalty. If it is not removed, the landlord would then have to remove it at the landlord's own expense. This will also take time and the property will not be able to be tenanted until the work is complete. The tenant should be liable for the expense of the removal and any loss of earning.

Question 2.3.5 – Discussion Document

It is reasonable for a landlord to turn down a tenant's request to make minor modifications to a rental property if the landlord does not want them made. The property belongs to the landlord and if the landlord feels the modification will detract from the property, affect the structure, negate the effectiveness of ventilation/heating systems he/she should have the right to reject the request.

Question 2.3.7 – Discussion Document

Depending on the modification, a landlord should be able to require the tenant to use a suitably qualified trade person. If it is an electrical, plumbing, or joinery modification, a qualified trade person should be used. This should be taken on a case by case basis.

Question 2.3.8 – Discussion Document

There are no modifications that could be put on a list of alterations tenants have a right to make without seeking their landlord's permission. The property is owned by the landlord. Not only do they have a right to be asked prior to a modification it is common courtesy.

Landlords have 21 days to consider a request, after which they are deemed to have agreed to minor modifications

Question 2.3.10 – Discussion Document

We would prefer the status quo but if it is definitely going to be one or the other, Option One would be the preferred option. However, the 21 days must be the same as for notices (i.e. not from the date of the letter but if by post, on the fourth working day after the date of the letter); if delivered, on the second working day after the date of the letter, etc. as per the Act.

12. Pets

Specifying the circumstances when a landlord could decline a request to keep a pet

Question 2.4.1 – Discussion Document

A landlord should, without a reason, be able to refuse a tenant's request to keep a pet. If it has been made clear in the tenancy agreement that no pets are allowed it is consistent to say no.

Question 2.4.3 – Discussion Document

Allowing tenants to keep pets has in some cases been okay and in others not. We allow only one cat and or two birds. Cats have caused damage to walls and carpet and sometimes the owner has not cleaned up after the cat and the smell of cat urine/faeces permeates the property. If cats are fed outside or food left inside and not eaten, other cats have entered the property. Cats also wander and enter the flats of tenants who are not always receptive to these visits.

Question 2.4.4 – Discussion Document

We have withheld permission for a tenant to have a pet when they have asked if they could have a small dog. Our flats are communal and a small dog barking would disturb other tenants. Once it is agreed that one tenant may keep a dog, the floodgates are open and it is very hard to turn down other tenants.

Question 2.4.6 – Discussion Document

It would not be effective for tenants to give reasons why they should be able to keep pets in rental properties. Most tenants want companionship and/or security. Because we want to ensure the quiet enjoyment and safety of other tenants and we do not want damage to our properties, we have set our rules at one cat and or two birds.

Question 2.4.7 – Discussion Document

Premises that are inappropriate for some types of pets are those with communal living, no fences, flats that are predominantly tenanted by elderly persons.

Introducing pet bonds or carpet cleaning requirements

Question 2.4.8 – Discussion Document

For potential damage to rental properties by pets, tenants should be liable to pay for the making good of all damage caused with no cap. Rather than the landlord having to claim insurance and the tenant paying excess only, the tenant should have insurance to cover the potential damage and claim against their own insurance.

13. Setting and Increasing Rent

Clarifying when tenants can challenge rent increases that are above market rent

Question 3.2.1 – Discussion Document

This is not applicable to Council our social housing rents are under market rent. If Council were to set rents above market rental, we consider any application for a rent adjustment should be made within 30 days to Tenancy Tribunal. The landlord has to give 60 days notice of an increase in rental. By having the application in place prior to the date of increase the amendment may be made and put in place within the 60 days.