



# Cabinet Social Wellbeing Committee

## Minute of Decision

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### Reform of the Residential Tenancies Act 1986: Minor Fittings, Rent Setting and Access to Justice

**Portfolio** Associate Housing (Public Housing)

On 16 October 2019, the Cabinet Social Wellbeing Committee:

#### Background

- 1 **noted** that the government initiated a Reform of the Residential Tenancies Act 1986 (the Act) in July 2018 [SWC-18-MIN-0080];
- 2 **noted** that the paper under SWC-19-SUB-0146 is the third in a suite of three that the Associate Minister of Housing (Public Housing) has brought to Cabinet in 2019 on the Reform of the Act, and provides for measures to improve tenants' wellbeing and enable them to feel more at home in their properties, while ensuring that landlords are able to protect their asset and their interests;
- 3 **noted** that on 25 September 2019, the Cabinet Social Wellbeing Committee considered the first paper in the suite, and agreed to changes to improve fairness in the Act [SWC-19-MIN-0142];

#### Adding minor fittings to rental properties

- 4 **noted** that the current rights and obligations around minor fittings in the Act are not functioning optimally because of a lack of clarity as to when a fitting is reasonable, and a general lack of knowledge and understanding of the law;
- 5 **agreed** that decisions around adding minor fittings should be reasonable and based on the particular circumstances;
- 6 **agreed** that minor fittings have the following attributes:
  - 6.1 present a low risk of damage to the property;
  - 6.2 is of a nature that allows the property to be easily returned to a reasonably similar condition at the end of the tenancy;
  - 6.3 does not pose a health and safety risk that is not able to be sufficiently mitigated, including during installation and removal;
  - 6.4 have no impacts on third parties; and

- 6.5 require no consents under law;
- 7 **agreed** that tenants must request permission to install a minor fitting and that landlords would only be able to decline a request in circumstances where the proposed fitting:
- 7.1 is not low-risk for installation and removal;
  - 7.2 means that remediation back to a similar state is not reasonably possible;
  - 7.3 will disturb hazardous materials;
  - 7.4 poses a health and safety risk that is not able to be sufficiently mitigated;
  - 7.5 will require legal consents;
  - 7.6 will compromise existing obligations the landlord has;
  - 7.7 will compromise the structural integrity, waterproofing or fundamental safety or character of the building; or
  - 7.8 will have an unreasonable impact on third parties;
- 8 **agreed** that it will be an unlawful act for a landlord to refuse a tenant's request to install a minor fitting for reasons other than those set out in the Act;
- 9 **agreed** that the new unlawful act set out in paragraph 7 will have corresponding exemplary damages of up to \$1,500;
- 10 **agreed** that landlords may place reasonable conditions around how the minor fitting is installed;
- 11 **agreed** that a landlord must respond to a request for a minor fitting within 21 days, and that failure to do so without reasonable excuse would be an unlawful act with corresponding exemplary damages of up to \$1,500;
- 12 **agreed** that, at the end of a tenancy where a minor fitting has been agreed to, the tenant must reinstate the property to a reasonably similar standard unless otherwise agreed with the landlord;
- 13 **agreed** that if a tenant does not remediate the property as required by the decision in paragraph 11, the tenant will become liable for the cost of the remediation and the failure would be an unlawful act with corresponding exemplary damages of up to \$1,500;

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**Setting and increasing of rent**

- 18 **noted** that rental bidding has the potential to exacerbate affordability issues in the market because it leads to higher rents being paid for properties than originally advertised;
- 19 **agreed** to prohibit landlords from:
- 19.1 asking tenants to pay more than the advertised rental price for a property;
  - 19.2 organising rental auctions to determine the rent payable to secure the tenancy;
  - 19.3 offering to make an applicant the successful tenant if they agree to pay more rent for the property; or
  - 19.4 advertising rental properties with no rental price listed;
- 20 **noted** that tenants will still be able to offer to pay more than the advertised rental price for a property and landlords would be able to accept this;
- 21 **agreed** to make it an unlawful act for landlords to engage in the conduct outlined in paragraph 19, with exemplary damages of up to \$1,500 which can be issued only once per incident of the behaviour outlined;
- 22 **agreed** to make engaging in the conduct outlined in paragraph 19 a strict liability infringement offence subject to a fee of \$500 or a maximum fine of \$1,000 for a landlord with five or fewer tenancies, and a fee of \$1,000 or a maximum fine of \$2,000 for a landlord with six or more tenancies;
- 23 **noted** that most rent increases take place at intervals of once every twelve months or longer and that support was raised in consultation for standardising this practice across the market;
- 24 **agreed** to change the law on limiting rent increases from once every 180 days to once every twelve months, except for Income Related Rent in public housing as provided for in the Public and Community Housing Management Act 1992;

**Access to justice and privacy**

- 25 **noted** that the Act can be interpreted as providing for the Tenancy Tribunal to anonymise its written decisions, but Tenancy Adjudicators and the public are unclear about how and when this can apply;
- 26 **agreed** to clarify, for the removal of doubt, the Tenancy Tribunal's general power to suppress identifying details from the Tenancy Tribunal decision if this is in the interests of either party and the public interest;
- 27 **agreed** to introduce a new default position that identifying details will be removed from Tenancy Tribunal decisions in the following circumstances;
- 27.1 where a party has wholly or substantially successfully enforced their rights or wholly or substantially defended a case;
- 27.2 that party makes an application or request for identifying details to be removed; and
- 27.3 the Tribunal does not consider that any specific attributes of the case or the conduct on the party seeking anonymisation mean there would be public interest in the identifying details being published;
- 28 **agreed** that the existing criminal offence for breaching a suppression order, with a maximum penalty of \$3,000, apply to the above clarified and proposed suppression orders;

**Assignment and fees charged upon consent to assignment, subletting or parting with possession of the premises**

- 29 **noted** that a discrepancy exists where tenancy agreements can include a clause to prohibit assignment, but assignment requests under tenancy agreements without that clause can only be declined under the Act when it is reasonable to do so;
- 30 **agreed** that assignment requests can only be declined if this is reasonable in the circumstances, regardless of whether a clause prohibiting assignment is included in the agreement, but that public housing providers retain the ability to prohibit assignment in the tenancy agreement;
- 31 **noted** that while the Act allows landlords and property managers to recover expenses reasonably incurred upon giving a tenant consent to assignment, subletting, or parting with possession of the premises, it is difficult for tenants to ascertain if a fee is reasonable if the details of the costs are not disclosed;
- 32 **agreed** that landlords and property managers must provide breakdowns of all costs, conditions and processes they are applying upon giving a tenant consent to assignment, subletting, or parting with possession of the premises, and that failure to do so would be an unlawful act subject to \$750 exemplary damages;
- 33 **agreed** that the failure to provide the information outlined in paragraph 32 would also be a strict liability offence subject to a fee of \$500 or a maximum fine of \$1,000 for a landlord with five or fewer tenancies, and a fee of \$1,000 or a maximum fine of \$2,000 for a landlord with six or more tenancies;

## Optimising the healthy homes standards

- 34 **noted** that the Healthy Homes Guarantee Act 2017 will require landlords to produce a statement about their compliance with the healthy homes standards, and the Residential Tenancies Amendment Act 2016 requires landlords to include a statement about various matters in the tenancy agreement, including insulation in the rental property;
- 35 **agreed** that landlords producing a healthy homes compliance statement need not also produce an insulation statement as currently required by the 2016 amendments;
- 36 **agreed** to allow tenants to request healthy homes compliance documents from landlords so that they can assess and enforce compliance if necessary, and that failure to do so within 21 days of a request be an unlawful act subject to exemplary damages of \$750;
- 37 **agreed** that the failure to provide the information outlined in paragraph 34 would also be an infringement offence subject to a fee of \$500 or a maximum fine of \$1,000 for a landlord with five or fewer tenancies, and a fee of \$1,000 or a maximum fine of \$2,000 for a landlord with six or more tenancies;

## How the penalties fit together

- 38 **agreed** that an infringement fee or fine or exemplary damages cannot be imposed in respect of the same breach of the Act;
- 39 **noted** that a tenant may seek compensatory damages, whether or not an infringement fee or fine or exemplary damages has already been imposed in respect of the same breach of the Act;

## Financial Implications

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43 **authorised** the Associate Minister of Housing (Public Housing) to issue drafting instructions to the Parliamentary Counsel Office to draft legislation giving effect to Cabinet's agreement to the decisions above;

44 **authorised** the Associate Minister of Housing (Public Housing) to make minor policy decisions on issues arising throughout the drafting process;

45 **noted** that the Associate Minister of Housing (Public Housing) intends to introduce legislation to Parliament in the first quarter of 2020.

Vivien Meek  
Committee Secretary

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**Present:**

Rt Hon Winston Peters (Chair)  
Hon Kelvin Davis  
Hon Chris Hipkins  
Hon Andrew Little  
Hon Dr David Clark  
Hon Nanaia Mahuta  
Hon Stuart Nash  
Hon Kris Faafoi  
Hon Willie Jackson  
Hon Aupito William Sio  
Jan Logie, MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for SWC  
Office of the Chair

**Hard-copy distribution:**

Associate Minister of Housing (Public Housing)