

New Renting Regulations: The Lease You Can Do

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A number of changes to the Residential Tenancies Act 1986 are set to come into force. These changes are aimed at improving tenants' security and stability and better balancing the rights and responsibilities of tenants and landlords, as well as helping tenants to feel more at home.

The main changes include:

- Rent can only be increased every 12 months.
- Changes to periodic and fixed term tenancy agreements aimed at increasing housing security for tenants.
- Making it easier for a tenant to assign their lease and more difficult for landlords to terminate a lease on the basis of anti-social behaviour.
- Landlords cannot use rental bids.
- Tenants can now make minor changes to the property and it is easier for them to have ultra-fast broadband installed.

These changes are to be phased in over the next year in three stages.

Stage I: Changes to Take Effect from 12 August 2020

Rental Increases

Rent increases are now limited to once every 12 months – rather than every six months under the previous legislation.

As of 26 March 2020, there has been a freeze on rent increases for an initial period of six months. This means landlords will not be able to implement a rent increase until after 25 September 2020 and any rent increase notices provided to tenants from 12 August on must comply with the new 12 month rule.

Stage II: Changes to Take Effect from 11 February 2021

Changes to Periodic Tenancy Agreements

A periodic tenancy agreement has no fixed end date. It continues until either landlord or tenant gives notice to end the tenancy.

Under the new legislation, landlords are now required to provide reasons for why a periodic tenancy is being brought to an end (rather than just terminating by notice).

Legitimate reasons would include that the owner or a family member is going to move into the house; that the landlord requires the house for an employee (but note, this possibility must be clearly stated in the tenancy agreement); that the premises are to be converted into commercial premises; because extensive renovations to the property are needed; or because the premises are to be sold or demolished.

Strict requirements have also been introduced around the timeframes within which these actions have to take place, so as to ensure the reason given is a legitimate one. For example:

- Where the landlord requires the premises for an employee, the employee must move into the property within 63 days of the tenancy being terminated.
- Where the premises are to be converted into commercial premises this must take place within 90 days of the tenancy being terminated, and the premises must be used for a commercial purpose for at least 90 days.
- Where the tenancy needs to be terminated to allow for extensive renovations, material steps have to be taken to begin such renovations within 90 days of the termination date.
- Where the premises are to be demolished, this must take place within 90 days of the termination date.

The notice period that must be provided to tenants if the landlord wants to sell the property or move into it themselves has also been extended from 42 days to 63 to 90 days.

Changes to Fixed-Term Tenancy Agreements

The legislation already provided that a fixed-term tenancy defaults to a periodic tenancy at the end of the fixed-term.

Previously, a landlord could prevent this from happening simply by giving the tenant written notice of their intention not to continue with the tenancy. However, the circumstances in which a fixed term may *not* continue as a periodic tenancy have now been revised to include:

- Where the parties agree.

- Where the tenant gives 28-day notice of their intention not to continue with the tenancy.
- Where the landlord or tenant terminates the tenancy in accordance with the provisions of the Act.

These changes will make it harder for landlords to stop a fixed-term tenancy from becoming a periodic tenancy.

Assignment

Previously, a tenancy agreement could prohibit a tenant from transferring their interests and responsibilities to a new tenant. Now, all assignment requests *have* to be considered by the landlord and the landlord cannot withhold their consent unreasonably. Landlords are also required to respond to such requests in writing and within a reasonable timeframe.

Termination by Landlord

It will now be more difficult for landlords to terminate a tenancy agreement on the basis of anti-social behaviour. To terminate a tenancy for anti-social behaviour, the landlord must:

- give written notice to the tenant for anti-social behaviour on three separate occasions;
- apply to the Tenancy Tribunal for termination within 28 days after the third notice; and
- prove that the anti-social behaviour occurred, if the tenant challenges a written notice or the application for termination.

Rental Bids

In an effort to reduce affordability issues in the current rental market, landlords will be prohibited from using rental bids. This practice involves landlords bidding potential tenants against one another in order to increase rental income.

The Act specifies that landlords must state the amount of rent when advertising their premises and cannot invite or encourage bids for rent. The only exception to this is where housing is provided as part of an employment package and the cost of this is deducted from the employee's pay (known as a "service tenancy").

Minor Changes to the Property

Tenants are now permitted to make minor changes to the property, so that rental properties can become more liveable. Examples could include putting brackets up to secure furniture and appliances against earthquake damage; installing paintings or putting up posters; baby-proofing; and installing visual fire alarms and doorbells for hearing-impaired tenants.

While landlords can still require tenants to abide by reasonable conditions in relation to such changes, they will no longer be able to prevent tenants from making them where it is for a legitimate reason. Additionally, Landlords cannot prevent tenants from making reasonable changes, where the property is returned to substantially the same condition as when the tenants moved in.

Ultra-fast Broadband

Landlords must now permit and facilitate the installation of ultra-fast broadband where a tenant requests it – although the tenant does have to pay for this themselves. There are some limited exceptions where landlord's consent or facilitation can be lawfully declined. For example, where installation would compromise the weather-tightness or character of a building, or where the landlord has to obtain consent for the installation from a third party but is unable to.

Additionally, if a landlord intends to carry out extensive alternations, refurbishment, repairs or redevelopment of the property and installation of ultra-fast broadband would impede this, they can refuse. However, for this exception to apply material steps must be taken by the landlord to progress such alterations within 90 days of the request for fibre.

Other Changes

A number of other changes will also be introduced as of 11 February 2020. These include:

- New compliance tools, meaning direct action can be taken against parties who are not meeting their obligations.
- The penalties for breaching the Act or obligations under a tenancy agreement are increased. The Tenancy Tribunal will now be able to make awards or order work to be done up to the value of \$100,000 (up from \$50,000).

- “Large-scale” landlords with six or more tenancies will be subject to higher infringement fees and penalties where they offend against the Act.
- A party who is successful in the Tenancy Tribunal can have their identifying details removed from the Tribunal’s decision.

Stage III: Changes to Take Effect from 11 August 2021

From 11 August 2021, tenants who are victims of family violence will be able to withdraw from their lease with two days’ notice by providing evidence they have been subjected to family violence.

A landlord will also be able to terminate a lease with 14 days’ notice where a tenant physically assaults them, their agents, or one of their family members.

Further Advice

If you’d like further advice on your obligations and rights as a landlord or tenant please contact Jenna Riddle at jenna.riddle@gallawaycookallan.co.nz or 027 742 1032 or Rosie Clark at rosie.clark@gallawaycookallan.co.nz or 03 474 9776.

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