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BILLS DIGEST

Digest No. 1722

Residential Tenancies Amendment Bill 2009 (2009 No 34-2)

Date of Introduction:	13 May 2009
Portfolio:	Hon Phil Heatley
Select Committee:	Social Services
Date report presented:	25 September 2009
Published: 17 November 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The purpose of the Bill as introduced is to amend the Residential Tenancies Act 1986 (the Act) and other legislation to adapt the law to " ... significant changes in the structure and dynamics of the residential rental market [which have] taken place since the Act came into force" and the fact that " ... the number of people living in rental housing has increased with a corresponding decline in home ownership rates".

The particular aim of the legislation is to:

- "encourage the development of a rental market that provides stable, quality housing to those who rent their homes;
- "enable landlords to manage their properties more effectively;
- "clarify and appropriately balance tenant and landlord rights and obligations"¹.

The Bill as introduced is described in [Bills Digest 1687](#).

¹ Residential Tenancies Amendment Bill, 2009 No 34-1, Explanatory note, General policy statement, p. 1.

Main changes to the Bill

What tenancies are covered by the Act?

Section 6 of the Act excludes the Act from application to a number of different types of tenancies (for example, tenancies of commercial premises, tenancies of farms or tenancies of hospitals).

The Bill as introduced repeals the current exclusions from the Act of tenancies with a substantial service component and of boarding houses.

The Select Committee has made the following recommendations: elaboration of the types of tenancies covered or not covered by the Act as follows:

- in relation to camping-grounds, the Act should apply to long-term tenancies and that temporary living-spaces in camping-grounds subject to regulations under the Health Act 1956 and tenancies of relocatable homes also subject to those regulations where a tenancy agreement has been entered into for the purpose of, and continues to provide, temporary or transient accommodation be specifically excluded. A definition of the term "relocatable home" is recommended for inclusion in the Bill (*Part 1, Clause 6, amending Section 5 of the Act by inserting new paragraphs (ta), (tb) and new subsection (3) (containing a new definition, that of "relocatable home")*);
- in relation to retirement villages, a clarification that occupation right agreements for residential units in retirement villages, as defined in the Retirement Villages Act 2003, are specifically excluded from the Act (*Part 1, Clause 6, amending Section 5(1) of the Act by substituting paragraph (l)*);
- in relation to the exception in the Bill for "social housing", a definition of that term is recommended for inclusion in the Bill and is "... housing for ... persons on low incomes: persons with special housing needs: persons whose disabilities mean that they need support or supervision in their housing" (*Part 1, Clause 6, amending Section 5 of the Act by inserting new subsection (2)*);
- in relation to premises intended to provide temporary or transient accommodation (such as that provided by hotels and motels), being accommodation that is ordinarily provided for periods of less than 28 days at a time, requirements that the premises must be intended to provide temporary or transient accommodation and that the agreement must have been entered into for the purpose of, and must continue to provide, temporary or transient accommodation (*Part 1, Clause 6, amending Section 5(1) of the Act by substituting paragraph (k)*).

Cleansing orders deleted

The Bill as introduced amended Section 13A of the Act to require landlords to disclose to prospective tenants whether a property has been subject to cleansing orders, for example because it had been used to manufacture methamphetamine, and if so, what steps the landlord has taken to comply with these orders.

The Select Committee has recommended the deletion of this provision (*Part 1, Clause 9, substitution of subclause (1)*).

Letting fees

The Bill as introduced allowed only estate agents to charge tenants letting fees.

The Select Committee has recommended that property managers as well as real estate agents should be able to charge such fees and has generically named such persons as "letting agents" in the Bill. That term is defined as "... in relation to a tenancy, means a person who, in the ordinary course of business, acts, or who holds himself or herself out to the public as ready to act, for reward as an agent in respect of the grant or assignment of tenancies, whether or not the person carries on any other

business" (*Part 1, inserting New Clause 13A, amending Section 17(4)(c) of the Act; Clause 4(1), inserting a new definition, that of "letting agent"; Clause 9, amending Section 13A(1)(m) of the Act*).

Termination for breach capable of remedy

Currently the Tenancy Tribunal may terminate a tenancy if either party to the agreement has failed to remedy a breach of the principal Act within a period of 10 working days of being asked to remedy the breach. The Bill provides that the provision may be used in cases of rent arrears.

The Select Committee has recommended that the expression "10 working days" be replaced by the term "14 days" (*Part 1, Clause 36, inserting new subsection (3), amending Section 56(1)(b)(i) of the Act*).

Landlords' right of entry

Section 48(1)(a) of the Act provides that the landlord may not enter the premises during the currency of the tenancy agreement, except (*inter alia*) with the consent of the tenant given at, or immediately before, the time of entry. The Select Committee has recommended that the word "freely" be inserted after the word "tenant" in this provision (*Part 1, Clause 28, inserting new subclause (1AA), amending Section 48(1)(a) of the Act*).

Abandoned goods

The Bill as introduced provided that Tenancy Tribunal orders permitting a landlord to dispose of abandoned goods may be conditional upon giving the tenant opportunities to collect the goods.

The Select Committee has recommended that this provision be substantially amended to provide that a landlord may immediately dispose of foodstuffs and other perishable goods, and must make a reasonable attempt to contact the tenant and arrange collection of other abandoned goods. Where abandoned goods are not collected, a landlord must make a reasonable effort to assess their market value, and be allowed to immediately dispose of the goods where the cost of removing, storing, and selling them would be more than the proceeds of sale. If the cost of removing, storing, and selling the goods would be less than the proceeds of the sale, the landlord is required to store the goods for 35 days before disposing of them. However, the tenant should be entitled to claim the stored goods at any time before disposal, on payment of reasonable storage and removal costs if required. Landlords are permitted to deduct removal, storage, and disposal costs from any proceeds of the sale of abandoned goods, but are required to pay any residual funds from sales to the Residential Tenancies Trust Account in the Department of Building and Housing. If any other amounts are owing to the landlord arising from the tenancy or the disposal of goods, the landlord would be permitted to claim them from the bond, or from the residual balance pursuant only to a Tenancy Tribunal order. Any personal papers unclaimed after 35 days must be handed to the Police. These rules would also apply to abandoned goods in boarding houses (*Part 1, substituting New Clause 42, inserting New Sections 62 and 62A-62F into the Act; Part 1, Clause 47, deleting New Clause 66Y*).

Tenants' responsibilities

The Select Committee has recommended that the Bill prohibit tenants from causing or allowing any interference with, or rendering inoperative, any means of escape from fire as defined by the Building Act 2004 and that breaches of this provision be an unlawful act, attracting exemplary damages of up to \$3,000 (*Part 1, Clause 24, inserting new subclause (1AA), inserting new paragraph (ab) into Section 40(2) of the Act; Clause 47, inserting New Section 66K, inserting new paragraph (ab) in subclause (2) and new paragraph (aa) in paragraph (4); New Schedule 1A (setting maximum amount of exemplary damages for this unlawful act at \$3,000)*).

Termination

The Select Committee has recommended that it be made clear that landlords may terminate a boarding house tenancy on 48 hours' notice only if the tenant is in rent arrears, the landlord has given

the tenant a notice requiring the unpaid rent to be remedied over a period of at least 10 consecutive days (commencing on the day the notice is given), and the tenant has failed to remedy the arrears within the stipulated period. It is also recommended that a landlord be able to terminate the tenancy agreement for a sole tenant in a boarding house in the event that the sole tenant dies 48 hours after the death (*Part 1, Clause 47, amending New Sections 66U and 66W*).

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