

Residential Tenancies (Prohibiting Letting Fees) Amendment Bill

Government Bill

As reported from the Social Services and Community Committee

Commentary

Recommendation

The Social Services and Community Committee has examined the Residential Tenancies (Prohibiting Letting Fees) Amendment Bill and recommends by majority that it be passed with the amendments shown.

About the bill as introduced

Under the Residential Tenancies Act 1986, letting agents and solicitors can charge letting fees to tenants to cover the costs of setting up or assigning a tenancy. The Act does not specify the maximum amount that may be charged. However, letting fees are typically charged as one week's rent plus GST, and differ across the country. This practice results in the letting fee not accurately reflecting the agent's actual costs.

The bill aims to ensure that the costs associated with letting a rental property are met by the landlord, rather than the tenant. It also seeks to reduce the upfront costs faced by some tenants when renting a property.

To achieve its aim, the bill would amend the Residential Tenancies Act to prohibit the charging of letting fees, or any other fee charged to a tenant, in respect of charges for services provided in relation to a tenancy. The bill would make it an unlawful act to charge a tenant a letting fee, with a maximum level of exemplary damages set at \$1,000.

Landlords or their agents could still seek reimbursement from a tenant for expenses reasonably incurred as a result of a tenant assigning, subletting, or parting with possession of their interest in a tenancy.

Proposed amendments

We recommend two amendments to the bill, which are detailed below.

Separating the bill into parts

We recommend separating the bill into two parts, which would enable the bill to be considered part by part in the Committee of the whole House under Standing Order 303(2).

Our proposed amendment would group the substantive provisions (clauses 4 to 8) together in Part 1. Part 2 would contain the further amendments to the Residential Tenancies Act (clauses 9 and 10). The amendment would enable the Committee of the whole House to debate the bill and its purpose more efficiently.

Commencement date

Clause 2 of the bill sets the commencement date as 3 months after the date on which it receives the Royal assent. We recommend amending the commencement date to 12 December 2018. We were advised that tenancy turnover around New Zealand is highest between November and February. Our amendment would help to maximise the reduction in costs for tenants who sign up for new tenancies over the peak period.

Review of the Residential Tenancies Act

We understand that a targeted reform of the Residential Tenancies Act is under way and a discussion document with proposals is now available for comment. We note that there are no regulations covering letting agents, including property managers. We urge the Government to consider introducing a regulatory regime for this industry.

We were concerned to hear about property managers checking potential tenants' bank statements and to learn that nothing in the Act prohibits this. We encourage the Government to consider this matter during the review.

National Party minority view

The bill would prohibit a landlord or his agent from charging a letting fee and aims to ensure all costs are met by the landlord. However, the bill fails to recognise that the cost will have to be passed on to the tenants by way of increased rent. This was confirmed by some submitters. The unintended consequences could be that landlords charge more weekly rental than they otherwise would and/or that landlords decide to quit the residential rental market and either sell, or turn to long term Airbnb for the property, thereby avoiding all obligations of the Residential Tenancies Act.

An alternative is to make letting fees more transparent so that an actual fee for service could be charged. The bill fails to consider the cumulative effects of other legislation that will impose further costs on landlords—for example the Healthy Homes Guarantee Act 2017.

National OPPOSES this bill.

Appendix

Committee process

The Residential Tenancies (Prohibiting Letting Fees) Amendment Bill was referred to the committee on 5 April 2018. The closing date for submissions was 23 May 2018. We received and considered 187 submissions from interested groups and individuals. We heard oral evidence from 27 submitters at hearings in Wellington and Auckland. We received advice from the Ministry of Business, Innovation and Employment.

Committee membership

Gareth Hughes (Chairperson)

Darroch Ball

Dan Bidois

Hon Kris Faafoi

Hon Alfred Ngaro

Greg O'Connor

Maureen Pugh

Priyanca Radhakrishnan

Hon Louise Upston

**Residential Tenancies (Prohibiting Letting Fees)
Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Phil Twyford

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Schedule

New Part 4 inserted into Schedule 1AA

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Residential Tenancies (Prohibiting Letting Fees) Amendment Act **2018**.

cl 2	Residential Tenancies (Prohibiting Letting Fees) Amendment Bill	
2	Commencement	
	This Act comes into force 3 months after the date on which it receives the Royal assent <u>on 12 December 2018</u> .	
3	Principal Act	
	This Act amends the Residential Tenancies Act 1986 (the principal Act).	5
	<u>Part 1</u>	
	<u>Substantive provisions</u>	
4	Section 2 amended (interpretation<u>Interpretation</u>)	
	In section 2(1), insert in its appropriate alphabetical order:	
	letting fee—	10
	(a) means any fee or charge (however described) in respect of services rendered by the letting agent or any other person that relate to—	
	(i) the grant, continuance, extension, variation, or renewal of any tenancy agreement; or	
	(ii) the assignment of a tenant’s interest under any tenancy agreement; or	15
	(iii) the subletting of the whole or any part of the premises by a tenant; but	
	(b) does not include any expenses recoverable under section 44(5)	
5	Section 13A amended (Contents of tenancy agreement)	20
	Repeal section 13A(1)(m).	
6	Section 17 amended (Requiring key money prohibited)	
	Repeal section 17(4)(c).	
7	New section 17A inserted (Requiring letting fee prohibited)	
	After section 17, insert:	25
17A	Requiring letting fee prohibited	
(1)	No letting agent or other person may require a tenant to pay a letting fee.	
(2)	Nothing in subsection (1) limits or affects section 44(5) (which entitles a landlord to recover reasonable expenses on consenting to the tenant’s assigning, subletting, or parting with possession of the premises).	30
(3)	Any requirement to pay a letting fee in contravention of subsection (1) is an unlawful act.	

8 Section 77 amended (Jurisdiction of Tribunal)

After section 77(7), insert:

(7A) The Tribunal does not have jurisdiction to consent to a person charging a tenant a letting fee.

Part 2
Further provisions

5

9 Schedule 1AA amended

In Schedule 1AA, after **Part 3**, insert the **Part 4** set out in the **Schedule** of this Act.

10 Schedule 1A amended

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In Schedule 1A, after the item relating to section 17, insert:

Section 17A	(Requiring letting fee)	1,000
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Schedule

New Part 4 inserted into Schedule 1AA

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	Part 4	
	Provision relating to Residential Tenancies (Prohibiting Letting Fees) Amendment Act 2018	5
20	Application of section 17A (Requiring letting fee prohibited)	
	Section 17A does not apply to—	
	(a) any fee or charge paid or payable before the date of commencement of that section; or	10
	(b) any tenancy agreement entered into before that date (whether the tenancy agreement took effect before or takes effect on or after that date); or	
	(c) any assignment or subletting if the landlord consented to the assignment or subletting before that date (whether the assignment or subletting took effect before or takes effect on or after that date); or	15
	(d) any amount that is charged in relation to a subletting, if the Tribunal consented to the charge before that date.	

Legislative history

22 March 2018	Introduction (Bill 36–1)
5 April 2018	First reading and referral to Social Services and Community Committee