



# New changes to tenancy law

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# Residential Tenancies Amendment Act 2020 now in force

## New changes

New changes have implications for the way residential landlords buy and sell property, some of these are as follows;

### 1. Rent increases

Landlords can increase rent for both fixed-term and periodic tenancies, after the first 12 months of the tenancy, and the increase cannot be within 12 months of the last increase. Landlords are required to give the tenant 60 days' notice in writing, and where the tenancy is a fixed term a rent increase clause must be in the tenancy agreement.

### 2. Security of rental tenure

Landlords will not be able to end a periodic tenancy without cause by providing 90 days' notice. For further information please see grounds for termination information on page 3.

### 3. Fixed-term tenancies

All fixed-term tenancy agreements will convert to periodic tenancies at the end of the fixed-term date unless both parties agree otherwise. The tenant is required to give the landlords 28-days' notice to end the fixed term, the landlord is required to give notice in accordance with the termination grounds for periodic tenancies.

### 4. Minor alterations

Landlords are not able to withhold consent to minor changes to the premises, such as repairs and work that doesn't require a consent, damage the property or have an "unreasonable negative effect on any person's enjoyment or use of any property outside the premises".

Examples include, "brackets to secure furniture and appliances against earthquake risk, baby proof the property, installation of visual fire alarms and doorbells and items to hang pictures".

The landlord can impose reasonable conditions around how that minor change is carried out and tenants must remove the minor changes and remediate the property when the tenancy ends.

### 5. Rental bidding

Rental bidding is prohibited, properties cannot be advertised without a rental price listed, and landlords cannot invite or encourage tenants to bid on the rental (pay more than the advertised rent amount).

### 6. Fibre broadband

Tenants can request to install fibre broadband, and landlords must agree if it can be installed at no cost to them, unless specific exemptions apply.

### 7. Assignment tenancies

Landlord must consider all requests to assign a tenancy and cannot decline any request unreasonably. Where a residential tenancy agreement prohibits assignment, it is now of no effect.

### 8. Landlord records

Not providing a tenancy agreement in writing is now an unlawful act. Landlords must provide the tenant with new contact details if they move, or new owner details if they sell the property. Where a property is managed by a party other than the owner (property management company) the landlord must provide the contact details to the tenant. The landlord must appoint an agent in New Zealand to manage the property if they are leaving New Zealand for more than 21 days in a row.

### 9. Changes to Tenancy Tribunal jurisdiction

The Tenancy Tribunal can hear cases and make awards up to \$100,000. This significantly higher than the previous \$50,000.

### 10. Strengthened enforcement measures

As the tenancy regulator, the Ministry of Business, Innovation and Employment (MBIE) will now be able to use four enforcement measures to take action against parties who are not meeting their obligations. These are Enforceable undertakings, Improvement notices, Infringement notices and Pecuniary penalties. Penalties have increased for unlawful acts between 50 to 80 percent.

### 11. Privacy and access to justice

A suppression order can remove names and identifying details from published Tenancy Tribunal decisions if a party who has applied for a suppression order is wholly or substantially successful, or if this is in the interests of the parties and the public interest.

### 12. Privacy Act

The Office of the Privacy Commissioner (OPC) has produced a set of guidelines outlining what information should and should not be collected by landlords when deciding whether someone will make a suitable tenant. Landlords have obligations under the Privacy Act to manage personal information responsibly.

## Healthy homes

Landlords are required to provide details of how the property meets the Government's healthy homes standards within 21 days of a tenant's request for this information.

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## Recovery of costs relating to assignment, subletting or early release from a fixed term tenancy

These costs can be recovered if they are reasonable and is now extended to include subletting. A full breakdown itemising each expense needs to be provided to the tenant.

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## In the pipeline

Further changes are expected to come into effect 11 August 2021.

### 1. Family violence

Victims of family violence will be able to terminate a tenancy without financial penalty by giving two days' notice.

### 2. Physical assault

Landlords will be able to terminate a tenancy with two weeks' notice if the tenant becomes physically abusive to them, their family or agent. The police, however, must have laid a charge against the tenant in respect of the assault.

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## Giving notice

Landlords are required to give tenants 90-days' notice to vacate the property where the landlord intends to market the property and sell it after the tenants have vacated. Once the landlord has given notice, they then need to wait until after the expiry date before placing the property on the market for sale. Landlords are unable to market the property during the 90-day notice period and must list the property within 90 days of the termination date.

Where the landlord wishes to sell the property while the tenants are still residing in the property, they are required to notify tenants that the property is going on the market for sale. When the landlord gets an unconditional sale, they are then required to give the tenants 90-days' notice that vacant possession is required.

If the landlord intends to carry out extensive alterations, refurbishment, repairs, or redevelopment of the premises, where it would make it impractical for the tenant to remain in occupation while the work is undertaken, the landlord is required to give

the tenants 90-days' notice. Work or material steps towards the work being done must be taken within 90-days of the termination date.

Landlords are also required to give tenants 90-days' notice where the premises have been acquired by the landlord to facilitate the use of nearby land for a business activity requiring vacant premises; or the premises are to be converted into commercial premises; or the premises are to be demolished. Demolishment or material steps towards demolition must be taken within 90-days of the termination date.

If a landlord or their family members intend to live in the premises, or the landlord has acquired the premises for their employees' use, the landlord is required to give the tenants 63 days' notice to terminate the tenancy.

The tenancy can also be terminated where the landlord gave the tenant notice that they were five working days late with their rent payments, on three separate occasions, within a 90-day period. The tenancy can also be terminated if the landlord has issued the tenant three notices for separate antisocial acts in a 90-day period.

Where a landlord fails to give the tenants written notice that a property has been put on the market; or if they have not informed prospective tenants of this fact; or the property has been marketed during the 90-day notice period for vacant possession, there are considerable penalties.

Up to \$1800 exemplary damages can be awarded for a failure to notify tenants that premises are on the market, and a fine of between \$500 to \$3,000 for not notifying prospective tenants that the property is on the market for sale. Up to \$1,800 exemplary damages can be awarded where the property has been marketed during the 90-day notice period for vacant possession.

### Phase 3 of the RTA amendments will come into force on the 11th of August 2021

Tenants experiencing family violence will be able to terminate a tenancy without financial penalty by giving 2 days' notice.

Where the tenant has assaulted the landlord, the owner, a member of their family, or the landlord's agent, and the Police have laid a charge against the tenant in respect of the assault, a landlord will be able to issue a 14-day notice to terminate the tenancy.

## Buying and selling

The Landlord is required to inform the tenant in writing that they are placing the property on the market for sale. Landlords are required to get the tenant permission before entering the house to take photos, tenants personal belongings should not be photographed. The tenant's permission is also required to show potential purchasers through the property, and any professionals such as valuers, builders and real estate salespeople.

Tenants are not able to unreasonably refuse access, however they can set reasonable conditions such as limiting access to certain days and times of the week, they can insist that purchasers are shown through the home by appointment only, and they can also refuse open homes and auctions at the property.

Tenants can request a temporary rent reduction in return for the inconvenience of having the property on the market for sale, and permitting open homes, landlords do not have to grant this. Tenants have the right to be present at the home at all times, including during open homes.

It is good practice to have a formal schedule of access in writing, signed by both parties, which avoids any misunderstanding.

## The property has sold with the tenants in place

When an investment property is sold, often the tenancy continues, the purchaser becomes the new Landlord. The current Landlord is required to inform the tenant who the new owner is, the date the new ownership will take place and provide the new owners contact details, including an address for service and their bank account number for future rental payments.

The Landlord is required to complete a Change of Landlord bond form, which needs to be signed by both the old and new owner, the bond is then transferred to the new owner.

## The property has sold with vacant possession

Where the property is required to be vacant, a condition of sale will be 'vacant possession'. Providing the tenancy is periodic, the landlord is required to give the tenant 90 days' notice in writing to terminate the periodic tenancy. If the tenancy is for a fixed term, then the property must be sold with the tenancy and tenants in place. The purchaser then becomes the new landlord for the rest of the fixed term.



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