

■ UNLAWFUL RESIDENTIAL PREMISES (continued)

- ▶ the landlord to make the premises lawful and comply with relevant legislative obligations, such as fire safety requirements under the Building Act 2004, within a specified timeframe
- ▶ exemplary damages of up to \$4,000 (a financial penalty payable to the tenant) for failing to comply with this work order
- ▶ the tenancy be terminated
- ▶ any other order in favour of the tenant that it may currently do under the Residential Tenancies Act.

Tenants will be able to give two days' notice to end a tenancy in an unlawful residential premises if the premises were unlawful at the start of the tenancy and are still unlawful. Both the tenant and the landlord can apply to the Tribunal for an order terminating a tenancy on the ground that the premises are unlawful.

The Residential Tenancies Amendment Act 2019 ('the Act') became law on 30 July 2019.

It was created to address issues related to:

- ▶ liability for damage to rental premises caused by a tenant
- ▶ methamphetamine contamination in rental premises
- ▶ rental premises that are unlawful for residential use.

It also allowed for:

- ▶ regulations to be made that address how contamination of rental properties is tested and managed
- ▶ the combination of the insulation statement and healthy homes statement into one separately signed statement, instead of two separately signed statements*
- ▶ a new requirement for landlords to include an insurance statement in tenancy agreements.

The Act came into force on 27 August 2019.

* Since 1 July 2016, landlords must provide an insulation statement in all new tenancy agreements that covers what insulation the home has, where it is, what type and condition.

Since 1 July 2019, landlords must include a statement with all new, renewed or varied tenancy agreements confirming they either will comply, or already do comply, with the healthy homes standards.

Templates for these statements are available at tenancy.govt.nz

■ INSURANCE STATEMENT

Since 27 August 2019, landlords now need to provide a statement in any new tenancy agreement about whether the property is insured and if so, what the excess amount is for any relevant insurance policies. The statement must also inform the tenant that copies of these policies are available on request.

If landlords don't provide this information, or if they don't tell tenants, in writing, within a reasonable time if this information changes, they may be liable for a financial penalty of up to \$500.

Tenants on existing tenancies will be able to ask their landlords for this insurance information, and this must also be provided within a reasonable time.

Tenancies under Kāinga Ora (formerly Housing New Zealand) and registered Community Housing Providers that were entered into before 27 August 2019 and where the social housing provider leases the property under the Property Law Act 2007 are exempt from having to provide the above insurance information to their tenants.

Where this exemption applies, tenants will be liable up to four weeks' rent (or four weeks' market rent) for careless damage.

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Tenancy Services



Residential Tenancies Amendment Act 2019

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The following amendments came into force on 27 August 2019.

■ TENANT LIABILITY FOR DAMAGE

If tenants (or their guests) damage a rental property as a result of careless behaviour, the tenant will be liable for the cost of the damage up to a maximum of four weeks' rent or the landlord's insurance excess, whichever is lower.

Tenants on income-related rents (such as Kāinga Ora (formerly Housing New Zealand) rentals or registered community house provider rentals) will be liable for up to four weeks' market rent or the landlord's insurance excess, whichever is lower.

The new amendments intend to:

- ▶ encourage tenants to take care of rental properties while making sure they are not liable for excessive costs
- ▶ ensure, as much as possible, that landlords are not out of pocket for careless damage to rental premises
- ▶ encourage cost-effective insurance arrangements.

A tenant will still be fully liable for the cost of damage where it is intentional or where the tenants' act or omission that caused the damage constitutes an imprisonable offence. The tenant will also be liable if the damage is caused by their guests, or someone they are responsible for, in these circumstances.

Any careless damage discovered by a landlord after 27 August 2019 is assumed to have occurred after this date unless the tenant proves otherwise.

■ CONTAMINATION OF PREMISES

Landlords can now test for methamphetamine (meth) in rental properties while tenants are living there. They must provide 48 hours' notice to tenants before entering the property. For boarding house tenants they must provide 24 hours' notice before entering the boarding house room.

Landlords will have to tell the tenant they are testing for methamphetamine contamination, and share the test results (in writing) with the tenant within seven days of receiving them.

The Act allows for regulations to be made that will prescribe the acceptable level for meth contamination, processes for testing (including when to test) and decontamination of rental properties.

Once the regulations are in place:

- ▶ if contamination is established above the prescribed uninhabitable level (as set out in the regulations), the landlord will be able to give seven days' notice to end the tenancy (if the contamination was not caused by their breach) and the tenant may give two days' notice (if the contamination was not caused by their breach). If the contamination was not as a result of a breach by the tenant then the rent may be stopped.
- ▶ boarding house landlords will be able to give seven days' notice of termination (if the contamination is established in any part of the premises, above the prescribed uninhabitable level (as set out in the regulations).
- ▶ the premises will not be treated as uninhabitable and neither party will be able to give these shorter termination notices, but may instead apply to the Tribunal for termination if:
 - only part of the premises is contaminated above the prescribed uninhabitable level (as set out in the regulations), and
 - was not the result of a breach by either the landlord or tenant, and
 - this part of the premises is located away from (or physically closed off from) the rest of the premises in a way that is likely to prevent the spread of the contaminant to the rest of the property, and
 - the rest of the premises can still be reasonably used.
- ▶ landlords will not be able to knowingly rent premises that are contaminated above the prescribed level (as set out in the regulations), without decontaminating in accordance with the regulations. They will be liable for a financial penalty of up to \$4,000 if they do so.

■ UNLAWFUL RESIDENTIAL PREMISES

Under the Residential Tenancies Act, landlords must comply with all legal requirements relating to buildings and health and safety that apply to the premises. They must also ensure that the premises can legally be lived in at the start of a tenancy.

This amendment strengthens the law for holding landlords to account if they rent out unsuitable properties.

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The Act has amended the definition of 'residential premises', so that regardless of whether premises can be legally lived in, they will be considered 'residential premises' under the Residential Tenancies Act if they are lived in or intended to be lived in.

This amendment gives the Tenancy Tribunal full jurisdiction over cases concerning premises that are unlawful* for residential purposes. It also means that tenants living in unlawful residential premises will be protected by the minimum requirements in the Residential Tenancies Act, such as landlord responsibilities for complying with building, health and safety laws, cleanliness, maintenance and repairs, smoke alarms, insulation, bond lodgement, rent increase notices, and notice periods for ending a tenancy.

Tenancy Services will be able to enforce the Act against landlords who breach it, regardless of whether premises are lawful for living in or not.

In cases of unlawful residential premises, the Tribunal can now order:

- ▶ the landlord to repay the tenant all or some rent, depending on the circumstances of the matter
- ▶ that the tenant is not liable for rent arrears, compensation or damages unless it would be unjust not to make the tenant liable

(continued overleaf)

*Properties may be unlawful for residential use if:

- › they do not have the required consents under the Building Act 2004 or the Resource Management Act 1991
- › there is unconsented building work, or
- › they are deemed unsafe and unsanitary by the local authority.