

Residential Tenancies Amendment Bill (No 2)

Government Bill

Explanatory note

General policy statement

This Bill amends the Residential Tenancies Act 1986 (the **principal Act**) in order to address issues related to—

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

Tenant liability for damage to rental premises

The first group of amendments made by this Bill addresses the rights and obligations of tenants and landlords for damage or destruction to rental premises following the Court of Appeal decision in *Holler v Osaki* [2016] NZCA 130. In that case, the Court ruled that residential tenants are immune from a claim by the landlord where the rental premises suffer loss or damage caused carelessly or negligently by the tenant or tenant's guest to the extent provided in sections 268 and 269 of the Property Law Act 2007.

Following this decision, landlords are bearing most of the costs of careless damage caused by tenants (including insurance excess payments) and there is little financial incentive for tenants to take care of rental premises.

The amendments made by this Bill are aimed at creating efficiencies in the way rental premises are covered against the risk of careless damage, incentivising tenants to take care of rental premises, and protecting tenants from excessive risks and costs.

To achieve these objectives, the Bill provides that in relation to each careless act or omission of a tenant (or someone for whom the tenant is responsible) that causes destruction or damage to the premises, the limit of liability for residential and boarding house tenants (including tenants who are paying an income-related rent) is the level

of a landlord's insurance excess (if applicable) but not more than 4 weeks' rent applicable to the tenancy.

Tenants will remain liable for intentional damage, damage caused by an act or omission that constitutes an imprisonable offence, or if insurance money that would have been payable in respect of the damage is irrecoverable because of the tenant's act or omission.

In addition, the Bill—

- places an obligation on a landlord to disclose insurance information (insofar as it relates to the tenant's liability for damage to the premises), or the fact that the landlord does not have insurance over the rental premises, to a tenant who requests it at any time during a tenancy; and
- creates unlawful acts for failing to comply with the landlord's insurance disclosure obligation, and for demanding, requesting, or accepting payment from the tenant for careless damage over and above the statutory cap provided; and
- limits the ability of insurance companies to pursue subrogated claims (or claims arising out of an assignment) in relation to a tenant's liability under the liability provisions in the Bill; and
- prevents insurance companies from taking into account a tenant's payment to the landlord for careless damage (up to the liability limit) when calculating the insurance amount payable to the landlord under the insurance policy.

Methamphetamine contamination in rental premises

The second group of amendments made by the Bill is required to protect tenants and landlords from the harmful effects of methamphetamine contamination. The manufacture and use of methamphetamine involves highly toxic chemicals that contaminate indoor surfaces, chattels, furnishings, and personal effects in a home. Contaminated homes pose serious risks to the health of occupants.

The Bill provides a number of measures to address the issues relating to contamination from methamphetamine manufacture or use in residential rental premises, including—

- a landlord may enter premises, on notice and between specified hours of the day, to test for methamphetamine or take samples for testing. A landlord who tests in accordance with regulations (which may, for example, set standards for testing) must notify the tenant of the results. In the case of testing carried out in the common facilities of a boarding house, the landlord must notify all tenants of the results of the testing;
- rights for landlords and tenants to terminate the tenancy in cases where testing carried out in accordance with regulations show that the premises are methamphetamine-contaminated.

The Bill also includes a regulation-making power whereby the Governor-General, by Order in Council, may make regulations that—

- prescribe a maximum acceptable level of methamphetamine for premises:
- provide for the way in which methamphetamine testing should be carried out (including sampling, assessing the results of testing, and who is authorised to carry out the process):
- prescribe the decontamination process relevant to the landlord’s ability to terminate a boarding house tenancy where any part of the shared facilities is contaminated.

The Bill also makes it an unlawful act (with a maximum level of exemplary damages of \$4,000) for a landlord to provide premises at the commencement of a tenancy if the landlord knows that the premises (or part of the premises) are methamphetamine-contaminated.

Rental premises that are not lawful for residential purposes

The third group of amendments made by the Bill addresses the application of the principal Act to premises that are not lawfully able to be used for residential purposes following the High Court decision in *Anderson v FM Custodians Ltd* [2013] NZHC 2423. The High Court found that where a property is not lawfully able to be used for residential purposes it is not a “residential premises”, as defined in the principal Act, and therefore tenancies over such premises are not covered by the principal Act and the Tenancy Tribunal (the **Tribunal**) does not have jurisdiction.

Since *Anderson*, premises that are used for residential purposes that are not lawfully permitted to be used for residential purposes are not fully covered by the principal Act. The remedies open to the Tribunal in these cases are often limited to those under section 137 of the principal Act (which relates to prohibited transactions).

The amendments in the Bill ensure that the Tribunal has full jurisdiction for premises occupied or intended to be occupied for residential purposes, regardless of whether the occupation would be unlawful. The amendments will enable the Ministry of Business, Innovation, and Employment to take enforcement action against landlords in breach of any of their obligations under the principal Act.

In the Bill, unlawful residential premises are premises that are occupied by a person for residential use but that cannot legally be occupied by that person. A further requirement is that the landlord’s failure to comply with certain obligations under the principal Act must have caused the occupation by that person to be unlawful or have contributed to that unlawful occupation (eg, the occupation contravening a resource consent or the relevant district plan). Occupation might not be permitted in general (eg, because the premises are an unlawfully converted garage or a commercial building) or it may be that the particular residential purpose the premises are used for under the tenancy agreement is not permitted (eg, if premises may be occupied only by a person of a specific kind or status, such as an employed security guard, and the tenant is not such a person).

The specific remedies that the Tribunal may order (on its own initiative or on the application of the tenant) in the cases of unlawful residential premises include—

- that the landlord pay the tenant a full or partial rent repayment, having regard to the special circumstances of the matter (including the nature of the premises):
- a work order requiring the landlord to remove or rectify the legal impediment to lawful occupation or to comply with building, health, or safety requirements that apply to the premises. Breaching this order without reasonable excuse will be an unlawful act with a maximum level of exemplary damages of \$4,000:
- any other order in favour of the tenant (including an order for exemplary damages for breach of section 45(1)(c) or 66I(1)(c) of the principal Act).

Under the Bill, where premises are found to be unlawful residential premises, the Tribunal must not, unless having regard to the special circumstances of the matter (including the nature of the premises) it would be unjust not to, order a tenant to pay rent arrears, damages, or compensation to the landlord.

Both tenants and landlords will be able to apply to the Tribunal for termination on the grounds that the premises are unlawful residential premises. However, a tenant will also have a right of termination on notice where the premises were unlawful residential premises at the time the tenancy was entered into.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2017&no=258>

Regulatory impact statements

The Ministry of Business, Innovation, and Employment produced regulatory impact statements on 10 November 2016 and 15 February 2017 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <http://www.mbie.govt.nz/publications-research/publications/housing-and-property/ris-tenant-liability-damage-residential-tenancy-properties.pdf>
- <http://www.mbie.govt.nz/publications-research/publications/housing-and-property/ris-protection-tenants-landlords-effects-meth-contamination.pdf>
- <http://www.mbie.govt.nz/publications-research/publications/housing-and-property/ris-unlawful-residential-premises.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill is in 2 Parts. *Part 1* of the Bill contains provisions relating to liability for damage caused to a rental property by a tenant, a new definition of residential premises (so that the principal Act applies to residential tenancies of premises that cannot be lawfully occupied for residential purposes), and provisions relating to unlawful residential premises. *Part 1* comes into force on the day after Royal assent.

Part 2 of the Bill contains provisions relating to methamphetamine. Of *Part 2*, *clauses 25(1), 27(1), and 34(1)* come into force on the day after Royal assent. *Clauses 27(1) and 34(1)* will give a right of entry to landlords, after giving notice, to enter premises and boarding house rooms to test for methamphetamine or take samples for such testing and *clause 25(1)* amends section 2 (which relates to interpretation). Although the Bill amends the principal Act to provide for regulations to be made relating to methamphetamine testing, *clauses 27(1) and 34(1)*, unlike the rest of *Part 2*, do not rely on regulations as there may be other means of testing.

The rest of *Part 2* comes into force by Order in Council. The Order in Council mechanism is needed to allow time to develop standards relating to testing for the presence of methamphetamine and for regulations relating to methamphetamine to then be made and published. Any provision of *Part 2* that is not in force on 1 July 2018 will come into force then.

Clause 3 provides that the Bill amends the Residential Tenancies Act 1986 (the **principal Act**).

Part 1

Amendments relating to tenant liability and premises unlawful for residential use

Clause 4 amends section 2, which is the interpretation section. A key amendment is in *clause 4(2)*, which replaces the definition of residential premises in section 2(1). The amendment made by *clause 4(2)* ensures that, regardless of whether premises can be lawfully occupied for residential purposes, if they are used or intended for residential occupation they will be residential premises under the principal Act.

Clause 4 also inserts new definitions of section 78A work order and unlawful residential premises, both of which are defined by reference to *new section 78A* (see note on *clause 18*). For the purposes of the principal Act, residential premises will be unlawful residential premises if—

- they are used for occupation for a person (A) as a place of residence, but cannot lawfully be occupied for residential purposes by A; and
- the landlord's failure to comply with the landlord's obligations under section 36 or 45(1)(c) (or, in the case of a boarding house tenancy, under section 66H(2)(c) or 66I(1)(c)) has caused A's occupation to be unlawful or has con-

tributed to that unlawful occupation. These sections of the principal Act impose obligations on the landlord in relation to legal impediments to occupation at the start of a tenancy and ongoing compliance with building, health, and safety legislation.

Clause 5 amends section 40(2)(a) of the principal Act, which sets out the tenant's obligation not to intentionally or carelessly damage the rented premises, to add a reference to *new section 49B*, which deals with the tenant's liability for such damage.

Clause 6 amends section 45 (landlord's responsibilities) to add provisions requiring a landlord to provide relevant insurance-related information to a tenant on the tenant's request. Information that would be relevant includes—

- information as to what actions by a tenant might cause insurance moneys that might otherwise be recoverable to be irrecoverable (*see new section 49B(1)(c)*); and
- information as to the amount of the landlord's excess (*see new section 49B(3)*).

Clause 7 inserts into the principal Act *new sections 49A to 49E*, which govern a tenant's liability for damage to the premises. The regime established has the following features:

- generally, a tenant is not liable for damage (*section 49A*);
- a tenant may be fully liable for damage caused intentionally or in certain other circumstances (*section 49B(1)*);
- a tenant is liable for careless damage, but only to the lesser of the landlord's insurance excess and 4 weeks' rent (*section 49B(2) and (3)*);
- any payment made or liability incurred by a tenant for careless damage is intended to benefit the landlord, not the landlord's insurer (*section 49C*);
- it is an unlawful act for a landlord to seek payment in excess of the limits of a tenant's liability (*section 49D*).

Clauses 8 and 9 amend, respectively, sections 50 and 51, which relate to the termination of tenancies. The amendments are technical and consequential on the insertion of *new section 56A* (a new termination provision relating to unlawful residential premises) by *clause 11*.

Clause 10 amends section 55, which relates to termination of a tenancy on application by the landlord in certain circumstances. The amendment is the inclusion of a note that points users of the principal Act to *new section 78A* (inserted by *clause 18*). The reason for the note is that section 55(1)(a) makes termination mandatory if the Tribunal is satisfied that the rent was, at the date on which the application was filed, at least 21 days in arrear, and section 55(2) provides for the one existing situation where the Tribunal may refuse to make the termination order. However, by the amendments made by this Bill, in the case of a matter before the Tribunal involving unlawful residential premises (*see note on clause 18*), the Tribunal may refuse to make the termination order.

Clause 11 inserts *new section 56A* into the principal Act. *New section 56A(1)* gives a tenant of premises that were at the start of the tenancy, and that remain, unlawful residential premises the right to terminate the tenancy on not less than 2 days' notice. *New section 56A* also provides that a landlord or a tenant may apply to the Tribunal for an order terminating a tenancy of premises that are unlawful residential premises.

Clause 12 amends section 61 consequential on *new section 78A*, which is inserted by *clause 18*. Under existing section 61(3), a tenant who abandons premises is liable to pay rent for a certain period. *New section 61(3A)* provides that section 61(3) will not apply to a tenant who abandons premises determined to be unlawful residential premises.

Clause 13 amends section 64 to provide that a termination order of the Tribunal under *new section 56A* (inserted by *clause 11*) has effect as a possession order in favour of the landlord.

Clause 14 amends section 66J (other obligations of landlord) to add provisions requiring a landlord to provide relevant insurance-related information to a tenant on the tenant's request. Information that would be relevant includes—

- information as to what actions by a tenant might cause insurance moneys that might otherwise be recoverable to be irrecoverable (*see new section 49B(1)(c)*); and
- information as to the amount of the landlord's excess (*see new section 49B(3)*).

Clause 15 repeals section 66K(1)(f) as it is redundant, a tenant's liability now being addressed in *new section 49B*.

Clause 18 inserts *new section 78A* into the principal Act. *Clauses 16 and 17* make consequential amendments to sections 77 and 78 (which relate to the jurisdiction of the Tribunal and orders of the Tribunal respectively). *New section 78A*—

- defines unlawful residential premises (*see note on clause 4*); and
- sets out the nature of the orders the Tribunal may make if the Tribunal determines that premises are, or were at any material time, unlawful residential premises; and
- sets out considerations relevant to the Tribunal making certain orders.

If the Tribunal finds that premises are, or were at any material time, unlawful residential premises, *new section 78A* limits its ability to order the tenant to pay rent arrears or damages or compensation to the landlord. Further, if the landlord has applied for termination on the ground of rent arrears, the Tribunal has the discretion to refuse to make the termination order. The Tribunal is empowered to make other orders, including an order for the landlord to repay rent paid by the tenant and a section 78A work order. A section 78A work order may require the landlord to take the steps available to fix any legal impediment to occupation or to comply with the applicable building, health, or safety legislation. Orders in favour of the tenant can be made by the Tribunal on its own initiative.

Clause 19 amends section 108, which relates to the enforcement of work orders, consequential to the amendments made by *clauses 17 and 18*.

Clause 20 amends section 112, which relates to contempt. This is a technical amendment and consequential to the amendment made by *clause 18*.

Clause 21 repeals section 142(2) of the principal Act, which provided that Part 4 of the Property Law Act 2007 could serve as a source of general legal principles relating to tenancies. This is the provision through which a court held that the liability regime in sections 268 to 270 of the Property Law Act 2007 applied with regard to residential tenancies. Since *new sections 49A and 49B* will now govern liability for damage with regard to residential tenancies, this provision is no longer required.

Clause 22 inserts *new Part 2* into Schedule 1AA of the principal Act. Schedule 1AA contains transitional, savings, and related provisions. *New Part 2* of Schedule 1AA is set out in the *Schedule* of this Bill. Among other things, *new Part 2* of Schedule 1AA provides for the amendments made by this Bill to apply to existing tenancies.

Clause 23 amends Schedule 1A, which contains the maximum amounts that the Tribunal may order a person to pay under section 109 for acts declared unlawful. *Clause 23(1)* inserts the amount of \$500 for breach of the landlord's obligations to provide insurance-related information (*see notes on clauses 6 and 14*) and the amount of \$1,000 for acts seeking to obtain more from a tenant than the amount of the tenant's liability under *new section 49B*. *Clause 23(2)* inserts the amount of \$4,000 for a breach of a section 78A work order (*see note on clause 18*) without reasonable excuse and makes consequential changes to the description of the existing unlawful act under section 108(2A).

Clause 24 consequentially amends section 176(1) of the Unit Titles Act 2010 so that *new section 78A* does not apply to the hearing and determination of a unit title dispute (within the meaning of Part 4 of that Act).

Part 2

Amendments relating to methamphetamine

Clause 25 amends section 2, which is the interpretation section, by inserting definitions of methamphetamine and methamphetamine-contaminated. The definition of methamphetamine-contaminated relies on regulations prescribing a maximum level of methamphetamine above which premises will be methamphetamine-contaminated for the purposes of the principal Act.

Clause 26 inserts a new landlord responsibility into section 45 and makes contravention of that responsibility an unlawful act. The responsibility applies at the start of a tenancy. A landlord must not provide premises to a tenant if the landlord knows that tests carried out in accordance with regulations have established that the premises are methamphetamine-contaminated and the premises have not been decontaminated (in accordance with the prescribed decontamination process). The maximum amount payable for contravention is \$4,000 (*see clause 38*).

Clause 27 amends section 48 to give the landlord the right to enter premises for the purpose of testing for the presence of methamphetamine or taking samples for such testing. The landlord is required to give at least 48 hours, and not more than 14 days, notice of the intended entry, and may only enter between 8 am and 7 pm. If the landlord enters premises for the purpose of carrying out the tests in accordance with any regulations, the landlord must, within 7 days of receiving the results of the testing, tell the tenant those results.

Clause 30 inserts *new section 59B* into the principal Act. *New section 59B* relates to termination in cases of methamphetamine contamination. If tests carried out in accordance with any regulations have established that any part of the premises is methamphetamine-contaminated, either party may terminate the tenancy—the minimum period of notice is 7 days (if the landlord gives notice) and 2 days (if the tenant gives notice). The ability to terminate is not fault-based. *New section 59B(a)* provides that, unless the tenant is responsible for the methamphetamine contamination, the rent abates. *Clauses 28 and 29* make technical and consequential amendments to sections 50 and 51 respectively.

Clause 31 amends section 66A, which relates to the application of provisions of the principal Act to boarding house tenancies. The amendment made by *clause 31* has the effect that *new section 59B* does not apply to boarding house tenancies. See instead *clause 35*.

Clause 32 amends section 66H, which relates to a landlord's obligations at the start of a boarding house tenancy. The amendments are similar to those made in *clause 26* in relation to tenancies other than boarding house tenancies. A landlord must not provide a boarding room to a tenant at the start of a tenancy if the landlord knows that tests carried out in accordance with regulations have established that any part of the room or facilities of the boarding house is methamphetamine-contaminated and the room or facilities (as relevant) have not been decontaminated in accordance with the prescribed process. Contravention of this obligation by the landlord is declared an unlawful act for which the maximum amount payable is \$4,000 (*see clause 38*).

Clause 33 amends section 66J, which contains other landlord obligations. A landlord who carries out testing in accordance with any regulations for the presence of methamphetamine in the facilities of a boarding house must, within 7 days of receiving the results of the testing, tell every tenant of the boarding house those results.

Clause 34 amends section 66S, which sets out the purposes for which a landlord may enter a boarding room under a notice of entry. *New section 66S(1)(fa)* will permit the landlord to give a notice of entry for the purpose of testing for the presence of methamphetamine or taking samples for such testing. If the landlord enters a boarding room under a notice of entry for the purpose of carrying out the tests in accordance with any regulations, the landlord must, within 7 days of receiving the results of the testing, tell the tenant those results. The right to enter for this purpose and the requirement to give certain test results to a tenant are similar to the amendments made by *clause 27* in relation to tenancies other than boarding house tenancies, though different notice and entry requirements apply (*see, for example, section 66R(2)* of the prin-

principal Act, which requires at least 24 hours' notice before entry into a boarding room, which must be between 8 am and 6 pm).

Clause 35 inserts *new section 66UA* into the principal Act. *New section 66UA* will apply if tests carried out in accordance with any regulations establish that any part of the boarding house is methamphetamine-contaminated. The new section gives termination rights to the landlord. The tenancy of a boarding room may be terminated by the landlord, on not less than 7 days' notice, if that room is contaminated, or if access to that room is needed in order to carry out a prescribed methamphetamine decontamination process to another room, or if any of the facilities are methamphetamine-contaminated. Further, if the contamination is in a room, the rent will abate for that room unless the tenant is responsible for the contamination.

Clause 36 amends section 66Y, consequential on the insertion of *new section 66UA*. Section 66Y relates to possession orders.

Clause 37 inserts *new section 138C* into the principal Act. *New section 138C* gives powers to the Governor-General to make regulations relating to the new methamphetamine provisions. Regulations may prescribe a maximum acceptable level of methamphetamine for premises, provide for the testing of premises for the presence of methamphetamine, and prescribe the decontamination process for the purpose of various sections of the principal Act.

Clause 38 amends Schedule 1A, which contains the maximum amounts that the Tribunal may order a person to pay under section 109 for unlawful acts. *Clause 38* inserts the amount of \$4,000 for a landlord providing premises (or a boarding room) to a tenant at the start of a tenancy despite knowing the premises (or the room or facilities of the boarding house) are methamphetamine-contaminated. *See notes on clauses 26 and 32.*

Hon Dr Nick Smith

Residential Tenancies Amendment Bill (No 2)

Government Bill

Contents

	Page
1 Title	3
2 Commencement	3
3 Principal Act	3
Part 1	
Amendments relating to tenant liability and premises unlawful for residential use	
4 Section 2 amended (Interpretation)	3
5 Section 40 amended (Tenant's responsibilities)	3
6 Section 45 amended (Landlord's responsibilities)	4
7 New sections 49A to 49E and cross-heading inserted	4
<i>Responsibility for damage</i>	
49A General principle: tenant not liable	4
49B When tenant liable	4
49C Landlord, not insurer, to benefit from tenant liability for careless damage	6
49D Unlawful acts related to liability	6
49E Meaning of premises	6
8 Section 50 amended (Circumstances in which tenancies are terminated)	6
9 Section 51 amended (Termination by notice)	6
10 Section 55 amended (Termination on non-payment of rent, damage, or assault)	6
11 New section 56A inserted (Termination where premises are unlawful residential premises)	7

Residential Tenancies Amendment Bill (No 2)

	56A	Termination where premises are unlawful residential premises	7
12		Section 61 amended (Abandonment of premises)	7
13		Section 64 amended (Possession orders)	7
14		Section 66J amended (Other obligations of landlord)	7
15		Section 66K amended (Obligations of tenant)	7
16		Section 77 amended (Jurisdiction of Tribunal)	8
17		Section 78 amended (Orders of Tribunal)	8
18		New section 78A inserted (Orders of Tribunal relating to unlawful residential premises)	8
	78A	Orders of Tribunal relating to unlawful residential premises	8
19		Section 108 amended (Enforcement of work orders)	10
20		Section 112 amended (Contempt)	10
21		Section 142 amended (Effect of Property Law Act 2007)	10
22		Schedule 1AA amended	10
23		Schedule 1A amended	10
24		Consequential amendment to Unit Titles Act 2010	10

Part 2

Amendments relating to methamphetamine

25		Section 2 amended (Interpretation)	10
26		Section 45 amended (Landlord's responsibilities)	11
27		Section 48 amended (Landlord's right of entry)	11
28		Section 50 amended (Circumstances in which tenancies are terminated)	11
29		Section 51 amended (Termination by notice)	11
30		New section 59B inserted (Termination in cases of methamphetamine contamination)	12
	59B	Termination in cases of methamphetamine contamination	12
31		Section 66A amended (Application of Part)	12
32		Section 66H amended (Landlord's obligations at start of tenancy)	12
33		Section 66J amended (Other obligations of landlord)	12
34		Section 66S amended (Notice of entry)	12
35		New section 66UA inserted (Rent abatement, and termination of tenancy or tenancies by landlord, in cases of methamphetamine contamination)	13
	66UA	Rent abatement, and termination of tenancy or tenancies by landlord, in cases of methamphetamine contamination	13
36		Section 66Y amended (Possession orders)	13
37		New section 138C inserted (Regulations in respect of methamphetamine)	13
	138C	Regulations in respect of methamphetamine	13
38		Schedule 1A amended	14

Schedule
New Part 2 of Schedule 1AA inserted

15

The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Residential Tenancies Amendment Act **2017**.

2 Commencement

- (1) **Part 2** (other than **sections 25(1), 27(1), and 34(1)**) comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates. 5
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.
- (3) Any provision of this Act that may be brought into force under **subsection 1(1)** and that is not in force on 1 July 2018 comes into force then. 10

3 Principal Act

This Act amends the Residential Tenancies Act 1986 (the **principal Act**).

Part 1

Amendments relating to tenant liability and premises unlawful for residential use 15

4 Section 2 amended (Interpretation)

- (1) In section 2(1), insert in their appropriate alphabetical order:
section 78A work order means a work order made against the landlord in relation to a matter in which **section 78A** applies 20
unlawful residential premises has the meaning given to it by **section 78A(2)**
- (2) In section 2(1), replace the definition of **residential premises** with:
residential premises means any premises used or intended for occupation by any person as a place of residence, whether or not the occupation or intended occupation for residential purposes is or would be unlawful 25
- (3) In section 2(1), definition of **work order**, paragraph (b), after “138B”, insert “; and”.
- (4) In section 2(1), definition of **work order**, after paragraph (b), insert:
(c) if **section 78A** applies, *see also* **section 78A(4)(b)**

5 Section 40 amended (Tenant’s responsibilities) 30

In section 40(2)(a), after “premises”, insert “(see **section 49B**)”.

6 Section 45 amended (Landlord's responsibilities)

After section 45(2A), insert:

- (2B) The landlord may at any time, and must within 14 days of receiving a request from the tenant, provide to the tenant under a tenancy agreement the following information about insurance of the premises: 5
- (a) if the premises are not insured by the landlord, a statement confirming that fact; and
 - (b) if the premises are insured by the landlord, a statement setting out details of the insurance policy that are relevant to the tenant's liability for destruction of, or damage to, the premises. 10
- (2C) The landlord must promptly notify the tenant in writing of the current, correct information if any information that was provided in accordance with **subsection (2B)** or this subsection is no longer current or is incorrect.
- (2D) A landlord's failure to comply with **subsection (2B) or (2C)** is declared to be an unlawful act. 15

7 New sections 49A to 49E and cross-heading inserted

After section 49, insert:

Responsibility for damage

49A General principle: tenant not liable

- (1) Except as provided in **section 49B**, a tenant has no liability or obligation, and must not be required, to— 20
- (a) meet the cost of making good any destruction of, or damage to, the premises; or
 - (b) indemnify the landlord against the cost of making good the destruction or damage; or 25
 - (c) pay damages related to the destruction or damage; or
 - (d) carry out any works to make good the destruction or damage.
- (2) A tenant is not, in any case, liable for fair wear and tear.

49B When tenant liable

- (1) A tenant is not excused from liability or obligation by **section 49A(1)** if, and to the extent that,— 30
- (a) the destruction or damage was intentionally done or caused by the tenant or by a person for whose actions the tenant is responsible under section 41 or 66L; or
 - (b) the destruction or damage was the result of an act or omission by the tenant or by a person for whose actions the tenant is responsible under sec- 35

- tion 41 or 66L and the act or omission occurred on or about the premises and constitutes an imprisonable offence; or
- (c) any insurance moneys that would otherwise have been payable because of the destruction or damage are irrecoverable because of an act or omission of the tenant or of a person for whose actions the tenant is responsible under section 41 or 66L. 5
- (2) To the extent provided in **subsection (3)**, the tenant is liable to the landlord for destruction of, or damage to, the premises that is caused by a careless act or omission of the tenant or of a person for whose actions the tenant is responsible under section 41 or 66L, other than an act or omission described in **subsection (1)**. 10
- (3) The tenant's liability under **subsection (2)** is limited, for each incident,—
- (a) if the property is insured by the landlord against the destruction or damage, to the lesser of the applicable excess under the insurance and whichever of the following is applicable: 15
- (i) if the tenant pays an income-related rent within the meaning of section 2(1) of the Housing Restructuring and Tenancy Matters Act 1992, the market rent within the meaning of section 2(1) of that Act for the premises for a period of 4 weeks:
- (ii) in any other case, the rent under the tenancy agreement for a period of 4 weeks; or 20
- (b) otherwise, to whichever of the following is applicable:
- (i) if the tenant pays an income-related rent within the meaning of section 2(1) of the Housing Restructuring and Tenancy Matters Act 1992, the market rent within the meaning of section 2(1) of that Act for the premises for a period of 4 weeks: 25
- (ii) in any other case, the rent under the tenancy agreement for a period of 4 weeks.
- (4) To avoid doubt, a tenant's liability under **subsection (2)** may, if the tenancy agreement so provides or the tenant and landlord so agree, be satisfied by the tenant carrying out works to make good the destruction or damage up to a value of the liability limit in **subsection (3)**. 30
- (5) Unless the damage is the result of an action described in **subsection (1)**, a tenant's obligations under section 42(6) (removal of a fixture) to repair damage or to compensate the landlord for expenses incurred in repairing damage are limited to work of a value, or payment of an amount, up to the liability limit set out in **subsection (3)**. 35
- (6) Destruction or damage of which the landlord becomes aware after this section comes into force is presumed to have occurred after this section came into force unless the tenant proves otherwise. 40

49C	Landlord, not insurer, to benefit from tenant liability for careless damage	
(1)	An insurer of the premises against destruction or damage has no right or claim in relation to a tenant’s liability under section 49B(2) or (5) , including no right of equitable or contractual subrogation and no right arising out of an assignment by the insured.	5
(2)	If an insured receives or is entitled to receive any money or benefit arising out of a tenant’s liability under section 49B(2) or (5) , an insurer of the premises may not take that money or benefit into account in calculating the amount payable under the insurance.	
49D	Unlawful acts related to liability	10
	It is declared to be an unlawful act for a landlord—	
(a)	to demand, request, or accept from the tenant—	
(i)	payment of an amount related to destruction of, or damage to, the premises that exceeds the tenant’s liability in accordance with section 49B ; or	15
(ii)	the carrying out of any works to make good destruction of, or damage to, the premises the value of which exceeds the tenant’s liability in accordance with section 49B :	
(b)	to propose to, or enter into with, the tenant an agreement under which the tenant is obligated—	20
(i)	to pay an amount related to destruction of, or damage to, the premises that exceeds the tenant’s liability under section 49B ; or	
(ii)	to carry out any works to make good the destruction or damage if the value of the works exceeds the tenant’s liability under section 49B .	25
49E	Meaning of premises	
	In sections 49A to 49D , unless the context otherwise requires, premises includes facilities.	
8	Section 50 amended (Circumstances in which tenancies are terminated)	
	In section 50(a), replace “sections 58(1)(d)” with “sections 56A(1) , 58(1)(d)”.	30
9	Section 51 amended (Termination by notice)	
	In section 51(2), after “53A,”, insert “ 56A(1) ,”.	
10	Section 55 amended (Termination on non-payment of rent, damage, or assault)	
	In section 55(2), after “applies”, insert “(but <i>see also</i> section 78A(3)(b))”.	35

11 New section 56A inserted (Termination where premises are unlawful residential premises)

After section 56, insert:

56A Termination where premises are unlawful residential premises

- (1) A tenant of premises that at the start of the tenancy were, and that remain, unlawful residential premises may terminate the tenancy by giving not less than 2 days' notice to the landlord. 5
- (2) Without limiting **subsection (1)**, a landlord or a tenant may apply to the Tribunal for an order terminating a tenancy on the ground that the premises are unlawful residential premises. 10
- (3) The Tribunal may make the order if **section 78A** applies and the Tribunal is satisfied that it would be inequitable to refuse to make an order terminating the tenancy.

12 Section 61 amended (Abandonment of premises)

After section 61(3), insert:

- (3A) Subsection (3) does not apply if **section 78A** applies. 15

13 Section 64 amended (Possession orders)

In section 64(3), after “section 56”, insert “or **section 56A**”.

14 Section 66J amended (Other obligations of landlord)

After section 66J(4), insert:

- (5) The landlord may at any time, and must within 14 days of receiving a request from the tenant, provide to the tenant under a tenancy agreement the following information about insurance of the premises: 20
- (a) if the premises are not insured by the landlord, a statement confirming that fact; and 25
- (b) if the premises are insured by the landlord, a statement setting out details of the insurance policy that are relevant to the tenant's liability for destruction of, or damage to, the premises.
- (6) The landlord must promptly notify the tenant in writing of the current, correct information if any information that was provided in accordance with **subsection (5)** or this subsection is no longer current or is incorrect. 30
- (7) A landlord's failure to comply with **subsection (5) or (6)** is declared to be an unlawful act.

15 Section 66K amended (Obligations of tenant)

- (1) In section 66K(1)(e), delete “; and”. 35
- (2) Repeal section 66K(1)(f).

- (3) In section 66K(2)(a), after “premises”, insert “(see **section 49B**)”.
- 16 Section 77 amended (Jurisdiction of Tribunal)**
- (1) After section 77(2)(ab), insert:
- (ac) to determine whether any premises are or are not, or were or were not at any material time, unlawful residential premises as defined in **section 78A(2)**: 5
- (2) After section 77(2)(mc), insert:
- (md) to make orders in accordance with **section 78A** (which relates to unlawful residential premises) if that section applies:
- (3) After section 77(2A), insert: 10
- (2B) If **section 78A** applies in any matter, the Tribunal’s jurisdiction under subsection (2)(k) and (n) of this section, in relation to that matter, is subject to that section.
- (2C) Nothing in this Act requires the Tribunal to inquire, in the case of every dispute within its jurisdiction, into whether premises are, or were at any material time, unlawful residential premises. 15
- 17 Section 78 amended (Orders of Tribunal)**
- (1) In section 78(1), after “in respect of any claim within its jurisdiction”, insert “(but subject to **section 78A**, if that section applies)”.
- (2) In section 78(2AA), after “apply”, insert “if the work order is a **section 78A** work order or”. 20
- (3) After section 78(2AAB), insert:
- (2AABA) Subsection (2AAB) does not apply if the work order is a **section 78A** work order.
- 18 New section 78A inserted (Orders of Tribunal relating to unlawful residential premises)** 25
- After section 78, insert:
- 78A Orders of Tribunal relating to unlawful residential premises**
- (1) This section applies in any matter where the Tribunal, on application by a party or otherwise on the evidence before the Tribunal in respect of any claim within its jurisdiction, determines or declares that the premises are, or were at any material time, unlawful residential premises. 30
- (2) For the purposes of this Act, **unlawful residential premises** means residential premises that are used for occupation for a person as a place of residence but—
- (a) that cannot lawfully be occupied for residential purposes by that person (whether generally or whether for the particular residential purposes for which that person is granted occupation); and 35

- (b) where the landlord's failure to comply with the landlord's obligations under section 36 or 45(1)(c), or section 66H(2)(c) or 66I(1)(c), as relevant, has caused the occupation by that person to be unlawful or has contributed to that unlawful occupation.
- (3) Despite anything to the contrary elsewhere in this Act,— 5
- (a) unless the Tribunal is satisfied that, having regard to the special circumstances of the matter, including the nature of the premises, it would be unjust not to make the order, the Tribunal must not order the tenant to pay to the landlord—
- (i) any sum found to be owing by way of rent in arrear; or 10
- (ii) any other sum by way of damages or compensation:
- (b) if the landlord has applied for termination on the ground of rent in arrear, the Tribunal may, but is not required to, make the order terminating the tenancy.
- (4) Without limiting the generality of section 77 or the nature or extent of orders that the Tribunal may make in accordance with this Act in relation to the matter,— 15
- (a) the Tribunal may order the landlord to pay to the tenant—
- (i) the whole of the sum found to have been paid by way of rent for the period for which the Tribunal is satisfied that the premises are or were unlawful residential premises; or 20
- (ii) an amount that is the sum referred to in **subparagraph (i)** less any amount that the Tribunal is satisfied, having regard to the special circumstances of the matter, including the nature of the premises, it is fair to deduct: 25
- (b) a **section 78A** work order may comprise or include an order that the landlord take the steps available to the landlord, as specified in the order, to (or to endeavour to)—
- (i) remove or rectify any impediment to the tenant lawfully occupying the premises for residential purposes; or 30
- (ii) comply with all requirements in respect of buildings, health, or safety under any enactment so far as they apply to the premises.
- (5) Even if the tenant does not apply for a particular order, the Tribunal may make any of the following orders on its own initiative:
- (a) any order under **subsection (4)(a)**; and 35
- (b) any **section 78A** work order; and
- (c) any other order, authorised by this Act, that is in favour of the tenant (including, without limitation, an order under section 109 for an amount in the nature of exemplary damages for failure to comply with section 45(1)(c) or 66I(1)(c)). 40

19 Section 108 amended (Enforcement of work orders)

- (1) In section 108(2)(a), after “section 78”, insert “(or **78A**, if that section applies)”.
- (2) In section 108(2)(c), replace “make an order” with “(except in the case of a **section 78A** work order) make an order”.

5

20 Section 112 amended (Contempt)

In section 112(1)(d), replace “section 78 or section 108(2)” with “section 78, **78A**, or 108(2)”.

21 Section 142 amended (Effect of Property Law Act 2007)

- (1) In the heading to section 142, replace “**Effect**” with “**Non-application of Part 4**”.
- (2) Repeal section 142(2).

10

22 Schedule 1AA amended

In Schedule 1AA, after clause 10, insert the **Part 2** set out in the **Schedule**.

23 Schedule 1A amended

15

- (1) In Schedule 1A, insert in their appropriate numerical order:

45(2D)	(Landlord’s failure to meet obligations in respect of insurance information)	500
49D	(Unlawful acts of landlord related to the tenant’s liability under section 49B)	1,000
66J(7)	(Landlord’s failure to meet obligations in respect of insurance information)	500

- (2) In Schedule 1A, replace the item relating to section 108(2A) with:

108(2A)	(Breach of work order (other than section 78A work order) without reasonable excuse)	3,000
108(2A)	(Landlord breaching section 78A work order without reasonable excuse)	4,000

24 Consequential amendment to Unit Titles Act 2010

- (1) This section amends the Unit Titles Act 2010.
- (2) After section 176(1)(a), insert:
- (aa) **section 78A** (which relates to orders of the Tribunal relating to unlawful residential premises):

20

Part 2**Amendments relating to methamphetamine****25 Section 2 amended (Interpretation)**

25

- (1) In section 2(1), insert in its appropriate alphabetical order:

methamphetamine means the Class A controlled drug methamphetamine specified or described in Schedule 1 of the Misuse of Drugs Act 1975

(2) In section 2(1), insert in its appropriate alphabetical order:

methamphetamine-contaminated, in relation to premises, means that methamphetamine is present in any part of the premises at a level above any prescribed maximum acceptable level

26 Section 45 amended (Landlord’s responsibilities)

(1) After section 45(1), insert:

(1AA) Without limiting subsection (1), the landlord must not provide the premises to the tenant at the commencement of the tenancy if—

(a) the landlord knows that tests carried out in accordance with any regulations made under this Act have established that the premises are methamphetamine-contaminated; and

(b) the premises have not been decontaminated in accordance with the prescribed methamphetamine decontamination process.

(2) After section 45(1A), insert:

(1AB) A contravention by the landlord of **subsection (1AA)** is declared to be an unlawful act.

(3) In section 45(3), replace “subsection (1)” with “subsections (1) and **(1AA)**”.

27 Section 48 amended (Landlord’s right of entry)

(1) After section 48(2)(b), insert:

(ba) for the purpose of testing for the presence of methamphetamine, or taking samples for such testing, at any time between 8 o’clock in the morning and 7 o’clock in the evening of any day, after giving to the tenant notice of the intended entry and the reason for it at least 48 hours but not more than 14 days before the intended entry; or

(2) After section 48(3A), insert:

(3B) If premises entered under a notice for the purpose of **subsection (2)(ba)** are entered for the purpose of carrying out tests for the presence of methamphetamine in accordance with any regulations made under this Act, the landlord must, within 7 days of receiving the results of the testing, notify the tenant of the results of the testing.

28 Section 50 amended (Circumstances in which tenancies are terminated)

In section 50(a), replace “or 59A” with “59A, or **59B**”.

29 Section 51 amended (Termination by notice)

In section 51(1) and (2), replace “and 59A” with “59A, and **59B**”.

30 New section 59B inserted (Termination in cases of methamphetamine contamination)

After section 59A, insert:

59B Termination in cases of methamphetamine contamination

If tests carried out in accordance with any regulations made under this Act have established that the premises are methamphetamine-contaminated,— 5

- (a) if the tenant is not responsible for the methamphetamine contamination, the rent abates; and
- (b) the landlord may give notice of termination, the period of notice to be not less than 7 days; and 10
- (c) the tenant may give notice of termination, the period of notice to be not less than 2 days.

31 Section 66A amended (Application of Part)

In section 66A(2)(d), replace “and 55 to 57” with “55 to 57, and **59B**”.

32 Section 66H amended (Landlord’s obligations at start of tenancy) 15

After section 66H(2), insert:

- (3) Without limiting subsection (2), the landlord must not provide the tenant with the boarding room at the commencement of a tenancy if—
 - (a) the landlord knows that tests carried out in accordance with any regulations made under this Act have established that any part of the room or facilities of the boarding house is methamphetamine-contaminated; and 20
 - (b) the room or facilities (as relevant) have not been decontaminated in accordance with the prescribed methamphetamine decontamination process.
- (4) A contravention by the landlord of **subsection (3)** is declared to be an unlawful act. 25

33 Section 66J amended (Other obligations of landlord)

After section 66J(3), insert:

- (3A) If the landlord carries out tests for the presence of methamphetamine in any of the facilities in accordance with any regulations made under this Act, the landlord must, within 7 days of receiving the results of the testing, tell every current tenant of the boarding house the results of the testing. 30

34 Section 66S amended (Notice of entry)

- (1) After section 66S(1)(f), insert:

- (fa) to test for the presence of methamphetamine, or to take samples for such testing: 35

- (2) After section 66S(4), insert:
- (5) If a boarding room entered under a notice of entry for the purpose of **subsection (1)(fa)** is entered for the purpose of carrying out tests for the presence of methamphetamine in accordance with any regulations made under this Act, the landlord must, within 7 days of receiving the results of the testing, notify the tenant of the results of the testing. 5

35 New section 66UA inserted (Rent abatement, and termination of tenancy or tenancies by landlord, in cases of methamphetamine contamination)

After section 66U, insert:

66UA Rent abatement, and termination of tenancy or tenancies by landlord, in cases of methamphetamine contamination 10

- (1) This section applies if tests carried out in accordance with any regulations made under this Act have established that any part of the boarding house is methamphetamine-contaminated.
- (2) The rent abates for any room that is methamphetamine-contaminated, unless the tenant of the room is responsible for the methamphetamine contamination. 15
- (3) The landlord may, on not less than 7 days' notice, terminate—
- (a) any boarding house tenancy, if any part of the room let to the tenant under that tenancy is methamphetamine-contaminated;
- (b) any boarding house tenancy, if access to any part of the room let to the tenant under that tenancy is needed in order to carry out the prescribed methamphetamine decontamination process to another room: 20
- (c) any or all of the boarding house tenancies, if any part of the facilities is methamphetamine-contaminated.
- (4) Section 66U(2) to (4) applies to a termination under this section. 25

36 Section 66Y amended (Possession orders)

In section 66Y(1)(a), after “section 66U”, insert “or **66UA**”.

37 New section 138C inserted (Regulations in respect of methamphetamine)

After section 138B, insert:

138C Regulations in respect of methamphetamine 30

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing a maximum acceptable level of methamphetamine for premises:
- (b) providing for the carrying out of tests for the presence of methamphetamine in premises, including prescribing methods or standards relating to— 35

- | | | |
|-------|--|----|
| (i) | testing premises, taking samples for testing, and testing of samples: | |
| (ii) | assessment of the results of the testing of premises or samples, including determining whether methamphetamine contamination is established: | 5 |
| (iii) | who is authorised to carry out the tests or parts of the tests: | |
| (c) | prescribing the decontamination process (which may extend to pre-decontamination and post-decontamination assessment, sampling, and testing, and may include who is authorised to carry out the process or parts of the process) for the purposes of sections 45(1AA), 66H(3), and 66UA(3)(b) . | 10 |
| (2) | Regulations under this section may be different for different spaces, materials, or other aspects of premises, or for different descriptions of premises. | |

38 Schedule 1A amended

In Schedule 1A, insert in their appropriate numerical order: 15

45(1AB)	(Landlord providing premises at start of tenancy despite knowledge of methamphetamine contamination)	4,000
66H(4)	(Landlord providing boarding room at start of tenancy despite knowledge of methamphetamine contamination)	4,000

Schedule
New Part 2 of Schedule 1AA inserted

s 22

Part 2		
Provisions relating to Residential Tenancies Amendment Act 2017		5
11	Interpretation	
	In this Part,—	
	2017 Amendment Act means the Residential Tenancies Amendment Act 2017	
	amendment means an amendment to this Act made by a provision of the 2017 Amendment Act	10
	commencement date , in relation to an amendment, means the date on which the provision of the 2017 Amendment Act that makes the amendment comes into force	
	tenancy includes a tenancy to which this Act applies as a result of section 4(2) of the 2017 Amendment Act (which replaces the definition of residential premises in section 2(1)) and that subsists on the date on which that amendment came into force.	15
12	Existing tenancies, etc	
	An amendment applies to a tenancy whether the tenancy commences before, on, or after the commencement date.	20
13	New unlawful acts	
	An amendment that creates a new unlawful act does not apply to acts or omissions before the commencement date.	
14	Proceedings that have commenced	25
	An amendment does not apply to proceedings commenced before the Tribunal before the commencement date.	
15	Application of section 56A(1) to existing tenancies	
	Section 56A(1) (as inserted by section 11 of the 2017 Amendment Act) applies to a tenant of a tenancy of premises that are unlawful residential premises immediately after the commencement of section 56A(1) as if the tenancy had started on commencement of that section.	30
16	Application of section 78A to certain work orders	
	Section 78A (as inserted by section 18 of the 2017 Amendment Act) does not apply to subsequent proceedings taken for enforcement of a work order	35

made in a matter for which proceedings commenced before the Tribunal before the date on which that section comes into force.