

Residential Tenancies Amendment Bill (No 2)

Government Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Residential Tenancies Amendment Bill (No 2) and recommends that it be passed with the amendments shown.

Introduction

The Residential Tenancies Amendment Bill (No 2) proposes changes to the Residential Tenancies Act 1986. The bill seeks to address three distinct issues relating to residential tenancies:

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

The bill's aim, through addressing these issues, is to improve the residential rental market by providing safety, protection, and clarity for landlords and tenants.

This commentary covers the main amendments we recommend to this bill. It does not discuss minor or technical amendments.

Commencement

In the bill as introduced, clause 2(1) would allow most of Part 2 to come into force on a date appointed by the Governor-General by Order in Council. Under clause 2(3), any provision that could be brought into force under clause 2(1), but had not yet been, would come into force on 1 July 2018.

We recommend replacing the date "1 July 2018" in clause 2(3) with "the first anniversary of the date of Royal assent". This would allow more time for regulations to be developed.

Recommended amendments to Part 1 (tenant liability and rental premises unlawful for residential use)

Part 1 of the bill proposes amendments relating to tenant liability, and to premises that are unlawful for residential use. We recommend that the following amendments be made to Part 1.

Landlords to include insurance information in tenancy agreements

Clauses 6 and 14 would require landlords to provide relevant insurance-related information to a tenant at the tenant's request. Numerous submitters felt that the bill should include a requirement for landlords to disclose insurance information as a matter of course. They maintained that it is unlikely that tenants would know to ask for this information, and therefore would not be aware of their liability for damage.

We recommend removing clauses 6 and 14 and inserting clause 4A. Clause 4A would amend section 13A of the Residential Tenancies Act to require landlords to include information about the insurance of a premises in a tenancy agreement.

Under new clause 4A(2), landlords would have to provide a written statement, as part of the tenancy agreement, specifying whether or not the premises were insured. If the premises were insured, the statement would have to include

- the amount of the excess under the insurance
- what relevant risks are insured against, and any relevant exceptions
- what (if any) acts or omissions of the tenant, or of a person for whose actions the tenant is responsible, would make insurance monies under the policy irrecoverable.

Our proposed new clause 4A(3) would provide for situations where tenancy agreements were entered into before clause 4A(2) had come into force. In these situations, if a tenant requested information about the insurance of the premises, the landlord would have to provide the information within 14 days.

We recommend inserting clause 23(1AA) to amend Schedule 1A of the Residential Tenancies Act to provide that it would be an unlawful act, with a maximum penalty of \$500, if a landlord did not comply with these provisions.

We consider that providing tenants with insurance information as part of their tenancy agreement would help make tenants aware of their level of liability. This knowledge would help motivate tenants to take care of rental properties.

When a tenant is liable for damage

Clause 7 of the bill seeks to amend section 49 of the Residential Tenancies Act by inserting new sections 49A to 49E regarding responsibility for damage to rental premises. We recommend some amendments to proposed new section 49B, which addresses when a tenant is liable for damage.

Proposed subsection (3) outlines what the limits on a tenant's liability would be. We do not consider that the words "for each incident" are necessary, and therefore we rec-

ommend removing them. We also recommend removing the words “by the landlord” in paragraph (a), as there are some situations where the landlord may not be the owner of an insurance policy over the rental premises.

The bill is unclear as to who would have to prove whether damage was caused intentionally. We recommend inserting subsection (7) into proposed new section 49B to clarify what landlords and tenants would have to prove if a home was damaged or destroyed during a tenancy.

Recommended amendments to Part 2 (contaminated properties)

Part 2 contains amendments aimed at addressing methamphetamine contamination in rental properties.

Replacing references to “methamphetamine” with “contaminant”

In the opinion of some submitters, the bill’s focus on methamphetamine contamination is misguided. They said that contamination by other toxic substances, such as asbestos, fungal toxins, and lead paint, could also put people’s health at risk.

We agree that limiting the bill’s coverage to just methamphetamine contamination would miss an opportunity to address contamination by other substances.

We therefore recommend inserting a definition of “contaminant” into clause 25(1). This definition specifically refers to methamphetamine, but also includes any substance, or class of substance, prescribed as a contaminant for the purpose of the legislation. Including methamphetamine in the definition of “contaminant” would allow landlords to exercise a right of entry to test for methamphetamine once Part 1 of the Act came into force.

We also recommend removing reference to the word “methamphetamine” in the bill and, where necessary, replacing it with the word “contaminant”.

Landlords’ right of entry to test for contaminants

Clauses 27 and 34 provide for a landlord’s right of entry to test for methamphetamine (clause 34 relates to boarding houses and clause 27 to other premises). To keep these clauses in line with our recommendation that the bill should refer more generally to contaminants instead of just to methamphetamine, we recommend amending clause 27(1)(ba) and inserting clause 34(1A) to require landlords to state the contaminants they will be testing for.

Clauses 27(3B), 33(3A), and 34(5) would require landlords to notify tenants of the results of a test within 7 days of receiving the results. (Clause 33(3A) stipulates that landlords must notify every current tenant of a boarding house if any of the shared facilities of the boarding house are tested.) We recommend amending these clauses so that landlords would have to notify tenants of the results in writing, and provide tenants with a copy of the results. We also recommend removing the requirement that results need only be provided if the test was carried out in accordance with any regulations made under the Act. This would ensure that landlords provide tenants with the

results, even if the test had not been done in accordance with a “prescribed method” under the Act.

Termination of tenancy in cases of contamination

Clauses 30, 35, and 36 deal with the termination of tenancies when premises were found to be contaminated with methamphetamine. We recommend removing clauses 30 and 35 and inserting clause 29A so that all forms of contamination are dealt with in the same way as damage and destruction of premises in sections 59 and 59A of the Residential Tenancies Act.

These amendments would bring the treatment of contaminated rental premises into line with other forms of damage. They would also allow for different approaches to be taken when dealing with tenants who caused the contamination, as opposed to tenants who did not cause the contamination.

Where only part of the premises was contaminated, our amendments would also allow the tenancy to continue while the landlord remediated the contaminated part.

Regulations about contaminants

The bill provides regulation-making powers in relation to methamphetamine. To align the bill with our recommendation that it refer more generally to contaminants instead of just to methamphetamine, we recommend amending clause 37.

We recommend inserting subsection (1AA) into proposed new section 138C. This would allow the Governor-General, by Order in Council on the recommendation of the Minister, to make regulations prescribing substances or classes of substances for the purposes of the Act.

We also recommend inserting subsection (1AB) into proposed new section 138C. This subsection would act as a check on the Minister by requiring the Minister to be satisfied that the substance may be harmful to people’s health before recommending that an Order in Council be made.

New section 138C(1) sets out the various purposes for which an Order in Council could be made. We recommend amending paragraph (a) to allow for the setting of maximum acceptable levels, or a way of calculating these levels, for any prescribed contaminant or class of contaminants. We also recommend amending paragraph (b) so that an Order in Council could be made prescribing methods for carrying out tests for the presence of contaminants.

We note that Standards New Zealand has standards relating to contaminants. It has recently released NZS 8510, the standard for testing and decontaminating properties contaminated by methamphetamine. While we would not want to constrain the legislation by referring explicitly to a particular standard, we do consider it important for any relevant standards to be taken into account. We therefore recommend inserting subsection (1A) into new section 138C, to require the Minister to have regard to any relevant New Zealand Standard before recommending an Order in Council.

We consider that the regulation-making powers under new section 138C would allow the necessary time and flexibility for the making of regulations about methamphetamine contamination, or contamination by other substances. We believe our proposed amendments would still achieve the bill's original purpose of addressing methamphetamine contamination. However, they would also make the legislation more future-focused and practical.

Abandoned goods left on contaminated premises

The bill provides that landlords should treat possessions abandoned in premises that are contaminated with methamphetamine in the same way as any abandoned goods under the Residential Tenancies Act.

We consider that current provisions under the Residential Tenancies Act are not sufficient to deal with abandoned goods in methamphetamine-contaminated premises. We therefore recommend inserting new section 62(3A) (new clause 30A) and new section 138C(1)(d) and (3) (clause 37) to provide that regulations may be developed to prescribe ways of dealing with goods left behind in contaminated premises. However, if no regulations are developed for a specific contaminant, then the existing provisions for abandoned goods under the Residential Tenancies Act would apply.

Appendix

Committee process

The Residential Tenancies Amendment Bill (No 2) was referred to the Local Government and Environment Committee of the previous Parliament on 4 July 2017 and was reinstated with this committee in the current Parliament. The closing date for submissions was 22 August 2017. We received and considered 35 submissions from interested groups and individuals. We heard oral evidence from 15 submitters at hearings in Auckland and Wellington.

Committee membership

Brett Hudson (Chairperson)

Virginia Andersen

Kanwaljit Singh Bakshi

Hon Jacqui Dean (from 21 March 2018)

Paul Eagle

Hon Peeni Henare

Raymond Huo

Stuart Smith (until 21 March 2018)

Dr Jian Yang

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Phil Twyford

Residential Tenancies Amendment Bill (No 2)

Government Bill

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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(4), and 34(4)**) 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)** and that is not in force on ~~1 July 2018~~ the first anniversary of the date of Royal assent comes into force then. 10

3 Principal Act

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

Part 1

15

Amendments relating to tenant liability and premises unlawful for residential use

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
- (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)**
- 4A Section 13A amended (Contents of tenancy agreement)**
- (1) In section 13A(1F)(a) and (b), replace “subsection (1A)” with “subsection (1A), **(2), (3), or (4)**”.
- (2) After section 13A(1F), insert:
 (2) The landlord must include in the tenancy agreement the following information about insurance of the premises:
 (a) if the premises are not insured, a statement that they are not insured; and
 (b) if the premises are insured, 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, including—
 (i) the amount of the excess under the insurance; and
 (ii) what relevant risks are insured against and any relevant exceptions; and
 (iii) what, if any, acts or omissions of the tenant or of a person for whose actions the tenant is responsible under section 41 or 66L would have the effect of making insurance moneys under the policy irrecoverable.
- (3) If a tenant under a tenancy agreement that was entered into before **subsection (2)** comes into force requests the landlord to provide the information referred to in that subsection, the landlord must, within 14 days after receiving the request, provide the information in writing to the tenant.
- (4) If anything changes so that the information that was included in the tenancy agreement in accordance with **subsection (2)** or that was provided in accordance with **subsection (3)** is no longer correct, the landlord must promptly provide the correct information in writing to the tenant.
- 5 Section 40 amended (Tenant’s responsibilities)**
- (1) In section 40(2)(a), after “premises”, insert “(*see* **section 49B**)”.
- (2) Repeal section 40(4).

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

- (7) If any destruction of, or damage to, the premises is proved to have occurred during any tenancy to which this Act applies,—
- (a) it is for the landlord to prove—
- (i) that any damage is not fair wear and tear; and
- (ii) that any destruction or damage occurred in circumstances described in **subsection (1)(b)**; and 5
- (iii) that any insurance moneys are irrecoverable for the reasons described in **subsection (1)(c)**; and
- (b) it is for the tenant to prove—
- (i) that any destruction or damage was not intentionally done or caused as described in **subsection (1)(a)**; and 10
- (ii) that any destruction or damage was not caused by a careless act or omission described in **subsection (2)**.
- 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. 15
- (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. 20
- 49D Unlawful acts related to liability**
- It is declared to be an unlawful act for a landlord—
- (a) to demand, request, or accept from the tenant— 25
- (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
- (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**: 30
- (b) to propose to, or enter into with, the tenant an agreement under which the tenant is obligated—
- (i) to pay an amount related to destruction of, or damage to, the premises that exceeds the tenant's liability under **section 49B**; or 35
- (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**.

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)”. 5	
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))”. 10	
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. 15	
(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. 20	
(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: 25	
(3A)	Subsection (3) does not apply if section 78A applies.	
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: 30	
(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:	
(a)	if the premises are not insured by the landlord, a statement confirming that fact; and 35	

- (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. 5
- (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”. 10
- (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)**: 15
- (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: 20
- (3) After section 77(2A), insert:
- (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. 25
- 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)”. 30
- (2) In section 78(2AA), after “apply”, insert “if the work order is a **section 78A** work order or”.
- (3) After section 78(2AAB), insert:
- (2AABA) Subsection (2AAB) does not apply if the work order is a **section 78A** work order. 35

18 New section 78A inserted (Orders of Tribunal relating to unlawful residential premises)

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. 5
- (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— 10
- (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
- (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. 15
- (3) Despite anything to the contrary elsewhere in this Act,—
- (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— 20
- (i) any sum found to be owing by way of rent in arrear; or
- (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. 25
- (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,— 30
- (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
- (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: 35

- (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 5
- (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: 10
- (a) any order under **subsection (4)(a)**; and
- (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)). 15

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”. 20

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**”. 25
- (2) Repeal section 142(2).

22 Schedule 1AA amended

In Schedule 1AA, after clause ~~10~~ 13, insert the **Part-2 3** set out in the **Schedule** of this Act. 30

23 Schedule 1A amended

(1AA) In Schedule 1A, replace the item relating to section 13A(1F) with:

<u>13A(1F)</u>	(Non-compliance with section 13A(1A), (2), (3), or (4) , etc)	<u>500</u>
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(1) In Schedule 1A, insert in ~~their~~ its appropriate numerical order:

45(2D)	(Landlord’s failure to meet obligations in respect of insurance information)	500
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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

23A Consequential amendment to Healthy Homes Guarantee Act 2017

- (1) This section amends the Healthy Homes Guarantee Act 2017.
- (2) In the Schedule, item relating to section 2, new paragraph (b) of the definition of **work order**, after "healthy homes standards", insert "; and".

5

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):

10

Part 2

Amendments relating to methamphetamine and other contaminants

25 Section 2 amended (Interpretation)

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

contaminant means any of the following:

15

(a) methamphetamine;

(b) any substance prescribed, or within a class of substance prescribed, as being a contaminant for the purposes of this Act

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

20

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

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

25A Section 33 amended (Tenant's goods not to be seized)

25

In section 33(4)(a), after "62C", insert "or in accordance with regulations made for the purposes of **section 62(3A)**".

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~~ prescribed methods have established that the premises are ~~methamphetamine~~-contaminated; and

(b) the premises have not been decontaminated in accordance with the relevant 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~~ contaminants, 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 (including stating the contaminants to be tested for) at least 48 hours but not more than 14 days before the intended entry; or

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

(3B) If premises are 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, in writing, of the results of the testing and provide the tenant with a copy of the results, if any.

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**”.

29A Section 59 amended (Destruction of premises)

After section 59(4), insert:

(5) In this section and section 59A, premises that are contaminated are treated as so seriously damaged as to be uninhabitable if the contamination has been established by tests carried out in accordance with prescribed methods.

(6) In subsection (4), **reinstate**, in the case of contamination, means decontaminate in accordance with the relevant prescribed decontamination process.

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

After section 59A, insert:

5

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,—~~

- ~~(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~~
- ~~(c) the tenant may give notice of termination, the period of notice to be not less than 2 days.~~

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30A Section 62 amended (Goods left on premises on termination of tenancy)

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After section 62(3), insert:

(3A) However, if tests carried out in accordance with prescribed methods have established that the premises are contaminated, and regulations under this Act prescribe a process (and associated duties) for dealing with the goods,—

- (a) subsection (3) and sections 62A to 62D do not apply; and
- (b) the prescribed process and duties must instead be complied with.

20

30B Section 62E amended (Responsibility of tenant unaffected)

In section 62E, after “62D”, insert “and any regulations made for the purposes of **section 62(3A)**”.

30C Section 62F amended (Protection from liability)

25

(1) In section 62F(1), after “62A” and “62B”, insert “or in accordance with regulations”.

(2) In section 62F(2), after “62A(5)(b)(ii)” and “62B(2)(b)”, insert “or in accordance with regulations”.

(3) After section 62F(2), insert:

30

(3) In this section, **regulations** means regulations made for the purposes of **section 62(3A)**.

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)

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~~ prescribed methods have established that any part of the room or facilities of the boarding house is ~~methamphetamine-contaminated~~; and
- (b) the room or facilities (as relevant) have not been decontaminated in accordance with the relevant prescribed methamphetamine decontamination process.
- (4) A contravention by the landlord of **subsection (3)** is declared to be an unlawful act.

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-contaminants~~ 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~~. notify every current tenant of the boarding house, in writing, of the results of the testing, and provide each of them with a copy of the results, if any.

34 Section 66S amended (Notice of entry)

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

(fa) to test for the presence of ~~methamphetamine~~ stated contaminants, or to take samples for such testing:

- (1A) After section 66S(3)(a), insert:

(aa) if the purpose is to test for the presence of stated contaminants or to take samples for such testing, state those contaminants; and

- (2) After section 66S(4), insert:

- (5) If a boarding room is 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, in writing, of the results of the testing and provide the tenant with a copy of the results, if any.

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~~

- (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.~~ 5
- (2) ~~The rent abates for any room that is methamphetamine-contaminated, unless the tenant of the room is responsible for the methamphetamine contamination.~~
- (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;~~ 10
- (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;~~
- (c) ~~any or all of the boarding house tenancies, if any part of the facilities is methamphetamine-contaminated.~~ 15
- (4) ~~Section 66U(2) to (4) applies to a termination under this section.~~

~~36 Section 66Y amended (Possession orders)~~

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

~~36A Section 77 amended (Jurisdiction of Tribunal)~~

~~In section 77(2)(mc), after “62B”, insert “or in accordance with any regulations made for the purposes of **section 62(3A)**”.~~ 20

~~37 New sections 138C and 138D inserted (Regulations in respect of methamphetamine)~~

~~After section 138B, Before section 139, insert:~~

~~138C Regulations in respect of methamphetamine contaminants and contaminated premises~~ 25

- ~~(1AA) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing substances, or classes of substances, as contaminants for the purposes of this Act.~~
- ~~(1AB) Before making a recommendation for the purposes of **subsection (1AA)**, the Minister must be satisfied that the substance may be harmful to the health of persons.~~ 30
- (1) ~~The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:~~
- (a) ~~prescribing a maximum acceptable levels, or a means of calculating maximum acceptable levels, of methamphetamine contaminants for premises:~~ 35

- (b) ~~providing for the prescribing methods for carrying out of tests for the presence of methamphetamine contaminants in premises, including for testing premises, taking samples for testing, testing of samples, establishing levels of contaminants present in premises, and who is authorised to carry out the tests or parts of the tests: including prescribing methods or standards relating to—~~ 5
- (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:~~ 10
- (iii) ~~who is authorised to carry out the tests or parts of the tests:~~
- (c) ~~prescribing the decontamination process processes (which may extend to pre-decontamination and post-decontamination assessment, sampling, and testing, and may include who is authorised to carry out the process processes or parts of the process processes) for the purposes of **sections 45(1AA), and 66H(3), and 66UA(3)(b):**~~ 15
- (d) ~~prescribing processes and duties for the purposes of **section 62(3A)** (which relates to abandoned goods on contaminated premises).~~
- (1A) Before making a recommendation for the purposes of **subsection (1)**, the Minister must have regard to any relevant New Zealand Standard. 20
- (2) ~~Regulations under this section may be different for different— spaces, materials, or other aspects of premises, or for different descriptions of premises:~~
- (a) ~~contaminants or classes of contaminants:~~
- (b) ~~spaces, materials, or other aspects of premises or goods, or for different descriptions of premises or goods:~~ 25
- (c) ~~levels of contamination.~~
- (3) Regulations under **subsection (1)(d)** may require compliance with sections 62(3) and 62A to 62D—
- (a) ~~in whole or in part; and~~ 30
- (b) ~~with modifications, additions, or variations specified in the regulations.~~
- 138D Powers to make regulations under sections 138A to 138C not limited by other enactments**
- To avoid doubt, nothing in the Building Act 2004, or in any other enactment relating to buildings, health, or safety, limits the provision that may be made by regulations under section 138A, 138B, or **138C**. 35

38 Schedule 1A amended

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

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

39 **Consequential amendment to Healthy Homes Guarantee Act 2017**

- (1) This section amends the Healthy Homes Guarantee Act 2017.
- (2) In section 6, repeal new section 138C.

Schedule
New Part 2-3 of Schedule 1AA inserted

s 22

Part <u>23</u>	
Provisions relating to Residential Tenancies Amendment Act 2017	
<u>114</u> Interpretation	5
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	
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.	
<u>1215</u> Existing tenancies, etc	20
An amendment applies to a tenancy whether the tenancy commences before, on, or after the commencement date.	
<u>1316</u> New unlawful acts	25
An amendment that creates a new unlawful act does not apply to acts or omissions before the commencement date.	
<u>1417</u> Proceedings that have commenced	25
An amendment does not apply to proceedings commenced before the Tribunal before the commencement date.	
<u>1518</u> Application of section 56A(1) to existing tenancies	30
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.	
<u>1619</u> Application of section 78A to certain work orders	35
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	

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

Legislative history

23 May 2017

Introduction (Bill 258–1)

4 July 2017

First reading and referral to Local Government and Environment Committee

8 November 2017

Reinstated before Governance and Administration Committee