

TENANCY AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Tenancy Act 1955.

Clause 2 provides that the landlord of a dwellinghouse may make application to a Magistrate's Court for an order exempting the dwellinghouse from the provisions of the principal Act. The landlord is required—

- (a) To serve the tenant with not less than 1 month's notice of his intention to make the application; and
- (b) To have been the landlord or one of the landlords of the dwellinghouse throughout the period of seven years immediately preceding the date of service of the notice.

If an order is made, it will take effect at the expiration of 3 months from the date of the making of the order unless the Court directs that the order shall come into force at the expiration of a shorter period or on an earlier date. An order will not take effect while an appeal against the making of the order is pending under *clause 3*.

The Court may not make an order unless it is satisfied, after having considered the circumstances, including the tenant's financial position and his ability to pay a market rent for the dwellinghouse, that it is not fair and equitable that the principal Act should continue to apply to the dwellinghouse. In the absence of evidence from or on behalf of the tenant as to his financial position and his ability to pay a market rent, his financial position will be deemed sound and he will be deemed able to pay that rent.

Clause 3 gives a right of appeal to the Supreme Court against the making or the refusal to make an order under *clause 2*.

Clause 4 provides that Court fees are not payable in respect of proceedings under this Act and that a party to any such proceedings can be ordered to pay the costs of any other party to the proceedings only in certain specified circumstances.

Clause 5 provides that, with the written authority of the tenant, any Rents Officer may, on behalf of the tenant, oppose any application under *clause 2* and any appeal under *clause 3*.

Clause 6 provides that except as provided in *clause 3*, no decision by any Court under this Act can be appealed against, reviewed or quashed except on the ground of lack of jurisdiction.

Clause 7 makes a consequential amendment to the principal Act by inserting a new section 9A.

Hon. Mr Shand

TENANCY AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Tenancy Act 1955

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title**—This Act may be cited as the Tenancy Amendment Act 1968, and shall be read together with and deemed part of the Tenancy Act 1955* (hereinafter referred to as the principal Act).
- 10 2. **Magistrate's Court may exempt dwellinghouse**—(1) On application in that behalf made by or on behalf of the landlord of any dwellinghouse, a Magistrate's Court may, subject to the provisions of this Act, make an order exempting the dwellinghouse from the provisions of the principal Act.
- 15 (2) Where the landlord of the dwellinghouse in respect of which any such application is made holds the dwellinghouse as a tenant the head landlord shall be made a party to the proceedings.

*1957 Reprint, Vol. 15, p. 527
Amendments: 1958, No. 95; 1961, No. 66; 1964, No. 23

(3) No application shall be made under this section unless—

- (a) The landlord has, after the passing of this Act, served on the tenant not less than one month's notice in writing of his intention to make the application; and
- (b) The landlord has been the landlord or one of the landlords of the dwellinghouse throughout the period of seven years immediately preceding the date of service of the notice:

Provided that, where during the period referred to in paragraph (b) of this subsection, any person has become entitled to the interest in the dwellinghouse of his or her husband or wife or of one or both of his or her parents who had been a landlord or landlords thereof since the beginning of that period, that person shall be deemed for the purposes of that paragraph to have been a landlord of the premises throughout that period.

(4) Every notice under subsection (3) of this section shall contain an address for service, and shall be signed by the landlord or by some duly authorised attorney or agent of the landlord, and shall be served in accordance with section 50 of the principal Act.

(5) Every application under this section shall be made as if it were an application by a landlord to fix the fair rent of the dwellinghouse and the provisions of section 26 of the principal Act shall apply accordingly with any necessary modifications.

(6) Subject to subsection (7) of this section, the Court shall not make an order under this section unless it is satisfied, after having considered the circumstances, including the tenant's financial position and his ability to pay a market rent for the dwellinghouse, that it is not fair and equitable that the principal Act should continue to apply to the dwellinghouse.

(7) In the absence of evidence from or on behalf of the tenant as to his financial position and his ability to pay a market rent for the dwellinghouse, his financial position shall be deemed to be sound and he shall be deemed able to pay that rent.

(8) Every order made under this section shall take effect at the expiration of three months from the date of the making of the order unless the Court directs that the order shall come into force at the expiration of a shorter period or on an earlier date:

Provided that no such order shall take effect while any appeal against the making of the order is pending under section 3 of this Act.

5 (9) For the purposes of this section the term “market rent”, in relation to any dwellinghouse, means the rent at which the dwellinghouse might reasonably be expected to be let in the open market by a willing lessor.

3. Appeal to Supreme Court—Where a Magistrate’s Court makes or refuses to make an order under section 2 of this Act, any party to the proceedings may appeal to the Supreme Court in accordance with the provisions of Part V of the Magistrate’s Courts Act 1947 (except section 71), and those provisions shall apply accordingly with any necessary modifications:

10 15 Provided that the determination of the Supreme Court on any such appeal shall be final.

4. Court fees and costs—(1) No Court fees shall be payable in respect of any application made to the Court under section 2 of this Act, or in respect of any appeal under section 3 of this Act, or in respect of any document filed for the purposes of any such application or appeal.

20 25 30 (2) No party to any proceedings on an application made to the Court under section 2 of this Act or on an appeal under section 3 of this Act shall be liable to pay the costs of any other party to the proceedings unless the Court makes an order for the payment by any party of any such costs on the ground that in its opinion the conduct of that party has been for the purpose of causing delay or has in any other respect been vexatious, or on the ground that it is desirable for other special reason to make such an order.

5. Rents Officers may act on behalf of tenants of dwellinghouses—With the authority in writing of the tenant of any dwellinghouse, any Rents Officer may, on behalf of the tenant, oppose any application under section 2 of this Act and any appeal under section 3 of this Act and appear in the proceedings in the Magistrate’s Court or the Supreme Court, as the case may require, either in person or by a barrister or solicitor.

6. Decisions to be final—Except as expressly provided in this Act, no appeal shall lie from any decision, determination, or order made by the Court under this Act, and no such decision, determination, or order shall be liable to be challenged, reviewed, quashed, or called in question by any Court on any ground except lack of jurisdiction. 5

7. Exemption of dwellinghouses—The principal Act is hereby amended by inserting, after section 9 (as substituted by section 5 of the Tenancy Amendment Act 1961), the following section: 10

“9A. This Act shall not apply to any dwellinghouse in respect of which an order made under section 2 of the Tenancy Amendment Act 1968 has become effective.”