



pukeko
RENTAL MANAGERS



WHAT LANDLORDS NEED TO KNOW

**LANDLORDS RESPONSIBILITIES UNDER LEGISLATION
AFFECTING RENTAL PROPERTIES IN NEW ZEALAND.**

Contents

<i>Foreword</i>	03
<i>Fair Trading Act, Privacy Act, & Human Rights Act</i>	04
<i>Building Act & Residential Tenancies Act</i>	05
<i>Landlord Responsibilities</i>	06
<i>Health And Safety At Work Act</i>	08
<i>Landlord Fined For Rental Property Safety Failings</i>	09
<i>Landlord Compliance Checklist</i>	10
<i>Healthy Homes Standards</i>	11
<i>Compliance Dates</i>	14
<i>Residential Tenancies Amendment Act 2020</i>	15
<i>About David Pearse</i>	18

FOREWORD



It has continued to astonish me with the lack of knowledge and understanding I have encountered amongst landlords as to what their responsibilities are.

To me, it is like playing any game such as Rugby. If one side does not know the rules they are operating under then they should not be surprised if they are penalized for breaking the rules. Out of frustration they blame and criticize the referee when they should be looking at themselves.

It is the same with legislation relating to residential properties. The difference is that the Landlord is expected to know the rules and ignorance is not an excuse. If you are going to play the game, then get familiar with the rules, and stop blaming the referee.

I would not want to be a Tenancy Tribunal Adjudicator as the tenants say they favour the landlord, and the landlords say they favour the tenants. The fact is that while all Adjudicators are not perfect, they should be ruling on the rules and the evidence given to them.

We are in an unprecedented period of time when the rules are being changed and added to at an amazing rate, and with the changes come huge penalties for breaking the rules.

The purpose of this E-Book is to make sure that landlords know what they need to know and avoid finding themselves facing huge fines or penalties. Everyone taking on the responsibilities of the landlord need to know what those responsibilities are.

David Pearse

FAIR TRADING ACT 1986

Prohibits landlords from misleading or deceptive conduct and false representations. This is particularly applicable what a landlord says or does not say about a property in relation to compliance with the Building Act. Under the Fair Trading Act 1986, silence is not a defence.

HUMAN RIGHTS ACT 1993

It is illegal for a landlord to discriminate against any person because of their age (if they are over 18 - RTA), colour, disability, employment status, ethical beliefs, ethnic or national origins, family status, political opinions, race, religious beliefs, sex and sexual orientation.

Landlords cannot discriminate against prospective tenants or instruct someone to discriminate.

PRIVACY ACT 1986

Landlords must comply with the Privacy Act. In short, landlords must;

- Get the consent of the tenant to collect information about them;
- Collect information which is necessary for their purpose;
- Store the information securely;
- Give access to tenant if requested;
- Seek permission from tenant to disclose to another person;
- Dispose of when there is no longer a lawful purpose to hold it.

Landlords refuse tenants with assistance dogs and mental health issues



118 tenants alleged they were discriminated against in their search for a home, or were subjected to discrimination in the home.



BUILDING ACT 2004

The Building Act 2004 and The Building Code encompass the requirements for a property to be healthy and safe and sanitary.

The Building Act 2004 aims to ensure that building work is carried out so that buildings are safe and don't harm the health of the people who use them. Landlords must comply with all building and health and safety requirements (RTA 1986).

A property owner needs consent from the local authority to change a building's specified use. Under Section 14B of the Building Act, an owner is responsible for ensuring that building work carried out by them complies with the building consent or, if there is no building consent, with the building code. The owner is responsible for obtaining any necessary consents, approvals, and certificates. Landlords have to ensure compliance with any notices to fix.

RESIDENTIAL TENANCIES ACT 1986 & RESIDENTIAL TENANCIES ACT AMENDMENT 2010

The Residential Tenancies Act (RTA) defines the rights and responsibilities of landlords and tenants of residential properties. From the time of the original legislation in 1986, New Zealand had changed significantly. People were renting for longer, and the demographics of tenants had changed over time. This led to a review in 2010 to ensure it continued to work well then and into the future.

The review made some important changes including updating and clarifying the rights and responsibilities of landlords and tenants. A significant change was the introduction of Unlawful Acts which set out exemplary damages to punish and deter landlords and tenants for not fulfilling their responsibilities.

Even today ten years later there are many landlords that are unaware of the changes made. I will now touch on a few rules that landlords need to be aware of.



RENT BIDDING PROHIBITED

Rent bidding is now prohibited with landlords being obligated to state the amount of rent when advertising residential premises. Landlords would not be allowed to ask multiple applicants to pay more than this advertised price.



FIBRE CONNECTIONS

Landlords must permit and facilitate the installation of fibre broadband services. This is designed to ensure that New Zealanders renting a property have similar opportunities to access fibre as owner-occupiers.



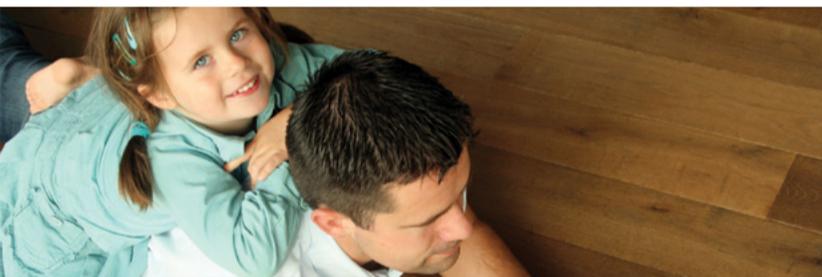
GUARANTORS

A guarantor is a person who guarantees the performance of the tenants' obligations. They now should be a party to a dispute in the Tenancy Tribunal.



CHANGE OF LANDLORD OR LANDLORDS ADDRESS

The tenant must be notified of a change of landlord or change of landlords address within 10 working days.



DISCRIMINATION

The landlord cannot discriminate against anybody. From the wording of the advert to termination of the tenancy, anything considered to be discrimination could be a contravention of The Human Rights Act 1993. It is wise not to give a reason why an applicant was not successful.



LANDLORD HOLIDAYS

A landlord firstly must reside in New Zealand. I have come across many that do not and are managing their properties from Australia. A landlord who leaves New Zealand for more than 21 consecutive days must appoint an agent in New Zealand. On appointment, the agent holds all the rights and obligations of the landlord. Both the tenant and Tenancy Services must be notified.



BODY CORPORATE RULES AND NOTICE OF CHANGES

Rules made under S.37 of the Unit Titles Act 2010 that affect a tenant are taken to be terms of the Tenancy Agreement. The landlord must supply at least a summary of the Body Corp Rules with the new Tenancy Agreement. A landlord must notify a tenant in writing if any rule changes.



BONDS

The Landlord cannot ask for more than 4 weeks rent as bond. They cannot seek any other form of security. This includes any further sum for pets. The landlord has 23 working days to forward the bond to Tenancy Services.

Invercargill landlord fined \$38,000 over unlodged bonds



Tenancy compliance and investigations national manager Steve Watson said there was “no excuse” for landlords to not comply with tenancy law.

LANDLORDS RESPONSIBILITIES CLEARLY DEFINED:

- To provide premises in a reasonable state of cleanliness;
- Provide and maintain the premises in a reasonable state of repair;
- Comply with ALL requirements with respect to buildings, health, and safety under any enactment;
- Provide means of collection and storage of water if not on town supply;
- Compensate tenant for any reasonable expenses incurred in repairing the premises;
- Take all reasonable steps to ensure that no other tenant causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises;
- Not to interfere with the supply of any services except to avoid danger or enable maintenance.

The major issue is the compliance with all requirements with respect to buildings, health, and safety under any enactment. Shortly I will raise the landlord’s responsibilities under the following:

- Health & Safety at Work Act 2016
- Residential Tenancies Amendment Bill (No2)
- Healthy Home Guarantee Bill

LANDLORD TO KEEP RECORDS

The landlord must keep proper business records showing all payments of rent and bond paid. I have helped many owners to create rent statements once they realised the tenant was not paying their rent and they needed a rent statement in the correct format to present to Tenancy Tribunal.

RESPONSIBILITY FOR OUTGOINGS

The landlord is responsible for any expenses incurred whether or not the premises are occupied and common facilities. In Auckland where the water is metered, the landlord is responsible for paying clearly defined Fixed Line Charges.

LANDLORD TO GIVE NOTICE OF INTENTION TO SELL

If at any time the property is going to be marketed for sale, the landlord shall notify the tenant in writing before being approached by the landlord’s real estate agent or any sign is placed on the property.

LANDLORDS MUST GIVE REASON OF TERMINATION OF NOTICE.

The use of “no cause” terminations (90 day notices) to end a periodic tenancy has been prohibited. Instead, landlords would be able to end a periodic tenancy on various specific grounds. They include existing grounds in the Act.

LARGE SCALE LANDLORDS

Landlords with six or more tenancies would be subject to higher infringement fees and pecuniary penalties and need to have an associated person test.

HEALTH & SAFETY AT WORK ACT 2015

The Act gave the Ministry of Business, Innovation and Employment new powers to investigate and prosecute landlords for breaking tenancy laws, particularly where there is a risk to the health and safety of tenants.

Under the Act, Landlords are responsible for Health & Safety as it encompasses residential properties that are tenanted. The fines for a serious offence go up to 5 years imprisonment and/or \$600,000 fine.

HEALTH & SAFETY AT WORK (ASBESTOS) REGULATIONS 2016 (AS OF 4 APRIL 2018)

MAKE SURE YOU AND YOUR TENANTS ARE COVERED.
HEALTH AND SAFETY LEGISLATION AROUND ASBESTOS REQUIREMENTS MUST BE IMPLEMENTED BY APRIL 2018.

New health and safety legislation that came into effect in 2015 has a requirement that needs to be implemented by April 2018; that PCBU's understand and document all asbestos within their buildings. A PCBU under this legislation is the person or entity that owns a commercial building, or a landlord of a commercial or residential building. Potentially, a home buyer looking to turn a property into a rental can ask to see this report from the current owner, or any contractor who might do building works on your family home can also ask to see a report.

By April 2018, every PCBU must have completed for each of their buildings:

- Assessed their property(ies) for the presence or absence of asbestos;
- If asbestos is found to be present, determined whether the asbestos is friable;
- Recommended actions for the ongoing management of any asbestos found.

While this sounds daunting and expensive, it doesn't need to be and a simple Asbestos Register can be all you need to meet compliance.

The report must be made available to any tenants and must be made known to any contractor that comes onto site, particularly if they are going to undertake any works that will cut into any building materials.

The report recommendations will specify the risk of the asbestos in and outside the building, and if there is a significant risk of people being exposed to friable asbestos, will recommend actions to get it safely removed.

SAFETY

Landlords have a "duty of care" to prospective tenants, tenants, and any contractor who visits the property.

PROSPECTIVE TENANTS

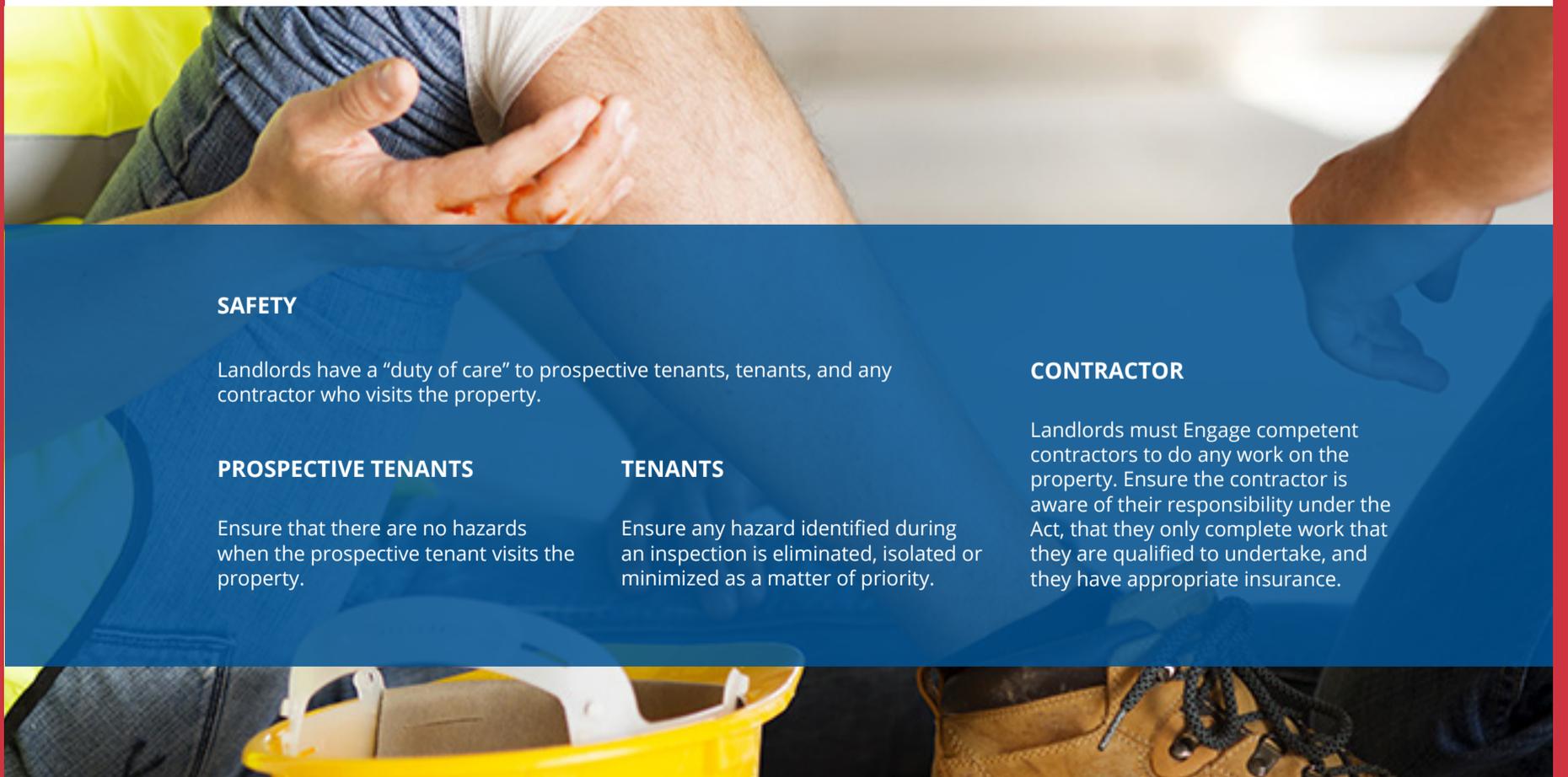
Ensure that there are no hazards when the prospective tenant visits the property.

TENANTS

Ensure any hazard identified during an inspection is eliminated, isolated or minimized as a matter of priority.

CONTRACTOR

Landlords must Engage competent contractors to do any work on the property. Ensure the contractor is aware of their responsibility under the Act, that they only complete work that they are qualified to undertake, and they have appropriate insurance.



LANDLORD FINED FOR RENTAL PROPERTY SAFETY FAILINGS



A Timaru landlord was fined \$55,000 and required to pay \$12,500 reparation for failing to take all practicable steps to ensure the safety of gas appliances and fittings when leasing out a property and for engaging a person who was not authorised to do gas-fitting. The Handyman franchisee was sentenced to 200 hours community work and required to pay \$2000 reparation for doing the unauthorised work. Both the landlord and handyman pleaded guilty to breaches of the Gas Act 1992 and the Plumbers, Gasfitters and Drainlayers Act 2006 and were sentenced in the Timaru District Court.

In early June 2014 the landlord engaged the handyman to remove a gas heater from a property they managed. He was not authorised to do this work and the gas supply was left uncapped. A new tenant moved into the property and arranged for new gas cylinders to be delivered and connected.

The next day the tenant noted a strong smell of gas. Following an investigation by WorkSafe's Energy Safety, it was estimated that 35kgs of gas had leaked into the house. This follows a similar incident in Ruakaka which resulted in the death of a 19-year-old woman who suffered horrific burns when the leaked gas was ignited, exploding and destroying the rental property she had moved into a few days before.

"Always use an appropriately qualified person to do gas and electrical work on any property. All landlords, including property managers, have a duty to ensure the safety of gas and electrical installations, appliances and fittings in properties they lease," says Richard Lamb, Energy Safety's Compliance Officer.

SMOKE ALARMS

Smoke alarms were required in all tenanted properties from July 2016. Minimum standards were outlined with the landlord's obligation to install smoke alarms to or above minimum standards, and ensuring all alarms are operational at the start of the tenancy. There is also a responsibility for the landlord to test during and inspections and ensure they are operational.

LANDLORD COMPLIANCE CHECKLIST

The Ministry of Business, Innovation, and Employment (MBIE) have provided The Landlord Compliance Checklist for landlords to complete so they can see if they are compliant.

The Landlord Compliance Checklist covers:

- Residential Tenancy Agreement
- Records
- Maintenance
- General Compliance

For the online
Landlord Compliance Checklist [click here](#)



The Government taskforce want to “crackdown on poor landlord behaviour across New Zealand.”
<https://www.tenancy.govt.nz/starting-a-tenancy/new-to-tenancy/landlord-compliance-checklist/>

HEALTHY HOMES STANDARDS

There are certain standards you legally must meet as a landlord. It is your responsibility as a landlord to meet the required standard of heating, insulation, and ventilation in your property by the relevant compliance dates. Meeting these standards ensures a happy and healthy life for your tenants within your property for as long as they stay. Please read below to find out more information.



HEATING STANDARD

There must be fixed heating devices, capable of achieving a minimum temperature of at least 18°C in the living room only.

For online heating assessment tool [click here](#)

How to find out what size heater you need

You can use our online heating assessment tool to help calculate the minimum heating capacity required for heaters in your rental property.

The tool provides a report that sets out the minimum heating capacity required for each property. You can use it to check if your current heating is sufficient to meet the healthy homes standard, or if you need to install a new heater. The report can also help prove a rental home meets the heating requirements in the healthy homes standards.

If you have a complex room layout, or you're not sure what figures to include, we recommend asking a professional for advice.

[Use the online heating assessment tool](#)

Top up existing heating

If you're adding a new heater to a room with existing heating, each heater must meet the requirements in the healthy homes standards, with one exception. If your existing heating doesn't have the required heating capacity, you can add a smaller fixed electric heater to 'top up' your heating. If you do, you must meet all these conditions:

- you installed your existing heating before 1 July 2019
- the required heating capacity is more than 2.4 kW
- the 'top up' you need is 1.5 kW or less.

For example, if you have a heat pump with a heating capacity of 3.3 kW, but you need a total heating capacity of 4.5 kW, you can add a fixed 1.5 kW electric heater with a thermostat[AD1] [RW2] to meet the standard.

You don't need to add more heating if you have one or more existing large heaters that:

- were installed before 1 July 2019
- each have a heating capacity greater than 2.4 kW
- meet the requirements in the standards (for example, not an open fire or an unflued combustion heater)

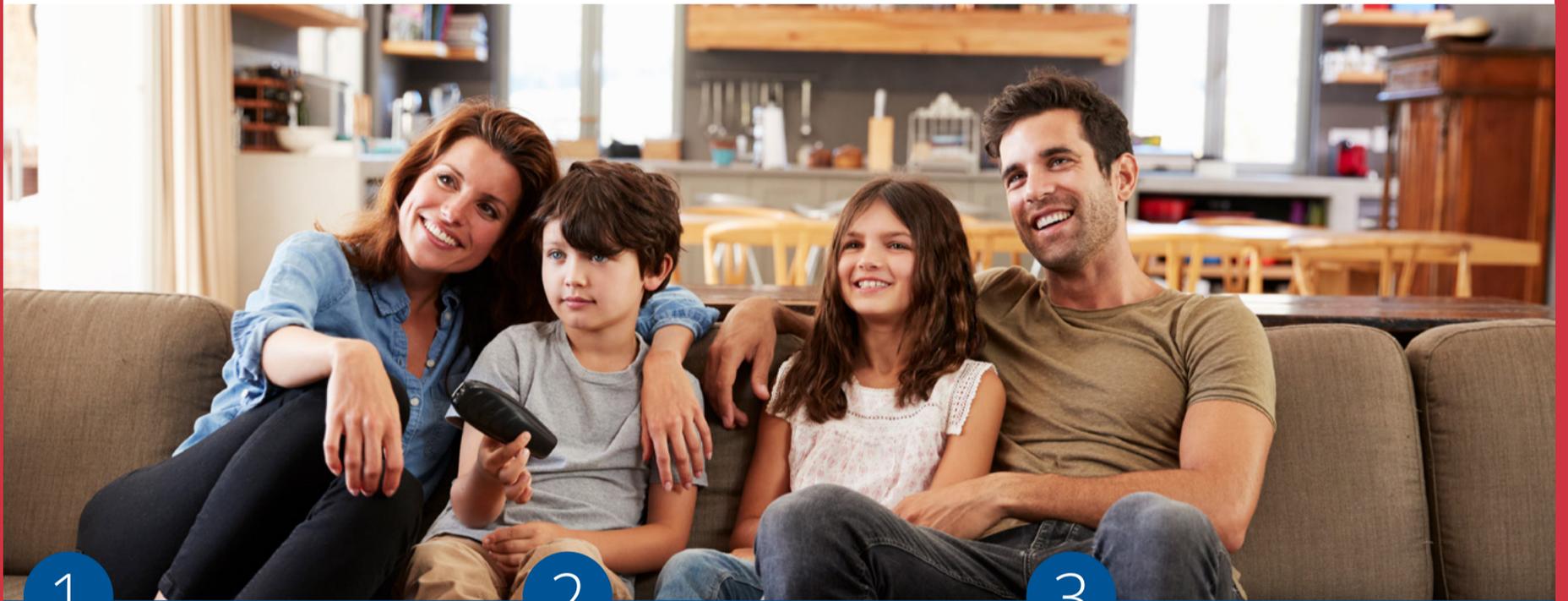
INSULATION STANDARD

The minimum level of ceiling and underfloor insulation must either meet the 2008 Building Code, or (for existing ceiling insulation) have a minimum thickness of 120mm.

Exemptions to the insulation standard

There are three specific insulation exemptions. The information here is an overview.

More information on these exemptions is available in Subpart 3 of the [Healthy Homes Standards Regulations](#).



1

Access is impracticable or unsafe

Some areas of some homes may be impracticable or unsafe to access due to their design, limited access, potential for substantial damage, or health and safety reasons.

There is an exemption for parts of homes where a professional installer is unable to access and/or insulate, until this becomes possible (for example when a property is re-roofed).

2

Partial exemption for certain underfloor insulation

If the rental home has existing underfloor insulation that was installed when the home was built or converted and this insulation is still in reasonable condition. Landlords must have a copy of any compliance documents that shows the home met the requirements of the time, for example:

- code compliance certificate
- certificate of acceptance
- another relevant compliance document.

3

Ceilings and floors with other habitable spaces directly above or below

The third exemption applies to areas of ceilings or floors where there are other habitable spaces directly above or below (e.g. another floor of the same property or another apartment). These areas do not require insulation to meet the healthy homes insulation standard.

These three exemptions are in addition to the general exemptions.

General exemptions to the healthy homes standards

Landlords who have installed new insulation since 1 July 2016 should already meet the requirements of the 2008 Building Code, so they won't need to do anything further to comply with the healthy homes standards. Landlords should still check that the insulation is in a reasonable condition.

Use our online tool to step you through whether or not you are likely to need to take action to comply with the insulation requirements under the healthy homes standards.

All existing insulation must still be in reasonable condition to meet the requirements. This means there should be no mould, dampness, damage or gaps.

[Online tool: Do you need to upgrade your insulation to meet the healthy homes standards?](#)

VENTILATION STANDARD

Ventilation must include openable windows in the living room, dining room, kitchen and bedrooms. Also an appropriately sized extractor fan(s) in rooms with a bath or shower or indoor cooktop.

If you have an existing fan

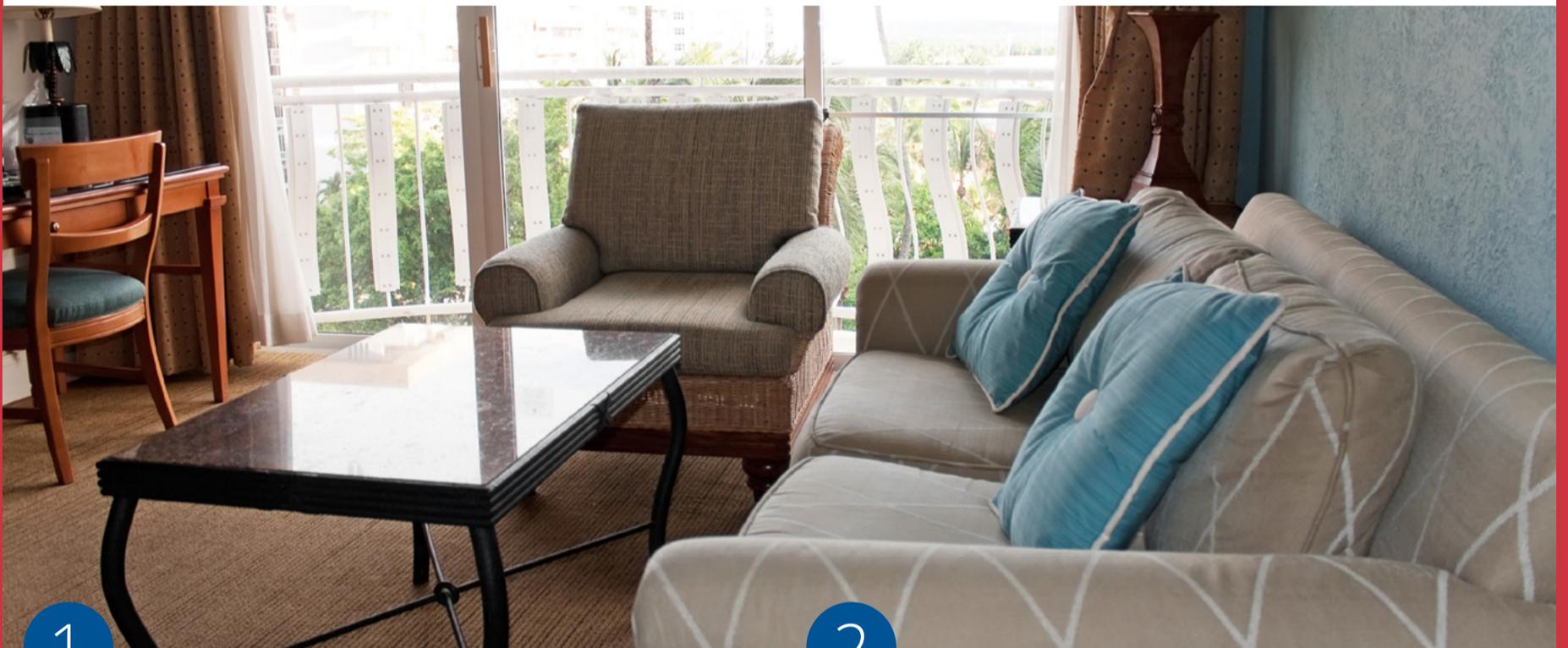
Fans put in before 1 July 2019 must ventilate to the outside the house and be in good working order, but they don't have to meet the requirements listed above.

When they stop working, they must be repaired to be in good working order or replaced with fans which do meet all the requirements.

Exemptions to the ventilation standard

There are two specific exemptions for the ventilation standard. The information here is an overview.

More information on these exemptions is available in Subpart 4 of the [Healthy Homes Standards Regulations](#).



1

A room doesn't need to meet the requirements for openable windows and external doors if it was lawful when it was built or converted into a habitable space. If having fewer windows or doors was only lawful because the room met alternative ventilation requirements, then the room must still meet those requirements to qualify for this exemption.

2

This exemption applies to kitchens or bathrooms where it is not reasonably practicable to install an extractor fan. This exemption has a number of criteria which must all be met. We recommend landlords get professional advice and keep a copy of that advice to qualify for this exemption.

These two exemptions are in addition to the general exemptions.

MOISTURE INGRESS AND DRAINAGE STANDARD

Rental properties must have efficient drainage for the removal of storm water, surface water and ground water. Rental properties with an enclosed sub-floor space must have a ground moisture barrier.

DRAUGHT STOPPING STANDARD

Landlords must make sure the property doesn't have unreasonable gaps or holes in walls, ceilings, windows, skylights, floors and doors which cause noticeable draughts. All unused open fireplaces closed off or their chimneys must be blocked to prevent draughts.

COMPLIANCE DATES

Exemptions to the healthy homes standards

In some situations a property may be exempt from complying with the healthy homes standards or parts of the standards.

Landlords and tenants should both understand these dates for complying with the healthy homes standards.



FROM 1 JULY 2019

- Ceiling and underfloor insulation will be compulsory in all rental homes where it is reasonably practicable to install.
- Landlords must sign a statement of intent to comply with the healthy homes standards in any new, varied or renewed tenancy agreement.
- This statement is in addition to the existing requirement to include a signed insulation statement with all tenancy agreements that covers what insulation the property has, where it is, and what type.
- Landlords must keep records that demonstrate compliance with any healthy homes standards that apply or will apply during the tenancy.

FROM 1 JULY 2020

- Landlords must include a statement of their current level of compliance with the healthy homes standards in any new, varied or renewed tenancy agreement.

FROM 1 JULY 2021

- Private landlords must ensure their rental properties comply with the healthy homes standards within 90 days of any new, or renewed, tenancy.

FROM 1 JULY 2024

- All rental homes must comply with the healthy homes standards.

RESIDENTIAL TENANCIES AMENDMENT ACT 2020

The Act was passed on the 4 August 2020 and changes will come into effect in six months (with one exception). Pukeko Rental Managers have reviewed the new legislation in detail and summarised it for our clients.

The government has passed a range of changes to the Residential Tenancies Act 1986. Their goal was to increase the security of tenure for tenants by promoting good-faith relationships in the renting environment; modernising and clarifying the Act to reflect the modern renting market and environment; enhancing powers and tools for the chief executive of the department responsible for the administration of the Act, and supporting tenants' ability to assert their legal rights.

[The amended act covers the following:](#)

- Removes a landlord's right to use "no cause" terminations to end a periodic tenancy agreement.
- Requires that fixed-term tenancy agreements must become periodic tenancy agreements upon expiry unless both parties agree otherwise, or certain conditions apply.
- Clarifies the rules about minor changes tenants can make to premises.
- Prohibits the solicitation of rental bids by landlords.
- Limits rent increases to once every 12 months.
(Effective immediately)
- Allows for identifying details to be suppressed in situations where a party has been wholly or substantially successful in taking a case to the Tenancy Tribunal.
- Clarifies the Tenancy Tribunal's power to suppress names and identifying particulars of any party or evidence given, if that is in the interests of the parties and the public interest.
- Requires landlords to permit and facilitate the installation of ultra-fast broadband, subject to specific triggers and exemptions
- Increases financial penalties.
- Gives the regulator new tools to take direct action against parties who are not meeting their obligations
- Makes other administrative changes.

Rent bidding prohibited

Rent bidding is now prohibited with landlords being obligated to state the amount of rent when advertising residential premises. Landlords would not be allowed to ask multiple applicants to pay more than this advertised price.

Assignment and break-lease fees

The assignment involves a tenant transferring their interests and responsibilities under a tenancy to a new tenant. Currently, the law distinguishes between tenancy agreements that prohibit assignment and those that require landlords to consider assignment requests on a case-by-case basis. The Act ensures that all assignment requests be considered by the landlord, who may not withhold consent unreasonably. The act considers that landlords should be required to respond to the assignment request in writing, and within a reasonable amount of time. This would ensure that they do not effectively withhold consent by failing to respond. We are aware that "a reasonable amount of time" is a subjective measure, but consider that it need not be strictly defined. It should accommodate both a response that needed only a short time, such as a reference check, through to a response that might need more time, such as for a criminal record check. The landlord should only be required to respond to an assignment request if the request names the proposed assignee. This would allow the landlord to conduct appropriate checks to determine the suitability of the assignee.

This has also been made an Unlawful Act if the Landlord has not responded to the request in a reasonable time.

Fibre connections

Landlords must permit and facilitate the installation of fibre broadband services. This is designed to ensure that New Zealanders renting a property have similar opportunities to access fibre as owner-occupiers.

Compromising weather tightness of a building

Landlords will be exempt from fibre obligations if the installation would compromise the weather-tightness of the building.

Compromising the character of a building

A landlord is not required to permit the installation of a fibre connection if the installation would "materially compromise" the character of a building.

Time limit on renovation exemption

A landlord is exempt from permitting the installation of fibre if the landlord intends to carry out extensive alterations, refurbishment, repairs, or redevelopment of the premises and the installation would impede that work.

Landlord or network operator unable to obtain consent

A landlord is exempt from permitting the installation of a fibre connection if installation requires the consent of a third party and the landlord or network operator is unable to obtain consent.

RESIDENTIAL TENANCIES AMENDMENT ACT 2020

Termination by notice

The Act prohibits the use of “no cause” terminations (90 day notices) to end a periodic tenancy without a reason. Instead, landlords would be able to end a periodic tenancy on various specific grounds. They include existing grounds in the Act.

Termination to allow the owner or a family member to move in

A landlord may end a periodic tenancy on at least 63 days’ notice if the owner requires the premises as the principal place of residence for themselves or a family member.

Also that the owner or their family member must move into the premises within 90 days. This would help ensure that the notice of termination was genuine in its intent and that the property did not stand vacant for an extended period of time.

Termination where the landlord requires the premises for an employee

A landlord can terminate a periodic tenancy on at least 63 days’ notice if the premises are to be occupied by employees of the landlord. This possibility would have to have been clearly stated in the tenancy agreement.

Termination to change to a commercial premise

A landlord to terminate a periodic tenancy by giving at least 90 days’ notice if the premises are to be converted into commercial premises. A further restriction is applied: that the premises must be used for a commercial purpose for at least 90 days. This would help ensure that the tenancy was terminated because of a genuine intent to use the property commercially and that the tenant was not required to leave earlier than necessary.

Termination to allow renovations

A landlord can terminate a periodic tenancy if extensive alterations, refurbishment, repairs, or redevelopment were to be carried out, and it would not be reasonably practicable for the tenant to remain in place. The landlord should take material steps towards beginning renovations within 90 days of the termination date.

Termination because of demolition

Allows a landlord to terminate a periodic tenancy, with at least 90 days’ notice, if the premises are to be demolished. The landlord should take material steps towards beginning demolition within 90 days.

“Within 90 days” of termination.

As noted, clause 32 provides for a number of termination grounds that envisage landlords doing certain things within 90 days of the termination date. Note that a tenant could give 28 days’ notice following a landlord’s giving of a 90-day notice. This would terminate the tenancy earlier than the landlord had expected.

Termination for anti-social behaviour

Allows a landlord under a periodic tenancy to apply to the Tribunal for an order terminating the tenancy on the ground of anti-social behaviour. The Tribunal would make the order if it was satisfied about certain things. The tenant (or person on the premises with their permission) must have exhibited anti-social behaviour on three separate occasions, and the landlord must have given written notice each time. The landlord’s application to the Tribunal must be made within 28 days after the third notice. If a tenant makes an application to the Tribunal challenging a notice, it is for the landlord to prove that anti-social behaviour occurred and that the notice met the requirements of the RTA.

Privacy and access to justice

First, it makes clear that the Tribunal could make a suppression order prohibiting the publication of evidence, or the name or any identifying particulars of any witness or party to proceedings. It would also require the Tribunal to prohibit the publication of the name or identifying particulars of a party to the proceedings if that party had applied for suppression and been either wholly or substantially successful in the proceedings (unless the Tribunal considers publication is in the public interest or is justified because of the party’s conduct or any other circumstances of the case).



RESIDENTIAL TENANCIES AMENDMENT ACT 2020

CHANGES MADE AFTER SUBMISSIONS CLOSED

Enforcement Associated person test

The bill provides that landlords with six or more tenancies would be subject to higher infringement fees and pecuniary penalties. To avoid landlords structuring their affairs in such a way as to avoid liability, the bill sets out an associated person test, with the tenancies of the associated person counted towards the landlord's number of tenancies. The bill proposes that the associated person test include parents, children, partners and spouses, and the parents and children of partners and spouses, as well as a number of company arrangements.

Determining what is a "large-scale" landlord

The Act provides that landlords with six or more tenancies would be subject to higher infringement fees and also to pecuniary penalties.

Infringement notices still valid for large-scale landlords, even if issued for fewer than six properties.

Failing to provide the minimum information

The Act lists the minimum information required for a tenancy agreement. However, there is no penalty for failing to provide this information, even though it could result in parties having difficulty enforcing their rights. A landlord who fails to ensure that the tenancy agreement includes the landlord-related information specified by the Act commits an unlawful act.

The requirement to retain documents

The Act requires landlords to keep certain records and provide them to the regulator on request, including records of any building work, prescribed electrical work, or other maintenance work. Therefore documents must be retained for building work requiring a building consent.

Withdrawal from tenancy following family violence

The Act gives a tenant who has experienced family violence the ability to withdraw from a tenancy. In order to withdraw, the tenant will need to give notice and qualifying evidence of the family violence to the landlord. What constitutes qualifying evidence for this purpose will be set out in more detail in regulations to be made under the Act. A tenant who withdraws from a tenancy on this ground ceases to be responsible for obligations under the tenancy agreement. If there are no other tenants at the time of the withdrawal, the tenancy is terminated. If other tenants remain, the rent is reduced for the 2-week period following the withdrawal.

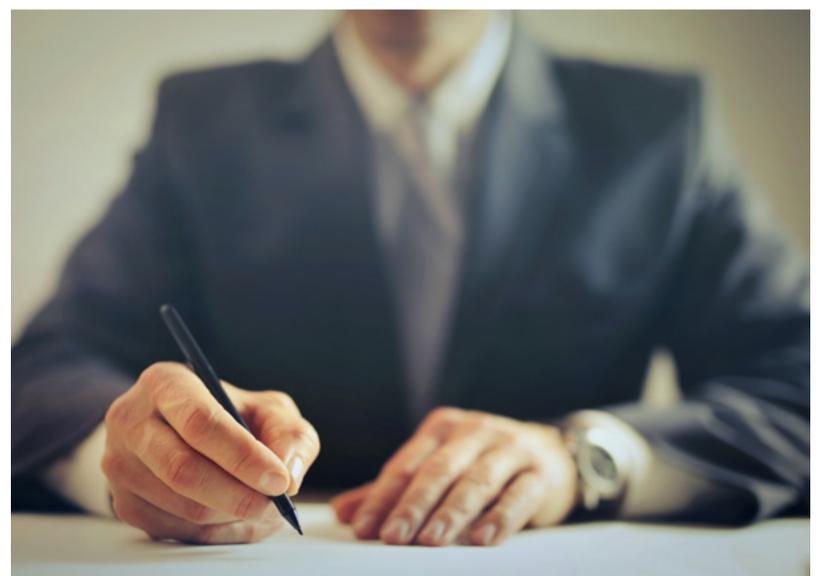
For the period of 2 weeks beginning with the day after the date of the withdrawal, the rent payable for the premises is reduced to an amount calculated in accordance with the following formula: $a = b \div c \times d$ where— "a" is the rent payable for the 2-week period. "b" is the rent that would otherwise have been payable for the 2 weeks. "c" is the number of tenants immediately before the withdrawal. "d" is the number of remaining tenants.

Related provisions prohibit the disclosure of the notice of withdrawal (and the qualifying evidence) except in certain limited circumstances and, in related Tenancy Tribunal proceedings, provide for the evidence to be given remotely, hearings to be held in private, and the name and identifying particulars of the parties to be suppressed.

Termination by notice for physical assault by the tenant.

New ground for termination of periodic and fixed-term tenancies in the case of physical assault by a tenant is added. If a tenant physically assaults the landlord, the owner, a member of the landlord's or owner's family, or the landlord's agent, and is charged in respect of the physical assault, the landlord may terminate the tenancy on 14 days' notice.

The notice must comply with certain requirements and be accompanied by qualifying evidence of the charge. If a tenant challenges the notice in the Tenancy Tribunal, the burden of proving the physical assault and the charge is on the landlord.



For further information about the act and how it may affect you, please contact your local Pukeko property manager.

ABOUT DAVID PEARSE



David Pearse started investing in property and becoming a landlord in the early 1990's. He oversaw a real estate property management department while running two real estate offices with Tremain Real Estate.

In 2004, as managing director of Twin City Properties Ltd, David launched the Quinovic franchise in Hawke's Bay winning several awards and growing the operation to 360 properties. In 2008 he sold the business as Napier and Hastings offices.

In 2010 David pioneered Pukeko Rental Managers as a new and innovative way of providing residential property management services to owners and investors. Pukeko is growing quickly throughout New Zealand as he recruits, trains and mentors boutique operators who want to provide the "best" property management service.

David is a committee member of the Independent Property Management Association (IPMA).