

Residential Tenancies Amendment Bill (No 2)

Government Bill

As reported from the committee of the whole House

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Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

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Hon Kris Faafoi

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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, and 34**) 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 This Act comes into force on the day after the date on which it receives the Royal assent, as follows:
- (a) **sections 1 to 3, 4A(1AAA) and (1AAB), 22, and 37 and the Schedule** come into force on the day after the date on which this Act receives the Royal assent: 10
- (b) the rest of **Part 1** and **sections 25(1), 27(1) and (2), 33, and 34** come into force on the 28th day after the date on which this Act receives the Royal assent: 15
- (c) the rest of **Part 2** comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bring-

ing different provisions into force on different dates and appointing different dates for different purposes.

- (3) Any provision of this Act that may be brought into force under **subsection (1) (2)(c)** and that is not in force on the first anniversary of expiry of the 18-month period that starts on the date of Royal assent comes into force then on the expiry of that 18-month period. 5

3 Principal Act

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

Part 1

Amendments relating to tenant liability and premises unlawful for residential use 10

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 15
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 20
- (3) In section 2(1), definition of **work order**, paragraph (b), after “~~138B~~” “healthy homes standards”, 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) 25

(1AAA) Renumber section 13A(1DA) (as inserted by the Healthy Homes Guarantee Act 2017) as section 13A(1DB).

(1AAB) After section 13A(1D), insert:

(1DA) However, the landlord’s statements under subsections (1A) and (1CA) can be combined, with the landlord signing once to confirm both statements (in addition to the landlord signing the tenancy agreement). 30

- (1) In section 13A(1F)(a) and (b), replace “subsection (1A), or (1CB)” with “subsection (1A), (1CB), (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: 35

- (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) ~~setting out, for each insurance policy that is relevant to the tenant's liability for destruction of or damage to the premises, the amount of each excess that is relevant (if any) to that liability; and~~ 5
 - (ii) ~~informing the tenant that a copy of the policy is available to the tenant on request (except that the statement need not inform the tenant of this if the landlord has already provided to the tenant a copy of the policy in accordance with **section 45(2B) or 66J(5)**).~~ 10
 - (i) ~~the amount of the excess under the insurance; and~~
 - (ii) ~~what relevant risks are insured against and any relevant exceptions; and~~ 15
 - (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 a reasonable time~~ after receiving the request, provide the information in writing to the tenant. 20
- (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)** ~~or this subsection~~ is no longer correct, the landlord must ~~promptly~~ provide the correct information in writing to the tenant ~~within a reasonable time after the landlord becomes aware of the change.~~ 25
- 5 Section 40 amended (Tenant's responsibilities)**
- (1) ~~In section 40(2)(a), after "premises", insert "(see **section 49B**)".~~ 30
- (1) After section 40(3A), insert:
- (3B) See **sections 49A and 49B** in relation to the tenant's liability for a contravention of subsection (2)(a).
- (2) Repeal section 40(4).
- 6 Section 45 amended (Landlord's responsibilities)** 35
- After section 45(2A), insert:
- (2B) The landlord of premises that are insured may at any time, and must within a reasonable time after receiving a request from the tenant for a copy of the insurance policy, provide to the tenant under a tenancy agreement a copy of

- each insurance policy that is relevant to the tenant's liability for destruction of, or damage to, the premises.
- (2C) If anything changes so that the insurance information that was provided in accordance with **subsection (2B)** or this subsection is no longer correct, the landlord must, within a reasonable time after the landlord becomes aware of the change,— 5
- (a) provide the tenant with a copy of the correct information; or
 - (b) if the premises are no longer insured, provide the tenant with a statement that they are not insured.
- (2D) A landlord's failure to comply with **subsection (2B) or (2C)** is declared to be an unlawful act. 10

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

After section 49, insert:

Responsibility for damage

- 49A General principle** 15
- (1) Except as provided in **section 49B**, a tenant has no liability or obligation, and must not be required, to—
- (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 20
 - (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** 25
- (1) A tenant is not excused from liability or obligation by **section 49A(1)** if, and to the extent that,—
- (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 30
 - (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 section 41 or 66L and the act or omission occurred on or about the premises and constitutes an imprisonable offence; or
 - (e) ~~any insurance moneys that would otherwise have been payable because of the destruction or damage are irrecoverable because of an act or omis-~~ 35

- ~~sion of the tenant or of a person for whose actions the tenant is responsible under section 41 or 66L.~~
- (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)**. 5
- (3) The tenant's liability under **subsection (2)** is limited,—
- (a) if the property is insured against the destruction or damage, to the lesser of the applicable excess under the insurance and whichever of the following is applicable: 10
- (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: 15
- (ii) in any other case, the rent under the tenancy agreement for a period of 4 weeks; or
- (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: 20
- (ii) in any other case, the rent under the tenancy agreement for a period of 4 weeks.
- (3A) However,— 25
- (a) if 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, for the purposes of **subsection (3)** the property is treated as not insured against the destruction or damage (and therefore **subsection (3)(b)** sets out the limit of the tenant's liability under **subsection (2)**); and 30
- (b) see also **clause 19 of Schedule 1AA** (for other circumstances where **subsection (3)(b)** sets out the limit of the tenant's liability under **subsection (2)**, regardless of whether the property is insured against the destruction or damage). 35
- (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)**. 40

- (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)**. 5
- (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.
- (7) If any destruction of, or damage to, the premises is proved to have occurred during any tenancy to which this Act applies,— 10
- (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
- (iii) that any insurance moneys are irrecoverable for the reasons described in **subsection (3A)(a)-(1)(c)**; and 15
- (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
- (ii) that any destruction or damage was not caused by a careless act or omission described in **subsection (2)**. 20

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. 25
- (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. 30

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—
- (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 35
- (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**:

14 Section 66J amended (Other obligations of landlord)

After section 66J(4), insert:

- (5) The landlord of premises that are insured may at any time, and must within a reasonable time after receiving a request from the tenant for a copy of the insurance policy, provide to the tenant under a tenancy agreement a copy of each insurance policy that is relevant to the tenant’s liability for destruction of, or damage to, the premises. 5
- (6) If anything changes so that the insurance information that was provided in accordance with **subsection (5)** or this subsection is no longer correct, the landlord must, within a reasonable time after the landlord becomes aware of the change,— 10
- (a) provide the tenant with a copy of the correct information; or
- (b) if the premises are no longer insured, provide the tenant with a statement that they are not insured.
- (7) A landlord’s failure to comply with **subsection (5) or (6)** is declared to be an unlawful act. 15

15 Section 66K amended (Obligations of tenant)

- (1) In section 66K(1)(e), delete “; and”.
- (2) Repeal section 66K(1)(f).
- (3) ~~In section 66K(2)(a), after “premises”, insert “(see **section 49B**)”.~~ 20
- (3) After section 66K(4), insert:
- (5) See **sections 49A and 49B** in relation to the tenant’s liability for a contravention of subsection (2)(a).

16 Section 77 amended (Jurisdiction of Tribunal)

- (1) After section 77(2)(ab), insert: 25
- (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)**;
- (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: 30
- (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. 35
- (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.

17 Section 78 amended (Orders of Tribunal)

- (1) In section 78(1), after “in respect of any claim within its jurisdiction”, insert “(but subject to **section 78A**, if that section applies)”.
- (2) In section 78(2AA), after “apply”, insert “if the work order is a **section 78A** work order or”.
- (3) After section 78(2AAB), insert:
- (2AABA) Subsection (2AAB) does not apply if the work order is a **section 78A** work order.

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

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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.
- (2) For the purposes of this Act, **unlawful residential premises** means residential premises that are used for occupation for a person as a place of residence but—
- (a) that cannot lawfully be occupied for residential purposes by that person (whether generally or whether for the particular residential purposes for which that person is granted occupation); and
- (b) where the landlord’s failure to comply with the landlord’s obligations under section 36 or 45(1)(c), or section 66H(2)(c) or 66I(1)(c), as relevant, has caused the occupation by that person to be unlawful or has contributed to that unlawful occupation.
- (3) Despite anything to the contrary elsewhere in this Act,—
- (a) unless the Tribunal is satisfied that, having regard to the special circumstances of the matter, including the nature of the premises, it would be unjust not to make the order, the Tribunal must not order the tenant to pay to the landlord—
- (i) any sum found to be owing by way of rent in arrear; or
- (ii) any other sum by way of damages or compensation:
- (b) if the landlord has applied for termination on the ground of rent in arrear, the Tribunal may, but is not required to, make the order terminating the tenancy.
- (4) Without limiting the generality of section 77 or the nature or extent of orders that the Tribunal may make in accordance with this Act in relation to the matter,—

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- (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: 5
- (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)— 10
- (i) remove or rectify any impediment to the tenant lawfully occupying the premises for residential purposes; or
 - (ii) comply with all requirements in respect of buildings, health, or safety under any enactment so far as they apply to the premises. 15
- (5) Even if the tenant does not apply for a particular order, the Tribunal may make any of the following orders on its own initiative:
- (a) any order under **subsection (4)(a)**; and
 - (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)). 20

19 Section 108 amended (Enforcement of work orders)

- (1) In section 108(2)(a), after “section 78”, insert “(or **78A**, if that section applies)”. 25
- (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 Section 112 amended (Contempt)

In section 112(1)(d), replace “section 78 or section 108(2)” with “section 78, **78A**, or 108(2)”. 30

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**”. 35
- (2) Repeal section 142(2).

22 Schedule 1AA amended

In Schedule 1AA, after clause ~~13~~ 14, insert the **Part 3 4** set out in the **Schedule** of this Act.

23 Schedule 1A amended

(1AA) In Schedule 1A, ~~replace the item relating to section 13A(1F), replace “or (1CB)” with: “(1CB), (2), (3), or (4)”~~. 5

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

45(2D)	<u>(Landlord’s failure to meet obligations to provide insurance policy or to correct information provided)</u>	500
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49D	(Unlawful acts of landlord related to the tenant’s liability under section 49B)	1,000
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66J(7)	<u>(Landlord of boarding house failing to meet obligations to provide insurance policy or to correct information provided)</u>	500
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(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
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108(2A)	(Landlord breaching section 78A work order without reasonable excuse)	4,000
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23A Consequential amendment to Healthy Homes Guarantee Act 2017

(1) This section amends the Healthy Homes Guarantee Act 2017. 10

(2) ~~In the Schedule, item relating to section 2, new paragraph (b) of the definition of **work order**, after “healthy homes standards”, insert “; and”.~~

24 Consequential amendment to Unit Titles Act 2010

(1) This section amends the Unit Titles Act 2010.

(2) After section 176(1)(a), insert: 15

(aa)	section 78A (which relates to orders of the Tribunal relating to unlawful residential premises):
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Part 2**Amendments relating to methamphetamine and other contaminants**

25 Section 2 amended (Interpretation) 20

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

contaminant means any of the following:

(a) methamphetamine:

(b) any substance prescribed, or within a class of substance prescribed, as being a contaminant for the purposes of this Act 25

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

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

contaminated, in relation to premises, means that 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)

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)

(1AAA) Before section 45(1)(c), insert:

(bd) comply with all requirements in respect of contaminants imposed on the landlord by regulations made under **section 138C(1)(ab)**; and

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

(1AA) **Subsection (1AAB)** applies to a landlord of premises ~~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 prescribed methods have established that the premises are contaminated; and
- (b) the premises have not been decontaminated in accordance with the relevant prescribed decontamination process.

(1AAB) If this subsection applies—

(a) and the premises have not yet been provided to the tenant, the landlord must not provide the premises to the tenant until the premises have been decontaminated in accordance with a relevant prescribed decontamination process;

(b) and the tenant has already been provided with the premises, the landlord may continue to provide the premises to the tenant (under that tenancy or any extension or renewal of that tenancy) only if the premises are being decontaminated in accordance with a relevant prescribed decontamination process and any rules prescribed under **section 138C(1)(ca)**.

(1AAC) **Subsections (1AA) and (1AAB)** do not limit subsection (1), but *see also*, in relation to the landlord’s liability for contaminant presence, **section 45A**.

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

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

(3) In section 45(3) and (4), replace “subsection (1)” with “subsections (1) to (1AAB) ~~and (1AA)~~”.

26A New section 45A inserted (Protection from liability for landlord who complies with contaminant regulations)

After section 45, insert:

45A Protection from liability for landlord who complies with contaminant regulations

- (1) **Subsection (2)** applies to a landlord of premises during any period where—
- (a) a contaminant is present at the premises, but either—
- (i) the premises are not contaminated with the contaminant; or
- (ii) unknown to the landlord, the premises are contaminated with the contaminant; and
- (b) regulations made under **section 138C(1)(ab)** are in force in respect of the contaminant and apply in relation to the premises.
- (2) The landlord (having complied with those regulations during that period) is not liable, under this Act, for not having provided the tenant with clean or habitable premises during that period on the basis of the presence of the contaminant in the premises.
- (3) For the purpose of this section, a landlord knows that premises are contaminated only if the landlord knows that tests carried out in accordance with a relevant prescribed method have established that the premises are contaminated.

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 contaminants; or taking samples for such testing; (except where the testing or sample taking is part of a prescribed decontamination process) 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
- (1A) Before section 48(2)(d), insert:
- (cc) without limiting paragraph (d), for the purpose of carrying out decontamination work to the premises, and attending to such other matters required if decontaminating in accordance with a prescribed process (including any testing or sample taking as part of that prescribed process), at any time between 8 o’clock in the morning and 7 o’clock in the evening of any day, after giving to the tenant notice of the intended entry and the reason for it at least 24 hours 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)**, testing for the presence of contaminants or taking samples for such testing

(including as part of any decontamination process), 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 (if any) of the results; if any.

28 Section 50 amended (Circumstances in which tenancies are terminated) 5

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.~~

(5) This section does not apply in relation to damage that is contamination by a contaminant if regulations prescribe a relevant method of testing for, and a relevant maximum inhabitable level of, that contaminant (but see **section 59B**).

29B Section 59A amended (Termination where breach renders premises uninhabitable) 20

After section 59A(5), insert:

(6) This section does not apply in relation to damage that is contamination by a contaminant if regulations prescribe a relevant method of testing for, and a relevant maximum inhabitable level of, that contaminant (but see **section 59B**).

30 New section 59B inserted (Termination where regulations prescribe testing methods and maximum inhabitable level of contaminant)

After section 59A, insert:

59B Termination where regulations prescribe testing methods and maximum inhabitable level of contaminant 30

(1) This section applies if testing in accordance with a relevant prescribed method establishes contamination by a contaminant, in any part of the premises, at a level that is above a relevant maximum inhabitable level prescribed for that contaminant.

(2) If the contamination has occurred as a result of a breach of the tenancy agreement (whether for a fixed-term tenancy or a periodic tenancy),—

- (a) the whole of the premises is treated as uninhabitable; and
- (b) if the tenant is not in breach, the rent abates; and
- (c) the party who is not in breach may give notice to the other party terminating the tenancy.
- (3) If the contamination has occurred otherwise than as a result of a breach of the tenancy agreement (whether for a fixed-term tenancy or a periodic tenancy), then, unless **subsection (4)** applies,— 5
- (a) the whole of the premises is treated as uninhabitable; and
- (b) the rent abates; and
- (c) either party may give notice to the other terminating the tenancy. 10
- (4) However, for the purposes of **subsection (3)**, if the only part of the premises that is established to be contaminated above the maximum inhabitable level is a remote and inconsequential part of the premises (*see **subsection (8)***),—
- (a) the rent abates accordingly; and
- (b) either party may apply to the Tribunal for an order terminating the tenancy. 15
- (5) On an application under **subsection (4)(b)**, the Tribunal may make an order terminating the tenancy if it is satisfied that it would be unreasonable to require the landlord to decontaminate the premises or (as the case may require) to require the tenant to continue with the tenancy albeit at a reduced rent. 20
- (6) Where a landlord gives notice of termination under this section, the period of notice is not less than 7 days.
- (7) Where a tenant gives notice of termination under this section, the period of notice is not less than 2 days.
- (8) In this section, a part of the premises is **remote and inconsequential** if— 25
- (a) it is physically located away from, or physically closed off to, the rest of the premises in a way that is likely to prevent the spread of the contaminant to the rest of the premises (or is capable of being, and, after contamination is established, is, physically removed from or physically closed off to the rest of the premises in a way that is likely to prevent that spread); and 30
- (b) the rest of the premises can reasonably be used, without that part, as residential premises under the tenancy agreement.

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

After section 62(3), insert:

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

	goods, subsection (3) does not apply and those regulations must instead be complied with.—	
	(a) subsection (3) and sections 62A to 62D do not apply; and	
	(b) the prescribed process and duties must instead be complied with.	
30B	Section 62E amended (Responsibility of tenant unaffected)	5
	In section 62E, after “62D”, insert “and any regulations made for the purposes of section 62(3A) ”.	
30C	Section 62F amended (Protection from liability)	
(1)	In section 62F(1), after “62A” and “62B”, insert “or in accordance with regulations”.	10
(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:	
(3)	In this section, regulations means regulations made for the purposes of section 62(3A) .	15
31	Section 64 amended (Possession orders)	
	In section 64(3), after “or section 59”, insert “or section 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—	20
	(a) the landlord knows that tests carried out in accordance with prescribed methods have established that any part of the room or facilities of the boarding house is contaminated; and	
	(b) the room or facilities (as relevant) have not been decontaminated in accordance with the relevant prescribed decontamination process.	25
(4)	A contravention by the landlord of subsection (3) is declared to be an unlawful act.	
(3)	<i>See also</i> sections 66I(1B)(a) and 66IA.	
32A	Section 66I amended (Landlord’s ongoing obligations)	30
(1)	After section 66I(1)(bb), insert:	
	(bc) comply with all requirements in respect of contaminants imposed on the landlord by regulations made under section 138C(1)(ab); and	
(2)	After section 66I(1), insert:	
(1A)	Subsection (1B) applies to a landlord of a boarding house tenancy if—	35

- (a) the landlord knows that tests carried out in accordance with a relevant prescribed method have established that any part of the boarding room or facilities of the boarding house is contaminated; and
- (b) the boarding room or facilities (as relevant) have not been decontaminated in accordance with a relevant prescribed decontamination process. 5
- (1B)** If this subsection applies—
- (a) and the boarding room has not yet been provided to the tenant, the landlord must not provide the boarding room to the tenant until the boarding room or facilities (as relevant) have been decontaminated in accordance with a relevant prescribed decontamination process: 10
- (b) and the tenant has already been provided with the boarding room, the landlord may continue to provide the boarding room to the tenant (under that tenancy or any extension or renewal of that tenancy) only if the boarding room or facilities (as relevant) are being decontaminated in accordance with a relevant prescribed decontamination process and any rules prescribed under **section 138C(1)(ca).** 15
- (1C)** **Subsections (1A) and (1B)** do not limit subsection (1) or section 66H(2), but *see also*, in relation to the landlord’s liability for contaminant presence, **section 66IA.**
- (3) In section 66I(2), replace “Subsection (1) applies” with “Subsections (1) to **(1B)** apply”. 20
- (4) After section 66I(4), insert:
- (5) A contravention by the landlord of **subsection (1B)** is declared to be an unlawful act.
- 32B** **New section 66IA inserted (Protection from liability for landlord who complies with contaminant regulations)** 25
- After section 66I, insert:
- 66IA** **Protection from liability for landlord who complies with contaminant regulations**
- (1) **Subsection (2)** applies to a landlord of a boarding house during any period where— 30
- (a) a contaminant is present at the premises, but either—
- (i) the premises are not contaminated with the contaminant; or
- (ii) unknown to the landlord, the premises are contaminated with the contaminant; and 35
- (b) regulations made under **section 138C(1)(ab)** are in force in respect of the contaminant and apply in relation to the premises.
- (2) The landlord (having complied with those regulations during that period) is not liable, under this Act, for not having provided the tenant with clean or habita-

- ble premises during that period on the basis of the presence of the contaminant in the premises.
- (3) For the purpose of this section, a landlord knows that premises are contaminated only if the landlord knows that tests carried out in accordance with a relevant prescribed method have established that the premises are contaminated. 5
- 33 Section 66J amended (Other obligations of landlord)**
- After section 66J(3), insert:
- (3A) If the landlord carries out tests for the presence of contaminants in any of the facilities, the landlord must, within 7 days of receiving 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 (if any) of the results, if any. 10
- 34 Section 66S amended (Notice of entry)**
- (1) ~~After~~ Before section 66S(1)(f)(d), insert:
- (face) to test for the presence of stated contaminants, or to take samples for such testing: 15
- (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 (or involves such testing or sample taking for the purpose of subsection (1)(c)), state those contaminants; and 20
- (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)~~ testing for the presence of stated contaminants, or taking samples for such testing (or involves such testing or sample taking for the purpose of subsection (1)(c)), 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 (if any) of the results, if any. 25
- 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)**”.
- 30
- 36B Section 78 amended (Orders of Tribunal)**
- After section 78(2AA)(b), insert:
- (ba) decontamination:

37 ~~New sections 138C and 138D inserted~~ Section 138C replaced (Powers to make regulations under sections 138A and 138B not limited by other enactments)

~~Before section 139, insert: Replace section 138C (as inserted by the Healthy Homes Guarantee Act 2017) with:~~

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138C Regulations in respect of contaminants and contaminated premises

(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.

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(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 maximum acceptable levels, or a means of calculating maximum acceptable levels, of contaminants for premises for the purposes of the definition of contaminated:

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(aa) prescribing maximum inhabitable levels of contaminants for premises for the purpose of **section 59B**:

(ab) imposing on landlords requirements in respect of contaminants for the purposes of **section 45(1)(bd) or 66I(1)(bc)**:

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(b) prescribing methods for carrying out tests for the presence of 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):

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(c) prescribing decontamination processes (which may extend to pre-decontamination and post-decontamination assessment, sampling, and testing, and may include who is authorised to carry out processes or parts of processes) ~~for the purposes of **sections 45(1AA) and 66H(3)**:~~

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(ca) prescribing, for the purposes of **section 45(1AAB)(b) or 66I(1B)(b)**, additional rules about how decontamination of premises is to be carried out while the landlord continues to provide the premises to the tenant (for example, periods (or means of calculating periods) within which processes or parts of processes must be begun or completed):

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(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.~~

- (2) ~~Regulations under this section may be different for different~~ make different provision for different cases on any differential basis, including—
- (a) contaminants or classes of contaminants:
 - (b) spaces, materials, or other aspects of premises or goods, or for different descriptions of premises or goods: 5
 - (c) levels of contamination;
 - (d) without limiting **paragraph (b)**, ways in which premises or goods, or spaces or materials or other aspects (for example, surfaces) of premises or goods, may have or may become contaminated.
- (2A) The requirements that may be imposed by regulations under **subsection (1)(ab)** include the following (for example): 10
- (a) requirements to test premises for the presence of contaminants in certain circumstances:
 - (b) requirements to use the methods prescribed, or parts of those prescribed methods, for carrying out tests or parts of tests for the presence of contaminants in premises, in all or in certain circumstances: 15
 - (c) requirements to use prescribed decontamination processes if decontaminating premises.
- (2B) Requirements under **subsection (2A)(a)** may apply to, or may be different for, different stages of tenancies (for example, at the commencement of or during a tenancy). 20
- (2C) Regulations under this section, including requirements imposed by regulations under this section, may be subject to exceptions.
- (3) ~~Regulations under **subsection (1)(d)** may require compliance with sections 62(3) and 62A to 62D—~~ 25
- (a) ~~in whole or in part; and~~
 - (b) ~~with modifications, additions, or variations specified in the regulations.~~
 - (a) require compliance with, or otherwise incorporate, sections 62(3) and 62A to 62D—
 - (i) in whole or in part; and 30
 - (ii) with modifications, additions, or variations specified in the regulations; and
 - (b) without limiting the generality of the above, permit the landlord to decontaminate abandoned goods and deduct from the proceeds of sale the costs of decontaminating the goods that were reasonably incurred by the landlord. 35
- (4) In this section, **premises** includes facilities.

138D Powers to make regulations under sections 138A to 138C not limited by other enactments, etc

- (1) 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**.
- (2) Regulations under section 138B(1) may provide that a provision of any regulations in force under section 120C of the Health Act 1956 that relates to any matter referred to in section 138B(2) does not apply in relation to premises (read in accordance with section 138B(7)) that are subject to tenancies.

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38 Schedule 1A amended

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

45(1AB)	(Landlord providing premises, or continuing to provide premises, at start of tenancy despite landlord's knowledge of contamination of premises)	4,000
66I(5)H(4)	(Landlord of boarding house providing, or continuing to provide, boarding room at start of tenancy despite landlord's knowledge of contamination of boarding room or facilities)	4,000

- (2) In Schedule 1A, in the items relating to sections 45(1A) and 66I(4), after “healthy homes standards,” (as inserted by the Healthy Homes Guarantee Act 2017), insert “contamination,”.

39 Consequential amendment to Healthy Homes Guarantee Act 2017

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

Schedule
New Part ~~3~~4 of Schedule 1AA inserted

s 22

Part 3<u>4</u>		
Provisions relating to Residential Tenancies Amendment Act 2017		5
<u>14</u>15	Interpretation	
	In this Part,—	
	2017 Amendment Act means the Residential Tenancies Amendment Act 2017	
	amendment means an amendment to this Act made by a provision of the 2017 Amendment Act	10
	commencement date , in relation to an amendment, means the date on which the provision of the 2017 Amendment Act that makes the amendment comes into force	
	tenancy includes a tenancy to which this Act applies as a result of section 4(2) of the 2017 Amendment Act (which replaces the definition of residential premises in section 2(1)) and that subsists on the date on which that amendment came into force.	15
<u>15</u>16	Existing tenancies, etc	
(1)	An amendment applies to a tenancy whether the tenancy commences before, on, or after the commencement date.	20
(2)	This clause is subject to clause 19 .	
<u>16</u>17	New unlawful acts	
	An amendment that creates a new unlawful act does not apply to acts or omissions before the commencement date.	25
<u>17</u>18	Proceedings that have commenced	
	An amendment does not apply to proceedings commenced before the Tribunal before the commencement date.	
<u>19</u>	<u>Application of insurance and tenant liability provisions to social housing provider tenancies under existing Property Law Act 2007 leases</u>	30
(1)	<u>This clause applies only in circumstances where—</u>	
(a)	<u>Housing New Zealand Corporation or a registered community housing provider (a housing provider) is the landlord of residential premises that are the subject of a tenancy agreement; and</u>	
(b)	<u>the housing provider is a lessee of those premises under a lease—</u>	35

- (i) to which the Property Law Act 2007 applies; and
- (ii) that was entered into before the date on which **section 4A** of the **2017** Amendment Act came into force (and including any renewal term commencing on or after that date if the right of renewal existed in the lease before that date); and 5
- (c) the housing provider has no legally enforceable right to require the lessor under that lease to provide the housing provider with the information that the housing provider would need to possess in order to be able to comply with the insurance information sections.
- (2) If this clause applies,— 10
- (a) the insurance information sections do not apply to the housing provider; and
- (b) for the purpose of determining the tenant's liability under **section 49B(2)**, the premises are treated as not insured against the destruction or damage (so that the applicable limit in **section 49B(3)(b)** applies). 15
- (3) In this clause,—
- insurance information sections** means—
- (a) **section 13A(2) to (4)** (as inserted by **section 4A** of the **2017** Amendment Act); and
- (b) **section 45(2B) to (2D)** (as inserted by **section 6** of the **2017** Amendment Act); and 20
- (c) **section 66J(5) to (7)** (as inserted by **section 14** of the **2017** Amendment Act)
- registered community housing provider** has the same meaning as in section 2(1) of the Housing Restructuring and Tenancy Matters Act 1992. 25
- 20 Transitional provision for continuing tenancy agreement when circumstances in clause 19 cease applying**
- (1) This clause applies if **clause 19** ceases to apply but the tenancy agreement is continuing, and the tenancy agreement was entered into on or after the date on which **section 13A(2)** (as inserted by **section 4A** of the **2017** Amendment Act) came into force. 30
- (2) For the purpose of **section 13A(3)**, the tenancy agreement is treated as having been entered into before **section 13A(2)** came into force.
- 1821 Application of section 56A(1) to existing tenancies**
- Section 56A(1)** (as inserted by **section 11** of the **2017** Amendment Act) 35
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.

1922 Application of section 78A to certain work orders

Section 78A (as inserted by **section 18** of the **2017** Amendment Act) does not apply to subsequent proceedings taken for enforcement of a work order made in a matter for which proceedings commenced before the Tribunal before the date on which that section comes into force.

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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
16 April 2018	Reported from Governance and Administration Committee (Bill 258–2)
8 November 2018	Second reading
23 July 2019	Committee of the whole House (Bill 258–3)