

Residential Tenancies (Prohibiting Letting Fees) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Residential Tenancies Act 1986 (the **principal Act**) to prohibit the charging of a letting fee, or any other fee charged to a tenant, in respect of charges for services rendered by a letting agent, solicitor, or any person in relation to a tenancy.

Under the principal Act, letting agents (including property managers), and solicitors, are able to charge letting fees to tenants to cover the administrative costs of listing and advertising a rental property, conducting open homes, and vetting prospective tenants at the beginning of a tenancy.

By paying a letting fee, tenants are bearing the costs associated with letting a rental property, where the benefit ultimately rests with the landlord. The amendments made by this Bill aim to ensure that costs associated with letting a property rest with the beneficiary of the service, and to reduce the upfront costs that some tenants can face in renting a new rental property. The Bill also ensures that other fees cannot be charged to tenants in place of a letting fee.

To achieve this, the Bill prohibits the charging of a letting fee, or any other fee to a tenant, by any person in relation to the—

- grant, continuance, extension, variation, or renewal of any tenancy agreement; or
- assignment of a tenant's interest under any tenancy agreement; or
- subletting of the whole or any part of the premises by a tenant.

Landlords, or their agents, will remain able to seek reimbursement from a tenant for expenses reasonably incurred as a result of a tenant assigning, subletting, or parting with possession of their interest in a tenancy. The Bill creates a new unlawful act for

charging a tenant a letting fee (with a maximum level of exemplary damages of \$1,000). The new unlawful act is based on the current unlawful act of charging a tenant key money due to the similarity in harm caused. The Bill also limits the Tenancy Tribunal's authority, in that it will not have jurisdiction to consent to a person requiring a tenant to pay a letting fee.

Departmental disclosure statement

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

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=36>

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 16 March 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <http://www.mbie.govt.nz/info-services/housing-property/residential-tenancies/letting-fees>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 relates to the Title.

Clause 2 provides that the Act comes into force 3 months after the date on which it receives the Royal assent.

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

Clause 4 amends section 2 of the principal Act by inserting a definition of letting fee based on section 17(1) of the Act (which states the matters for which key money cannot be required). A letting fee—

- is any fee or charge (however described) in respect of services rendered by the letting agent or any other person that relate to—
 - the grant, continuance, extension, variation, or renewal of any tenancy agreement; or
 - the assignment of a tenant's interest under any tenancy agreement; or
 - the subletting of the whole or any part of the premises by a tenant:

- does not include any expenses recoverable under section 44(5) of the Act (which provides that, on giving consent to any assignment, subletting, or parting with possession of the premises by the tenant, the landlord is entitled to recover from the tenant any expenses reasonably incurred by the landlord in respect of the proposed transaction).

Clause 5 amends section 13A of the principal Act, which relates to the contents of a tenancy agreement. Section 13A(1)(m) requires a tenancy agreement to include a statement (if applicable) that the tenant pay any fee or other charge for services rendered by any solicitor or letting agent relating to the grant or assignment of the tenancy. This clause repeals that provision because it would be inconsistent with the policy of prohibiting letting fees.

Clause 6 repeals section 17(4)(c) of the principal Act. The effect of that provision is that the prohibition against requiring the payment of key money does not apply to letting fees. This clause repeals that provision because it would be inconsistent with the policy of prohibiting letting fees.

Clause 7 inserts *new section 17A* to prohibit any person from requiring a tenant to pay a letting fee.

New section 17A(1) prohibits a letting agent or any other person (for example, a lawyer or property manager) from requiring a tenant to pay a letting fee.

New section 17A(2) provides that the prohibition in *subsection (1)* does not apply to expenses that are recoverable under section 44(5) of the principal Act. Section 44(5) applies if the landlord consents to the tenant's assigning, subletting, or parting with possession of the premises. In such a case, the landlord is entitled to recover from the tenant any expenses reasonably incurred by the landlord in respect of the proposed transaction.

New section 17A(3) makes a contravention of the prohibition an unlawful act for the purposes of the principal Act. The effect of this and the associated amendment in *clause 10* is to enable the Tenancy Tribunal to order the payment of up to \$1,000 in exemplary damages if the prohibition is contravened. In such a case, the application would be made by the tenant or the chief executive of the Ministry acting on behalf of the tenant.

Clause 8 amends section 77 of the principal Act, which relates to the jurisdiction of the Tenancy Tribunal. This amendment provides that the Tribunal does not have jurisdiction to consent to a person charging a tenant a letting fee.

Clause 9 amends Schedule 1AA of the principal Act by adding the transitional provision set out in the *Schedule* of this Bill. The provision relates to the application of *new section 17A* and provides that *new section 17A* does not apply to—

- any fee or charge paid or payable before the date of commencement of that section;
- any tenancy agreement entered into before the commencement date (whether the tenancy agreement took effect before or takes effect on or after that date):

- any assignment or subletting, if the landlord consented to the assignment or subletting before the commencement date (whether the assignment or subletting took effect before or takes effect on or after that date):
- any amount (such as key money in the form of a letting fee) that is charged in relation to a subletting, if the Tribunal consented to the charge before the commencement date.

Clause 10 amends Schedule 1A of the principal Act, which prescribes the maximum amounts of exemplary damages that can be awarded to a person against whom an unlawful act is committed. This amendment prescribes \$1,000 as the maximum amount of exemplary damages that may be awarded if the prohibition against letting fees is contravened.

Hon Phil Twyford

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Residential Tenancies (Prohibiting Letting Fees) Amendment Act **2018**.

2 Commencement

This Act comes into force 3 months after the date on which it receives the Royal assent.

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3 Principal Act

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

4 Section 2 amended (interpretation)

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

letting fee—

- (a) means any fee or charge (however described) in respect of services rendered by the letting agent or any other person that relate to—
 - (i) the grant, continuance, extension, variation, or renewal of any tenancy agreement; or
 - (ii) the assignment of a tenant’s interest under any tenancy agreement; or
 - (iii) the subletting of the whole or any part of the premises by a tenant; but
- (b) does not include any expenses recoverable under section 44(5)

5 Section 13A amended (Contents of tenancy agreement)

Repeal section 13A(1)(m).

6 Section 17 amended (Requiring key money prohibited)

Repeal section 17(4)(c).

7 New section 17A inserted (Requiring letting fee prohibited)

After section 17, insert:

17A Requiring letting fee prohibited

- (1) No letting agent or other person may require a tenant to pay a letting fee.
- (2) Nothing in **subsection (1)** limits or affects section 44(5) (which entitles a landlord to recover reasonable expenses on consenting to the tenant’s assigning, subletting, or parting with possession of the premises).
- (3) Any requirement to pay a letting fee in contravention of **subsection (1)** is an unlawful act.

8 Section 77 amended (Jurisdiction of Tribunal)

After section 77(7), insert:

- (7A) The Tribunal does not have jurisdiction to consent to a person charging a tenant a letting fee.

9 Schedule 1AA amended

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

10 Schedule 1A amended

In Schedule 1A, after the item relating to section 17, insert:

Section 17A	(Requiring letting fee)	1,000
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Schedule
New Part 4 inserted into Schedule 1AA

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Part 4	
Provision relating to Residential Tenancies (Prohibiting Letting Fees) Amendment Act 2018	5
20 Application of section 17A (Requiring letting fee prohibited)	
Section 17A does not apply to—	
(a) any fee or charge paid or payable before the date of commencement of that section; or	10
(b) any tenancy agreement entered into before that date (whether the tenancy agreement took effect before or takes effect on or after that date); or	
(c) any assignment or subletting if the landlord consented to the assignment or subletting before that date (whether the assignment or subletting took effect before or takes effect on or after that date); or	15
(d) any amount that is charged in relation to a subletting, if the Tribunal consented to the charge before that date.	