

Privacy Commissioner's Submission to the Social Services and Community Committee on the Residential Tenancies Amendment Bill (218-1)

1. I am pleased to provide this submission on the Residential Tenancies Amendment Bill ('the Bill'). The Bill seeks to modernise the Residential Tenancies Act 1986 to recognise the changes in the housing and rental markets over the past 34 years.
2. The functions of the Privacy Commissioner include examining new legislation for its possible impact on individual privacy. The Privacy Act 1993 is New Zealand's main privacy law. It governs the collection, use, storage and disclosure of personal information and provides a mandate for my Office to consider wider developments or actions that affect personal privacy. Central to my examination of any proposed legislation is the principle that policy and legislation should be consistent with privacy rights unless there is very good reason (and evidence) to override those rights.
3. I propose no changes to this Bill. My submission:
 - provides the Committee with background information on the law governing the collection of tenant's personal information and the guidance my office has issued in this area, and
 - discusses the power for the Tenancy Tribunal to suppress information.

The collection of tenant's personal information

4. The current rental market conditions have given rise to a significant power imbalance between landlords and tenants. This imbalance has led to prospective tenants feeling pressured into providing more information than is necessary or lawful. It also has raised concerns about discrimination and the security of information provided.
5. The information that tenants provide landlords received widespread attention following a property manager appearing before a Select Committee in August 2018. The property manager stated that she regularly asks for bank statements in order to perform what was dubbed the "KFC test" to see whether tenants were buying things that, in her opinion, they could not afford.¹
6. The Privacy Act provides that agencies, like landlords, are required to have a necessary and lawful purpose for collecting information. It also provides that agencies must not collect information unlawfully, unfairly or in a way that is unreasonably intrusive. When collecting information agencies are also required to tell individuals why they are

¹ <https://www.rnz.co.nz/news/national/363624/asking-prospective-tenants-for-bank-statements-unethical-critics>

collecting the information, what it will be used for and who it will be shared with. If tenants have concerns that landlords are acting inconsistently with these requirements they can make a complaint to my Office.

7. My Office has issued guidance² to landlords to improve the understanding of how the Privacy Act applies to the rental market. This guidance covers the types of information that is and is not appropriate to request, as well as when it might be appropriate to request for certain types of information. The Privacy Act and the guidance reinforce that landlords must consider what information they need and the lawfulness of their collection before asking for information from tenants.
8. Tenants informational privacy rights are also supported by the Human Rights Act, which makes it unlawful to discriminate or refuse a tenancy based on one of the prohibited grounds (for example, age).
9. Landlords are obliged to act in accordance with these laws. Failure to do so can result in action against them in the Human Rights Review Tribunal.

Suppressing information

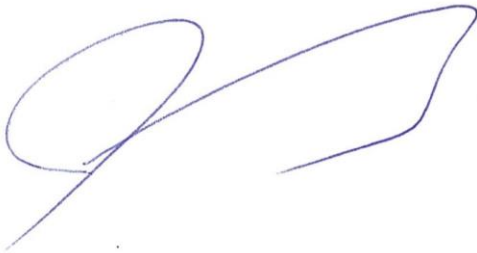
10. Under section 95 of the Residential Tenancies Act the proceedings of the Tenancy Tribunal are conducted in public and the parties to a dispute identified as a part of the publication of decisions. Section 95 also provides for the Tribunal to, on application, make an order prohibiting the publication of any report or description of the proceedings, but that 'no such order shall prohibit the publication of any decision of the Tribunal'.
11. My Office has heard concerns from Community Law advocates about the application and implementation of section 95. These advocates have said that tenants who are suffering domestic violence must go through the Tenancy Tribunal to seek an early termination of their tenancy and that these individuals' cases are published online (as are all Tenancy Tribunal decisions). The published details include the identifying details of the victim, their contact information and in some cases notes of abuse. The safety and privacy of domestic abuse victims is extremely important, especially as without some assurance of protection they are likely to be discouraged from seeking to terminate tenancies that involve abusive relationships.
12. Clauses 50 and 51 of the Bill replace the existing suppression power in the Residential Tenancies Act. This new power provides that the Tribunal can either on application or of its own initiative suppress all or part of the evidence before it or the name/identifying details of any individual. It also provides that if individuals are successful in their claims and make an application for their details to be suppressed, the Tribunal must suppress their name/identifying information unless it is in the public interest not to or because it is justified due to the party's conduct or other circumstances of the case.

² <https://privacy.org.nz/news-and-publications/guidance-resources/privacy-act-guidance-for-landlords-and-tenants/>

13. I support clauses 50 and 51 of the Bill as they will provide the Tribunal with an appropriate power to suppress information. I note that the application and implementation of this power will be a critical factor in encouraging individuals to uphold their tenancy rights and to protect individual privacy.

Conclusion

14. I trust my comments are of use to the Committee in its consideration of the Bill. I do not wish to appear before the Committee; however, I am available to answer questions on my submission if the Committee would find that useful.



John Edwards
Privacy Commissioner

25 March 2020