

TO	Social Services Select Committee
FROM	Otago University Students Association (OUSA)
DATE	January 27 th 2016
SUBJECT	Submission on Residential Tenancies Amendment Bill

Submission

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1.0 Introduction

This submission is written by the Otago University Students Association (OUSA). We support the intent of this bill and believe it will greatly improve rental conditions in New Zealand.

The University of Otago functions predominantly as a residential university, with a significant proportion of its 20,000 students living in rental accommodation throughout Dunedin, Christchurch and Wellington. Due to the current substandard living conditions in many student flats, OUSA believes it is imperative this opportunity be taken to ensure all students are guaranteed a basic standard of accommodation.

To achieve this we submit a handful of recommendations that best cater to the issues at hand. OUSA is mindful that the balance between stricter regulations and costs to property owners must be carefully managed and thus we have attempted to provide pragmatic solutions which benefit all parties in their implementation.

2.0 Summary of Recommendations

- i. Section 25 insertion of s91AA
 - a) Maintain a 21 day standard before a landlord may enter the premises.
 - i. In the alternative if a 14 day standard is applied requirements should be incorporated that a minimum of two distinct payments must have been missed and in addition suspicions for abandonment must be held to a higher requirement than the default “reasonable cause” standard.
 - b) Include a requirement that before abandonment is confirmed the Tenancy Tribunal must ensure the tenant is not in police custody or medical care.
- ii. Section 38 insertion of s138B
 - a) All Zone 3 properties which meet the 1978 standard shall be required to retrofit to the current Building Code standard.
 - i. In the alternative all properties which either only meet the 1978 standard and/or are exempt from meeting the current Building Code standard shall be required to comply with a heating standard to be outlined in the legislation.
- iii. Safety issues with fixed term leases
 - a) Provisions be put in place for a tenant to be able to terminate their lease when the Police or other such agency determine there to be serious safety concerns if they were to remain at the address.
- iv. Heating Standard
 - a) Parliament clarifies the authority of Housing Improvement Regulations 1947 by incorporating section 6 in this amendment to facilitate the creation of a universal heating standard for all rental properties.
 - i. In the alternative implement a heating standard for all properties which for any reason fail to meet the current Building Code insulation standard.

v. Mould/Ventilation Standard

- a) Section 11 of Housing Improvement Regulations 1947 be updated and incorporated into this amendment to better draw attention to a landlord's ventilation obligations.
- b) Section 15 of Housing Improvement Regulations 1947 be clarified and incorporated into this amendment to create a clear indication of a landlord's damp and mould obligations.

3.0 Section 25 insertion of s91AA – Process for determining abandonment applications

OUSA supports the principle of streamlining the abandonment process. However OUSA is concerned that the relative additional power being provided to landlord's needs to be balanced to ensure tenants are not caught out or unduly disadvantaged by the change in legislation.

In the primary OUSA recommends a 21 day standard be maintained to ensure the Act provides a responsible level of security for the tenant.

In addition we find it is important to highlight that additional support is needed in the Act. A section should be added to require that before abandonment can be confirmed, the Tenancy Tribunal must ensure the tenant is not in police custody or medical care. Situations arise where conventional methods of contact may not reach the tenant and it is vital these circumstances are recognised and protection is provided.

If the current 21 day in arrears standard is abandoned in favour of a new 14 day standard, OUSA consider a higher requirement than the suggested "reasonable cause to believe that the tenant has abandoned the premises" needs to be implemented. OUSA believes this should incorporate a requirement that a minimum of two distinct payment dates must have been missed and that the suspicions for abandonment be held to a higher standard than applications which pass through the default process.

4.0 Section 37 insertion of s138A – Regulations in respect of smoke alarms

OUSA supports the improvements the new regulations will provide to fire safety in flats.

5.0 Section 38 insertion of s138B – Regulations in respect of insulation

OUSA supports the implementation of mandatory insulation in flats. However OUSA is concerned that the acceptance of properties which only meet the 1978 standard, leaves a number of tenants at risk.

In the primary OUSA advocates that all Zone 3 properties (South Island and Central Plateau) which currently meet the 1978 standard, be required to retrofit to the current Building Code standard. Zone 3 properties are particularly vulnerable due to the colder climate they are exposed to.

In the alternative OUSA maintains Zone 3 properties must be given special attention so as to address the inadequacies remaining at a 1978 standard will create. In addition properties which do not meet the required insulation level but yet are granted an exemption due to the practical difficulties of retrofitting, must also receive attention.

OUSA proposes these properties be required to comply with a new heating standard to be outlined in the legislation. This heating standard should take into consideration non-insulation improvements such as a heat pump, thermal coated curtains, double glazing and other comparable measures. The aim of this standard would be to provide a halfway-house for properties unable to meet the modern standards and thus ensure no tenants are left behind in the reform.

6.0 Further Recommendations

6.1 Safety issues with fixed term leases

OUSA is concerned about the lack of practical assistance in situations where it is untenable for a person to continue in their lease agreement. Circumstances of physical assaults between flat members, altercations with neighbours and other such instances are an uncomfortable reality. Currently the lease can only be cancelled with consent from the landlord. This can lead to difficult situations where a landlord is unwilling to allow a tenant out of a lease and thus the tenant is exposed to undue risk.

OUSA proposes where the Police or other approved agency rule there to be a serious safety issue for a tenant to remain at an address, provisions need to be put in place for the lease to be cancelled.

6.2 Heating Standard

As aforementioned in section 5.0 OUSA advocates for a heating standard to be implemented.

Historically Parliament has supported the requirement of all rental properties to provide a heating source. We direct your attention to the Housing Improvement Regulations 1947 s6 which states “Every living room shall be fitted with a fireplace and chimney or other approved form of heating.” There is some doubt surrounding the current authority of these regulations, with suggestion that they were ‘impliedly repealed’ by the passage of the Building Act 2004¹. However there is evidence from both recent Tenancy Tribunal decisions and leading text on residential tenancies which indicate these regulations are still in force².

OUSA is asking Parliament to clarify the authority of these regulations.

OUSA proposes that this Bill serves to provide a clear and unequivocal heating standard to remove any doubt on the issue. If Parliament in 1947 had the foresight to recognise the importance of a national heating standard, we believe that continuing the intention of this standard in 2016 is a legitimate expectation to promote healthy rental properties in New Zealand.

In the primary OUSA advocates that this heating standard be universal, across all residential tenancies in New Zealand. Greater clarity needs to be provided to determine what constitutes an “approved form of heating”. OUSA believes this should be left for Councils to regulate so as to best set sufficient requirements for their respective climates.

In the alternative as aforementioned in section 5.0, OUSA proposes that all properties which for any reason do not meet the current building code insulation standards must meet an imposed heating standard. Particular focus must be given to ensure the most at risk regions (Class 3) are adequately protected. As indicated earlier, improvements including a heat pump, thermal coated curtains and double glazing should be considered as part of this standard. This view is supported in the Ministry of Business, Innovation & Employment discussion document on the proposed regulations³.

6.3 Mould/Ventilation Standard

OUSA is a strong believer that every student deserves to live in a flat free of mould and with sufficient ventilation. Parliament has already expressed this view in Housing Improvement Regulations 1947, specifically sections 11 and 15.

Section 11 provides specific standards as to the sizing of windows and the requisite area of opening required for ventilation. OUSA is concerned that despite these regulations still being current legislation, the opportunity has been missed to incorporate them directly into the Residential Tenancies Act. OUSA is aware of issues in student flats where insufficient ventilation is provided due to landlord’s failing to ensure the ongoing ability of being able to

¹ L Rogers, *Paper Walls – The law that is meant to keep rental housing healthy*. 2013 at 46

² D Grinlinton, *Residential Tenancies: The Law and Practice*, 4th ed. 2012 at 154

³ Ministry of Business, Innovation & Employment, *Proposed Residential Tenancies Regulations for insulation and smoke alarms – Discussion document*. 2015 at 15-16

open windows. OUSA proposes these regulations be updated and included in the amendment so as to better draw attention to a landlord's obligations.

Section 15 simply states "Every house shall be free from dampness". OUSA appreciates the difficulty in quantifying a specific mould standard due to mould prevention being reliant on both a tenant and a landlord fulfilling their obligations. However OUSA is concerned that the current standard is far too vague to be of any practical relevance. OUSA proposes that this amendment takes the opportunity to clarify the intention of this regulation by including a new standard in the Residential Tenancies Act to provide greater information to tenants, landlords and the Tenancy Tribunal.

Yours sincerely,

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