



Guidance on Transitional Housing Tenancy and Occupancy Agreements

1 Review of Transitional Housing Occupancy Agreements

Community Housing Aotearoa (CHA) and Christchurch TPA reviewed occupancy agreements currently used by Emergency and Transitional Housing providers to develop a better understanding of current practice and to support the development of best practice in the delivery of Transitional Accommodation.

As part of the review we have:

- Reviewed occupancy agreements currently in use (and provided to us) by providers;
- Identified the key elements of current practice;
- Identified the operational requirements of providers and MSD;
- Obtained independent legal advice from DLA Piper;
- Identified the legal status of Transitional Housing tenancies including the appropriate forms of occupancy agreements for this kind of accommodation;
- Identified the processes for ending tenancy agreements in Transitional housing;
- Identified the hallmarks of good practice - the common elements that should be included in all agreements.

2 Review of Occupancy Agreements - Findings

CHA and TPA reviewed 14 agreements supplied by Transitional Housing Providers. We found a wide range of Agreements being used and differences in way that Agreements are described. Examples of the some of the types and terms used include:

- Standard Periodic Tenancy Agreements
- Short Fixed-term Tenancy Agreements
- Boarding House Agreements
- Flat/house sharing agreements**
- Emergency Housing Lease/Occupancy Agreement*
- Conditions of Occupancy*
- Residency Agreement*
- Transitional Housing Tenancy Agreement*
- No status referred to*

The review identified four main types of agreement used:

* Several of the terms used to describe agreements are legally imprecise and it is unclear what class of legal occupation the provider is offering based on the document.

1. Two providers used periodic tenancies under the RTA
2. Four providers used various forms of fixed-term tenancies under the Residential Tenancies Act 1986 – giving occupiers and the landlord the rights and responsibilities contained in the RTA and bringing the agreement into the jurisdiction of the Tenancy Tribunal.
3. One provider used a Boarding House Tenancy under Part 2A of the RTA, also under the jurisdiction of the Tenancy Tribunal
4. Seven providers used a range of other ‘occupancy agreements’ described variously as; flat/house sharing agreements, emergency housing lease/occupancy agreements, residency agreements, transitional housing tenancy agreements etc.

3 Legal Context

We obtained an independent legal opinion from the law firm DLA Piper. The advice that we obtained was that it is almost certain that **the Residential Tenancies Act 1986 (RTA) governs all of the tenancies in relation to Transitional Housing**. DLA Piper identified three main types of tenancies under the RTA that may apply:

1. Boarding house tenancies
2. Short fixed-term tenancies; and
3. Standard residential tenancies
 - a. Fixed-term tenancies of more than 90 days
 - b. Periodic tenancies running from rent period to rent period

3.1 Boarding House Tenancies

In certain situations, Transitional Housing **may be** a boarding house tenancy (Part 2A, RTA). Transitional Housing will only be classed as a **boarding house** under Part 2A where -

- (a) It contains 1 or more boarding rooms along with **facilities for communal use** by the tenants of the boarding house; and
- (b) It is occupied or intended to be **occupied by at least 6 tenants** at any one time.
- (c) It is intended to, or does in fact, **last for 28 days or more**; and
- (a) The tenant is **granted exclusive rights to occupy particular sleeping quarters** in the boarding house, and has the right to the shared use of the facilities of the boarding house.

Part 2A of The Act outlines the requirements of a boarding house tenancy and these include requirements to:

- Provide every tenant with a copy of the house rules
- Give information on the services to be provided.

Under the boarding housing provisions the landlord has greater rights of entry to the premises and to the boarding room than in a periodic tenancy and the notice periods for a boarding house tenancy are considerably shorter, being:

- Immediate if the tenant has damaged the property, endangered or threatened other people or property or if they have caused serious disruption to tenants;
- 48 hours if the tenant has any rent arrears, is using the premises for any illegal purpose or the landlord believes the tenant has abandoned their room;
- 28 days for any other reason;

- Notice by the landlord must be in writing;
- The tenant needs only give 48 hours' notice and this need not be in writing.

Commentary

The Boarding House provisions only apply in limited circumstances – where there are six or more tenants who share communal facilities. Where they do apply Providers can't contract out of the provisions. Boarding House tenancies give clearly outlined terms and conditions and balance the rights and responsibilities of both Landlord and Tenant in short-term accommodation. They also give Landlord's sufficient flexibility to terminate tenancies quickly where a Tenant is in serious breach and poses a threat to the Landlord or other tenants. In the case of Transitional Housing providers would need to give notice to Tenants at 8 weeks to ensure possession at the end of the initial 12 week period. This notice can always be withdrawn if MSD or the provider wish to extend the accommodation.

3.2 Short fixed-term tenancy (RTA 1986, Section 7)

Short fixed-term tenancies can be created for a period of not more than 90 days. During this initial period the Landlord is not bound by the notice periods outlined in section 51, nor the rent provisions in sections 25 to 28. For more information on the notice and rent provisions contained in the RTA refer to the [Act](#). Short fixed-term tenancies only apply if the parties agree in writing that the tenancy will not be extended or renewed to give a term in excess of 90 days. *This means that the Provider must include a clause in the Agreement to this effect. This raises issues if the Provider or MSD may extend the duration of the accommodation beyond 90 days (12 weeks).*

Where such a tenancy is extended or renewed, once or more than once, to exceed 90 days, on expiry of the 90 day period the tenancy will become subject to the notice periods in section 51, and the rent provisions in sections 25 to 28.

Under section 2A the parties may not enter into a short fixed-term tenancy of up to 90 days for the purpose of using that tenancy as a trial period for ascertaining the desirability of extending or renewing the tenancy. The Tenancy Tribunal can order the renewal or extension of the tenancy if it believes section 2A has been contravened.

As there are no notice periods specified in the RTA relating to short fixed-term tenancies, providers can incorporate specific provisions in their agreement to provide specific notice periods in the event that the tenant breaches a fundamental term of the agreement. For example the agreement could set out that if the tenant has been conducting illegal activities on the premises the provider may immediately terminate the tenancy. If the situation is not explicitly set out in the agreement, the landlord may need to apply to the Tenancy Tribunal to terminate the tenancy. Providers will need to explicitly set out each circumstance and the notice period that will apply. [CHA will develop a model agreement with suggested clauses].

Commentary

The short fixed-term tenancy is probably the most appropriate form of tenancy for transitional housing providers. It only covers a 90 day period - the initial 12 week period anticipated and contracted with MSD.

After 90 days has expired it reverts to either a periodic tenancy or a fixed-term tenancy of an agreed length. During the initial 90 day period short fixed-term tenancies offer the Landlord the flexibility needed to terminate a tenancy at short notice for a serious breach. See Section 5.2 for recommended approach to tenancy agreements.

4 Other Residential Tenancies

4.1 Fixed-Term Tenancies

A Landlord can create a fixed-term tenancy for a specified period of time e.g. 4 weeks or 12 months etc. The fixed-term tenancy has a start date and an end date and the other conditions of the tenancy are fixed, including the tenants and the rent. If a Landlord doesn't want to extend a fixed-term tenancy they must give written notice to the other party. If neither party gives written notice the tenancy automatically becomes a periodic tenancy at the end of the fixed-term.

4.2 Periodic Tenancies

A periodic tenancy is the default tenancy under the RTA and gives the greatest security of tenure to Tenants. It runs from rent period to rent period and can only be terminated by giving 90 days' notice (no reason required), or by an order of the Tenancy Tribunal for a serious breach of the tenancy agreement. This appears to be the **least appropriate** form of tenure for Transitional Housing from a purely operational perspective, given it affords Tenants the greatest security of tenure and reduces the operational flexibility of providers to terminate the Tenancy in the case of a serious breach.

4.3 Flat-sharing agreements

The advice received from DLA Piper is that flat-sharing agreements, used by a number of providers, **are not valid or enforceable** if used in Transitional Housing as the 'Head Landlord' does not live at the property. These agreements would, therefore, fall under the protection of the RTA as Periodic Tenancies by default.

5 Recommended Approach to Occupancy Agreements

5.1 Recommended Approach for Boarding House Tenancies

Where Transitional Housing meets the conditions of the Boarding House provisions of the RTA (see above) these provisions should be followed. The Provider should issue the Tenant with a Boarding House Tenancy agreement as provided by MBIE and a set of house rules that clearly spell out the conditions of the tenancy and the sanctions for breaching those conditions.

5.2 Recommended Approach for non Boarding House Tenancies

Based on the legal advice received we recommend the following approach:

5.2.1 First 90 Day Period

Providers should issue Tenants with a short fixed-term tenancy agreement for a period of 90-days (or less). This agreement should include a clause outlining that the intention is not to extend the agreement beyond the initial 90 day period (Section 7 (1)) The Agreement should also include a set of clear conditions of the Tenancy and the sanctions and notice

periods if these conditions are breached. CHA suggests that good practice would be for these to mirror the conditions and notice periods for a Boarding House Tenancy, section 5.1 above. [CHA will develop a model agreement]

5.2.2 Subsequent Periods

If the Provider wishes or needs to extend the Transitional Housing beyond the initial 90-day period, and has agreement from MSD to do so, the Provider should discuss the option of a short extension with the Tenant. It is suggested that the Provider thereafter uses fixed term tenancies of 28-day duration after the initial 90-day period has expired. Whilst the tenancy would then be a regular fixed-term tenancy from the date the extension is agreed, Providers can require the tenant to move out at the end that the tenancy expires (i.e. at the end of each 28-day period). If there is a serious breach of the tenancy conditions the Provider would need to apply to the Tenancy Tribunal to terminate the tenancy, but it is assumed that by the end of the first 90-day short fixed-term tenancy the Provider will know the Tenant and be able to better assess and manage any risks as a result of the Tenant's behaviour.

6 Suggested Hallmarks of Good Practice - Criteria for Transitional Housing Occupancy Agreements

Based on our review CHA has identified a number of features that we believe constitute good practice in Transitional Housing occupancy agreements. Good practice agreements should:

- Give clear reference to legal status of the agreement and have clear terms and conditions that specify how the Tenancy will be ended, how the landlord deals with breaches of the Tenancy Agreement etc.
- Clearly outline rights and responsibilities of both the Landlord and occupier
- Give start and end dates
- Be clear and transparent
- Give information on rights to complain and appeal and recourse to independent advice
- Balance the rights and responsibilities of the Tenant whilst affording the Landlord some operational flexibility to deal with serious breaches
- Respect the human rights of the occupier.

This is not an exclusive list, and will be developed through further dialogue with providers, MSD, and other stakeholders.

For more information contact Marc Slade or David Zussman at **Community Housing Aotearoa**
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