



Christchurch Housing Forum Notes

12th September 2018

Main speaker: Principal Tenancy Adjudicator Melissa Poole

Facilitator: Lisa Coulter

Heidi Hurrell: Locally based MBIE Mediator Update

- ∂ Healthy homes guarantee Act – enabling government to set minimum standards:
 - heating, insulation, ventilation, ingress and drainage (drafts and moisture)
 - Discussion document, submission for online survey
 - Closed 22nd October
 - Email healthyhomes@Mbie.govt.nz
- ∂ Review of the Residential Tenancies Act. Proposed changes to cover:
 - Ending Terminations with justifiable reasons
 - Increasing notice
 - Obligations
 - Reaching agreements
 - New tools for compliance
 - Consultation phase
 - Closed 21st October
 - Website mbie.govt.nz/reform
- ∂ Question: Tony Brazier around tenants obligation to exercise ventilation best practice to avoid mould etc
 - Answer: environment or behaviour discussion at mediation/ adjudicator discussion
- ∂ “Capable of” a framework phrase for discussion
- ∂ Note what is **not** included in discussion
 - Definition of premises not covered
 - Bond
 - Administrative
 - Funding aspects

Minister Melissa Poole

- ∂ Basics of Tribunal - Helpful to focus on the nature of the Tribunal
- ∂ Role is of a Statutory Tribunal set up solely for landlord and tenant disputes
- ∂ Standing in the High Court, bottom of legal hierarchy
- ∂ Rules of evidence are relaxed
- ∂ Design of Tribunal allows people to tell their story
- ∂ Still is a judicial body – grievance or dispute but no need to be rude or abusive
- ∂ Misinformation is more around how it functions
 - Urban myths
 - 1955 Often no documentation, ambulance at bottom of cliff

- Need to bring evidence – burden of proof to civil standard
- Still have to make the case, put the evidence, tell the story
- Its not Judge Judy!
- Coherent and chronological
- Vital to make client understand they need to make their case with evidence
- Adjudicator will ask questions if unclear application
- What is the issue, what does she need to know to make a judgement, what are you asking for – compensation or exemplary damages have to be asked for
- Natural justice – anyone is entitled to know what is been lodged against them. If other party doesn't know or hasn't been informed then they have to adjourn until they have been.
 - Compensation – something broken damaged cost to replace repair
 - Exemplary damages – unlawful act committed– punishment claims
- ∂ Everything is online now
 - In hearing room they have two screens, one has all documents uploaded already.
 - Best to bring copy of everything for other party and three copies (you, judge, other party) of new evidence on the day.
- ∂ Liaison: Buck stops with Melissa – Adjudicators dedicated to the job
 - You can complain to Melissa, she can only deal with complaints about adjudicator behaviour other complaints (around result) go through appeal process
 - Adjudicators only paid for time sitting on tribunal
- ∂ Questions about process:
 - Karolin Potter 92% landlord 8% tenant's cases, systemic prevention of ordinary tenants not coming to the tribunal. How can we protect tenants going to tribunal as a huge number are not having their situation addressed? Answer: Statistic fluctuates from time to time but there are barriers to justice. Melissa has no power to tout for business – MBIES role to inform public. There are social changes in property market, renters for life – changes in property markets, changes in how we view tenancy. Being a renter in the future will have property rules attached to it rather than just a right to occupy. Minister Twyford is clear about setting some goals around people's access to the tribunal.
- ∂ Parlay Decision – court of appeal 2013 custodian's decision may have been wrong, gave unlawful properties, if unlawful in any way due to regulatory compliance, the tribunals jurisdiction was excluded from RTA. High court said just under section 137 – full refund of rent - Conflicting rulings. High court now set out a decision of unlawful properties, if it was a landlord breach of section 45, if breach of tenant no change.
- ∂ RTA Bill number 2 statutory amendment addressing that – freedom to say Tribunal has jurisdiction and room for discretion.
- ∂ Osaki Decision – people using it. Addressed in amendment Bill – restores tenant liability for damage and uses landlords excess for damage. Case by case rulings. Insurance policies now being used more.
- ∂ How do you ensure consistency between adjudicators?
 - Regular training
 - Cover comprehensive case studies
 - Email networking
 - Review all decisions
 - Publication committee
 - Questionable ones followed up on

- Policy discussion of development of changes of law and outcomes, interpretations range of outcomes etc
 - Adjudicators have general agreements on how to best achieve consistency of outcome
 - Some tweaking however generally should have same out for same case anywhere in country – Law is applied the same way and law determines outcome – nothing is random!
- ∂ Questions from the floor
- Letting fees – charge property managers can have – Minister Twyford mentioned this. Wipes 11-20% of income of property managers with a stroke of a pen. What is the interpretation of the letting fee is for? There are some unscrupulous property managers charging \$132 an hour for the paperwork is not right. Bad stories out there. No one does front page stories for the good property managers. Some do conduct themselves unprofessionally.
 - Letting fee is for registered property managers, individual landlords
 - Fee charged to a tenant at time setting up tenancy
 - Front end fee by property manager to the tenant
 - Charge over and above other cost for visits etc
 - Different service to tenants as to landlords
 - Secondary service to the property so needs a charge
 - In Australia the Landlord pays the letting fee
 - Select committee was not interested amount, but interested in occasions it was paid.
 - Prospective of young people accommodation can be intimidating. What kind of improvements could be applied to help young people at tenancy tribunal or educate so they know their right?
 - Tenancy Services website very good for this and very up-to-date
 - <https://www.tenancy.govt.nz>
 - 2nd year law students give best applications
 - Landlords also don't know what they are doing
 - People do have no idea what they are doing
 - People also do not read RTA before they sign anything
 - Anyone can call 0800 number, many languages available
 - TENANCY INFORMATION [0800 836 262](tel:0800836262)
 - BOND [0800 737 666](tel:0800737666)
 - Read your contract!
 - How to tell people that a contract is binding and if you promise you are responsible for your side of the contractual promise – Minister goes around schools trying to educate
 - Tenancy environment knowledge needs raising – rights and responsibilities
 - MBIE does huge amount of work doing workshop and lots of education in schools/ uni – talking to people all over the country – will go anywhere invited, any ideas gratefully received! Lack of Civics in schools
 - TPA also available for education programmes
 - Methamphetamine Report in May – reside from smoking alone cannot be proved to pose a risk to people who are exposed as secondary or tertiary. Review of all literature – showed it did not pose a risk! In stark conflict to report from July last year. Will see evidential to 15microgramme per cm2. Other evidence collects when other risks are present such as manufacturing changes this. Challenging as we move forward as the NZ standards by Minister Twyford review of committee and reviewing RTA provision 2 on Methamphetamine.
 - Tribunal fee is good value for \$20.44 – trained mediator, adjudicator, registrar etc