

licensing, letting fees and the law



There is an old saying about comparing apples with apples. With property management being firmly in the spotlight of late, and changes called for in licensing, letting fees and tenancy law, Harcourts Grenadier Accommodation Centre Director, Nigel Bowden, takes a look at the issues...

A bit of background

Not all apples are the same. A decade ago the property management industry was divided into two camps. There were those firms, like ourselves, that were licensed and members of the Real Estate Institute on New Zealand (REINZ), and there were a small number of unlicensed and independent operators.

To be licensed, a firm needed the people running it, and their property managers, to have certain training and property related qualifications. It also needed to hold all money in an approved and audited Trust Account.

Firms chose to be licensed for various reasons, but one of the main ones was the ability to be able to charge a Tenant a Letting Fee for negotiating and granting them a tenancy.

There has always been some confusion and tension in our market about why the Tenant pays the Letting Fee in New Zealand. The tenancy is really for the benefit of the Landlord, and seemingly everywhere else in the world, the fee was paid for by the Landlord. Nevertheless, that was our law.



A change to licensing and regulation

In 2008 the Labour Government passed the Real Estate Agents Act and it specifically excluded residential property management from the definition of real estate agency work. This caused a bit of uncertainty about the payment of Letting Fees in tenancy law, and so in the Residential Tenancies Amendment Act 2010 the definition of a Letting Agent was changed to allow for anyone acting as an Agent for the Landlord to charge a Letting Fee.

What was the response? Well, the income from Letting Fees saw a large number of small property management firms pop up. Some operated out of bedrooms, garages and the back of a car. Most didn't have Trust Accounts, and who knew where the money went.

We heard stories about how some would specifically pitch themselves to property owners as being able to avoid the law, using tactics to shield landlords from many of the obligations they had. They could also be cheap, but not necessarily so.

Some businesses, like ours, continued to be members of the REINZ. We were licensed under the REAA, Patricia and I hold individual licenses, and we continue to operate an audited Trust Account. We do so because we felt it was the right thing to do.

But, in a cities with insufficient housing stock, a lack of regulation of the industry allowed some sloppy and less

than ideal practices to evolve in some markets. We are now at a point where some serious questions are being asked about the industry. When you add in new requirements for smoke alarms in rental properties, insulation and additional property improvements due under the Healthy Homes Improvement Bill next year, it is alarming that some Landlords think they do not have to comply because their property manager may have told them it doesn't apply to them. How long can they hide?

What about qualifications? Well, the industry hasn't helped itself here. There are people around the country that call themselves Licensed Property Managers. There is no such thing. Over the last 25 years I have seen various property management courses developed by different study providers, and various accreditation schemes. We have done some of them, but they have all disappeared. Any new course will only get real support of the industry once regulation specifies a particular qualification, so that it is here to stay.

Is regulation a good thing? In this industry? Yes. Property management has been moving to a compliance based model in recent years, and property managers can collect significant sums of money. They also interact with some of the most vulnerable members of society. Regulation brings protection, but even with more than 150 working groups and reviews the Government has indicated it has no intention of looking at this.



Letting fees

It is expected that the law will be passed within the next few months which makes it unlawful for a Landlord to pass the cost of the Letting Fee onto the tenant. What is this likely to do?

Aside from aligning New Zealand with the practice of other countries, it is hoped that it will bring some stability to the rental market. How so? By curbing the practice of some property managers using short tenancies or knowingly

putting in poor quality tenants and evicting them quickly, just to earn Letting Fees.

If Property Owners need to cover this cost – even if it will be attempted to be recouped from tenants through rent increases – everyone might be more focused on having good, long-term tenancies rather than tenant turnover. I believe that longer term tenancies benefit everyone in society.

The law

New Zealand has a relatively young rental market. It has nowhere near the maturity of some European cities where properties are rented between generations. There, tenants will redecorate themselves, even installing their own kitchens, and they stay a long time.

Young New Zealanders are a nation of travellers and we seem to covet home ownership as a birthright. These two fundamentals don't lend themselves to long term renting. Coupled with a growing inability to budget, and people who like to move homes for their own reasons as often as the seasons change, our average tenancy is only around 12 months. There is a sense that these discussion points are geared to making tenancies longer, but I am not sure if much of the market really wants that.

There have already been howls in the media about what is going to change - even though it is only a discussion document, and even though no changes will be before 2020.

Protecting the vulnerable is one thing, but protecting those who set out to take advantage is another - and that includes bad tenants, bad landlords and bad property managers. There is that risk with some of these discussion points may indeed do that, but as a firm that does the right thing already, we will use our experience to advocate for positive change, and then lead our clients to make the best of whatever change comes, whenever it may come.