

A Decade Overdue

The need for regulation of property
management in New Zealand

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EXECUTIVE SUMMARY

Property managers have a high level of responsibility. They keep keys and personal information, handle rent, and conduct inspections. Their companies handle billions of dollars worth of housing, and millions of dollars in rent. Despite this, New Zealand law does not require them to have a license or any form of accreditation to operate and no professional oversight of the sector has developed.

Regulatory measures for property managers were called for back in 2007. Parliament's Justice and Electoral Select Committee recommended "immediate action be taken to create an appropriate regulatory regime for property management activities." 95% of submissions during a public consultation came from property managers, property owners and real estate agents, and the majority supported compulsory regulation. Despite this, the government concluded that it was "not justified."

The findings in this report indicate that landlords and tenants are suffering harm due to the lack of regulation of property managers, and have nowhere to turn with complaints. Included are first-hand accounts of the following behaviour from property managers:

1. Negligence in duties to tenants and landlords
2. Losing or not filing bond monies
3. Deceit and manipulation
4. Discrimination
5. Withholding bond
6. Wrongly claiming arrears
7. Invading privacy
8. Using unenforceable clauses in agreements.

Some of the practices revealed are already unlawful; many are not, or are of uncertain legal status. This demonstrates that regulation of the property management sector is indeed warranted.

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1. BACKGROUND & CONTEXT

1.1 The role of property managers

Roughly half of New Zealand's population is renting.¹ 70% of new households formed in the last ten years have been renters,² and with home ownership rates at their lowest level in 60 years,³ more New Zealanders now recognise that they will be renting for life. In this context, and with a number of changes on the horizon, including the Healthy Homes Guarantee Act; the Residential Tenancies Amendment Bill No. 2; the Residential Tenancies (Prohibiting Letting Fees) Amendment Bill; and a review of the Residential Tenancies Act (RTA), it is an appropriate time to examine another closely-related sector: property management.

Investments in private rental properties have increased over recent years, and so too has demand for residential property management services.⁴ In the 2013 census, the number of people employed as property managers in New Zealand was 5,622, compared to 4,788 real estate agents, 3,168 'real estate representatives' and 486 'Real Estate Agency Licensees'.⁵ Renters United estimates that in 2015 the number of property management companies in New Zealand was at least 1,200 and potentially as high as 3,700.⁶

Property managers, also known as letting agents, are providers of letting and property management services. Their role usually includes overseeing the letting process, managing and maintaining the property, and other functions to uphold the landlord's obligations under the RTA.

In performing these roles, property managers have a high level of responsibility. They select tenants, keep keys and personal information safe, handle rent and fees, and conduct inspections. **Consumer NZ estimates that billions of dollars worth of housing, as well as millions of dollars in rent, are handled by private property management companies in New Zealand,**⁷ and yet currently, the only statutory provision related to the handling of other people's finances that property managers must adhere to (under the RTA) is the lodging of bond monies within 23 working days.⁸

This is causing problems for property owners. In 2011, two property management

¹ Action Station and Renters United (2017) *People's Review of Renting*, p. 18.

² Johnson, Howden-Chapman and Eaube (2018) *A Stocktake of New Zealand Housing*, p. 4.

³ Johnson et al (2018), p. 4.

⁴ Auckland Council (2017) *Property Management in Auckland*. Technical Report 2017/018, p. v.

⁵ Stats NZ, Occupation (ANZSCO V1.1)(1)(2) *For the employed census usually resident population count aged 15 years and over*, 2013 Census.

⁶ Based on an official information request in July 2015. At that time there were 1,238 landlords who lodged bonds for 20+ rental properties (it is likely these were property management companies). There were 3,693 landlords who lodged bonds for 6+ rental properties (these may also have been property management companies).

⁷ Consumer.org.nz (2011) *Property managers*. Accessed at www.consumer.org.nz/articles/property-managers

⁸ Auckland Council (2017), p. V.

companies in Wellington and Auckland went under within a few months of each other, leaving landlords out of pocket.⁹ Earlier this year, more than 70 landlords were affected by a rent payment scam by a West Auckland property manager.¹⁰

New Zealand law does not require property managers to have a license or any form of accreditation in order to operate, nor are they required to keep payments in a separate trust account or carry indemnity insurance.

In contrast, real estate agents are required to abide by the Real Estate Authority (REA)'s Code of Professional Conduct and Client Care.¹¹ This Code sets standards for competence, conduct and client and customer care, and an oversight board has powers to sanction non-compliant agents.

1.2 Previous attempts to regulate property managers

Similar regulatory measures for property managers were called for more than a decade ago. When the Real Estate Agents Bill (2007) was being debated in the House, Parliament's Justice and Electoral Select Committee agreed with submitters who raised concerns about the lack of regulation, and recommended that "immediate action be taken to create an appropriate regulatory regime for property management activities."¹²

The select committee declared that "amending the [Real Estate Agents] bill to apply to property managers was outside the scope of the bill," but noted that the Government had signalled a separate review of the regulation of property managers. The select committee recommended "that some measures in relation to property managers are in place before the entirety of this bill is brought into force."¹³

This did not eventuate. The Real Estate Agents Act was signed into law in September 2008, and it was the following year before the Ministry of Justice undertook a review of property management regulation, which included a public consultation. The vast majority of submissions – 131 out of the 138 received – were from property managers, real estate agents, and property owners.¹⁴ The 7 remaining submissions were categorised as 'Other – None of the above (for example, a tenant)', although it is unclear whether or not any of these submissions were from tenants.¹⁵

Bizarrely, however, despite the majority of submissions supporting compulsory regulation,¹⁶ the government concluded it was not justifiable.

⁹ Consumer.org.nz (2011)

¹⁰ Stuff (2018), *72 Landlords and counting: cancer survivor among those owed rent after alleged scam*

¹¹ Auckland Council (2017), p. 5.

¹² Justice and Electoral Select Committee (2008) *Real Estate Agents Bill - Commentary*, p. 23.

¹³ Ibid.

¹⁴ Ministry of Justice (2009) *Review of regulation of property managers: summary of submissions*, p. 1.

¹⁵ Ibid.

¹⁶ Ministry of Justice (2009), p. 24.

Their first reason was that problems did not satisfy the 'significant harm' test "because there [were] few examples of problems, financial loss [was] generally less than \$15,000, and property owners can seek redress through existing Disputes Tribunals."¹⁷

This was contrary to the opinions of submitters. 79% of submitters (27 out of 34) responded 'yes' to the question, "As a property owner, have you experienced the sorts of problems identified in the public consultation document?" There were 172 entries against the 11 problems listed (which ranged from 'Poor communication' to 'Failing to pass rent on to the property owner or pay third parties'), indicating that property owners had experienced multiple problems with property managers. The summary of submissions also noted that "if a problem had been experienced by a property owner it had generally occurred more than once." It is hard to understand how this response was interpreted as too few problems to be deemed significant harm.

The government's second reason for declining to regulate property managers was that the industry was already taking steps to self-regulate.¹⁸

1.3 Voluntary regulation bodies

It is true that in the absence of any formal regulatory bodies for the property management sector, independent and self-regulating associations have emerged. The main organisation is the Independent Property Managers Association (IPMA), which has around 90 members. Up until recently, Leading Property Managers of New Zealand (LPMNZ) existed in New Zealand with 82 members (it appears that this group now operates in Australia only).

It is clear that both organisations saw a need to improve property management practices in New Zealand, and protect the public image of their profession. It is also clear that many members of these associations are striving to do their best by the tenants, landlords and other industry players with whom they interact.

Some of the IPMA's key objectives are to:

- Raise standards in the residential property management sector
- Improve the public standing of the property management industry
- Provide protection for the public through a robust complaints process¹⁹

Members of the IPMA are bound by a Constitution, and must adhere to the Rules, Code of Practice, and Code of Ethics set out by the organisation.

While these efforts are laudable, these associations cover a minority of participants in the sector. Furthermore, our findings suggest that membership of these associations does not guarantee ethical conduct by property managers. These findings are consistent with a survey by Consumer NZ earlier this year, which found that problems were much more likely to be reported by people who dealt with property managers rather than private landlords.²⁰

¹⁷ Cabinet Domestic Policy Committee (2009) *Review of regulation of Property Managers*, p. 1.

¹⁸ Ibid.

¹⁹ Independent Property Managers Association (n.d.) *About the IPMA*. Accessed at <http://ipma.org.nz/about-us>

²⁰ Consumer.org.nz (2018) *Fixing the rental market*. Accessed at www.consumer.org.nz/articles/the-rental-market

2. METHODOLOGY

The following research was conducted by Anglican Advocacy with input from Renters United. The research sought to determine whether lack of regulation of the New Zealand property management sector is causing harm to tenants and landlords.

Our primary data was information sent to us by renters and landlords via an online questionnaire, which we publicised via email and social media. Through this we received 67 stories (61 from renters; 6 from landlords) which we analysed for common themes. We also analysed relevant stories from a survey of renters conducted in 2017 by ActionStation and Renters United for the People's Review of Renting.

In addition, we looked at application forms and tenancy agreements given to us by renters and renters' advocates, and submissions from the 2009 Review of Property Managers undertaken by the Ministry of Justice.

We acknowledge that the data we analysed in no way represents the property management sector as a whole. The aim of this report is to provide a snapshot of the specific problems being faced by renters and landlords regarding property managers in New Zealand, and to suggest some tangible policy solutions.

3. FINDINGS

In their first-hand accounts, renters and landlords revealed a number of property management practices that they deemed to be of concern.

We have categorised these into 8 themes:

1. Negligence in duties to tenants and landlords
2. Losing or not filing bond monies
3. Deceit and manipulation
4. Discrimination
5. Withholding bond
6. Wrongly claiming arrears
7. Invading privacy
8. Using unenforceable clauses in agreements

Some of the practices are illegal under existing law. The occurrence of these behaviours therefore suggests that existing law is not adequately enforced. However, most practices mentioned are not illegal under current law, or are of uncertain legal status. This indicates that harmful or potentially harmful practices are occurring which do not fit within existing regulations.

3.1 Negligence in duties to tenants and landlords

PROPERTY MANAGERS FAIL TO CONDUCT MAINTENANCE REQUESTED BY TENANTS

Under section 45 of the RTA, landlords are required to “provide the premises in a reasonable state of cleanliness,” and to “provide and maintain the premises in a reasonable state of repair having regard to the age and character of the premises”. Landlords who hire a property manager are contracting the property manager to fulfil this

responsibility on their behalf.

The stories we collected suggest that property managers often fall short of this legal obligation. Property managers failing to act on or respond to complaints was the most common issue tenants and landlords reported. One respondent recalled a long wait for a water-damaged living room to be repaired:

“*We had a massive leak in our lounge... all the carpet got ripped up and a hole was cut in the floor and [Management company] left it like that with no progress for 3 months. In addition, we had black mould growing in our shower which they refused to do anything about for 7 months despite many complaints.*”

Someone else described how, after initially being excited to move with their 2-year old and 3-week old baby into an insulated house, they discovered that the property had a serious moisture problem. After heavy rain, up to 25cm of water would pool under the floor. After finding black mould throughout the entire house they informed the property management company but nothing was done. After trying for 5 months to get the situation remedied, the respondent issued a 14 day notice and was forced to go to the Tenancy Tribunal when there was still no response.

An extreme case was reported in Christchurch, where the property manager (who was acting on behalf of an owner who lived overseas) failed to have the house ready

for a group of six tenants.

The house had been undergoing repairs at the time of viewing, but the property manager assured the prospective tenants that it would be ready. When they moved in, however, they found the property was in a bad state, and it took “close to half a year to get everything sorted”:

“The kitchen was extremely grotty, cupboard doors were falling off, there was no power in the kitchen... there were cables and wires sticking up from the floor and hanging down from the ceiling in some bedrooms, the power switchbox was hanging off the wall, and there was a whole bunch of crappy furniture, broken appliances and general rubbish left on the property, including a broken fridge full of stagnant water in the sleepout.

At one point we had sewage spilling out by the back door. Not kidding - when we flushed the toilet it came out by the back steps because the pipe was blocked and broken. ”

Of particular concern is that the property manager reportedly paid a friend to clean up the property, replace a broken stove, and do electrical repair work, despite not being a registered electrician:

“When further electrical repair work was needed later in the year, we discovered that a whole bunch of dodgy wiring had been done in the ceiling by the guy who turned out to be just a mate of [property manager] and not licensed at all. ”

There were also accounts of necessary appliances breaking down and not being replaced within a reasonable timeframe.

While in theory tenants can take property managers to the Tenancy Tribunal over neglected maintenance, in reality they face numerous barriers to doing so.²¹

PROPERTY MANAGERS' NEGLIGENCE CAUSES LANDLORDS FINANCIAL LOSS

In many cases, neglected maintenance is likely to cause undue damage to the owner's property. But landlords also cited other examples of property managers' negligence causing them loss.

One landlord who responded to our online questionnaire recalled how the property manager used the same photographs for different inspections, and didn't complete a final inspection which meant the respondent was not able to claim back any bond to cover the damages.

Two landlords reported that property managers failed to inform them of breakages and damages to the property, one stating that they had been waiting 6 months for quotes, and that they weren't informed that repairs were being done inside the house:

²¹ Action Station (2017), p. 37.

“ We've been asking to get quotes for the driveway and the fence to be fixed for 6 months now and we're still waiting.

They didn't ask us before replacing a door and a shower head and then hit us with the big bill. ”

Another landlord reported that the property manager had failed to do an initial inspection, and also hadn't lodged the bond after two months.

Of course landlords can withdraw their custom from property management companies who neglect their duties. However, that does nothing to stop that property management company repeating negligent behaviour with other clients.

LACK OF COMMUNICATION FROM PROPERTY MANAGERS

Many accounts of negligence came down to the property manager neglecting or blocking communication.

A tenant in Christchurch told us that when they asked for permission to put in a garden, the property manager informed him that the landlord did not give permission. When the tenant was eventually able to speak to the landlord directly, the landlord did not have a problem with either request; he had simply not been informed.

“ The property manager clearly did whatever it took to make her life easier and lied about the landlord saying no... We thought the landlords must be horrible until we met them. ”

Another renter was evicted from their apartment in Wellington without being given due notice:

“ I found out that we had to move out for earthquake strengthening by talking to another tenant in the stairwell. This was two weeks before Christmas, and we had to all be out of the building by 9 January. ”

FAILURE TO COMPLETE OR KEEP TRACK OF PAPERWORK

One renter told us about the frustration of chasing their property manager to change their lease. Despite paying a fee for the property manager to make changes, these tenants ended up sorting out the paperwork themselves with the next tenants:

“ The property managers had never, not once, given any of the tenants instructions as to how to change the lease. After months of emailing backward and forward there was no resolution.

My last communication with the landlords was an email that I sent telling them to email me any documents that they needed me to sign (this was after hundreds of dollars in change of tenant fees had changed hands) which went unanswered. ”

Several respondents mentioned property managers simply not keeping track of paperwork:

“ They lost our tenancy application so when we went to leave they had no record of us actually being there.

When we arrived at Tenancy Tribunal we were informed that we didn't have a tenancy agreement because the property manager had failed to get permission from the tribunal to allow a child of the landlord to be on a tenancy agreement. ”

A tenant in Manawatū told us about problems they experienced when the management of their rental was transferred between companies. Not only were basic maintenance requests ignored, but the original property manager had twinkled out parts of the initial inspection form before the company went under and the paperwork was transferred to another company.

LACK OF KNOWLEDGE ABOUT THE RTA

One respondent shared that her property manager did not appear to know basic content of the RTA. When arguing a case in the Tribunal, the tenant discovered:

“ The property manager didn't know what 'key money' was, which is a pretty basic thing in the RTA. The adjudicator reprimanded her, telling her to go and read the law so that she could follow it. ”

Respondents used the following phrases to describe property managers' negligence of duties:

A year of badgering, a winter with no curtains

dragging their feet

their capacity to ignore texts, phone messages and email messages is almost limitless

very difficult to get a straight answer from

impossible to contact

failed to respond to maintenance requests throughout our tenancy

totally unsupported by my property manager

didn't get any service for my management fee

gave up hounding him

Tenants can at least theoretically take property managers to the Tenancy Tribunal for neglected maintenance (although in reality tenants face are many barriers in this process). However, for tenants or landlords who are harmed by property managers' lack of communication, or failure to keep track of paperwork, there is no forum in which to raise complaints.

3.2 Losing or not filing bond monies

Several respondents told us that their property manager had failed to keep records or lodge bond money. **This is illegal under section 19 of the RTA, which states that bond monies must be lodged within 23 working days.**

From our online questionnaire, there were four reported cases of the bond not being lodged. In one case a tenant reported that the property manager had lost the necessary paperwork and therefore couldn't lodge the bond. Another tenant recalled needing to make two separate payments to pay a bond, and not being given a receipt for the second amount (\$300) by the property manager:

“They failed to give me a receipt for the second amount and just took it from me with a note attached saying ‘part bond payment.’”

At the end of the tenancy, there was no record of the second payment, which prompted the tenant to go to the tribunal. Initially the claim was denied due to there being no proof of the payment:

“I ended up taking them to the Tenancy Tribunal, only to be denied anything due to ‘lack of evidence.’

In the end [the property management company] called me a liar and I fought and ended up with exemplary damages of \$100 for them not supplying me with a receipt, but they got away with the extra bond payment.

3.3 Deceit and Manipulation

There was more than one case of a property manager having used photographs to advertise a property that were not representative of the place.

“I had a property manager advertise a property with photos which were NOT of that property, and shrug it off when I pointed this out.”

Many stories described deliberate deception or manipulation on the part of the property manager. One serious instance was reported by a renter in Dunedin who was told by a property manager that they could not see a copy of the tenancy agreement until the bond and first week of rent was paid. After protesting this, the group were given one page of an ‘example lease’, which differed from the one they were then required to sign. The tenants felt they had been bullied into signing an agreement that they did not agree to.

Another tenant in Wellington felt they had been deceived over the allowance of pets. Having viewed a property that was advertised as allowing animals, they were told they would be able to keep a dog, but only after having lived in the place for six months with a record of good inspections. Once the 6 months was up, however, the tenant was told to supply a photo, name and age of the dog in order to bring it home, and on doing this was told they were not allowed the dog after all because it was a Rottweiler:

“I felt cheated, fought the point, but at the end of the day I was stuck in a fixed term contract so I couldn't leave.”

ALTERING CONTRACTS AT THE LAST MINUTE

Several tenants reported that property managers had altered contracts at the last minute, perhaps abusing the vulnerability of tenants who - if they did not agree to the change - could become homeless. One Wellington tenant reported that the night before they were due to move, the property manager told them that the room they had agreed to rent was actually \$200 per week, not \$160 as previously discussed, but that, "They would do \$180 but only if I signed a 12 month lease (originally agreed to periodic)." The property manager did not accept the respondent's counter-request for a cooldown period of one week to make sure they got along with the 10 other tenants, calling it ridiculous.

In another Wellington case, a property manager attempted to change an agreement at the last minute. The prospective tenant was offered a bedsit which they were told had already been given to another tenant the day before. The newer applicant was given the option to rent it if they could pay the bond straight away.

ENCOURAGING RENT BIDDING

Some property managers engage in behaviours that, while legal, are arguably unethical and exploitative of tenants. One example is encouraging 'rent bidding' (playing one prospective tenant off against another to see who will pay the most rent to secure a property).

A tenants' advocacy service told us about a couple who had immigrated to New Zealand and were struggling to find a place to live. They attended a viewing, along with many others, and put in an application. A day later the property manager contacted them saying that they could have the house if they were willing to pay an extra \$40 rent per week, but that they would have to decide right then and there or miss out. They agreed, despite it being more than they could comfortably afford. For fear that the property manager will terminate their lease, they chose not to complain about the rent-bidding behaviour.

We also found an example of a property management company explicitly advertising rent bidding as part of their services to landlords. The webpage has since been removed, but we captured the screenshot below. **This company also advertises as being a member of the IPMA.**

Here's how it works



Property listed

We list your property with a price indication, based on market rents.



Tenants bid

Interested tenants bid on the property, providing us with the rental amount they are willing to pay.



Highest bid accepted

The highest bids from the most qualified tenants are accepted.

This rental tender system comes with a number of important benefits:

Landlords can earn more money on their properties; there's no need to settle for the "market rent."

You won't have to worry about under-renting your property or decreasing its value with a lower than necessary rental price.

Use the extra rental income to pay down your mortgage, make improvements, or invest in additional properties.

Tenants can get the property they want and secure it immediately with the right bid.

Tenants don't have to waste time visiting other properties and filling out numerous applications; they can act immediately on the house they want.

Tenants drive the value of the property, establishing the amount that they're willing to pay.

“

Landlords can earn more money on their properties; there's no need to settle for the 'market rent.'

”

THREATS AND RETALIATION

One tenant sought help from an advocacy service after she had been told by the property manager to pay \$3000 for accidental damages. A meeting was called, where the advocate suggested that the cost of repairs were not necessarily the tenant's responsibility and that it should be settled by the Tenancy Tribunal. The property manager then threatened that going to the tribunal would result in the tenant being blacklisted and an inability to find a house in the future, but that paying up front would "keep everything square". The tenant decided to settle outside of court for fear of being blacklisted.

Someone else had been complaining about her leaking, damp flat for 4 years, only to be threatened with eviction:

“My rental agent regularly reminds me that she could get \$80 a week more for my flat and she has evicted 4 tenants in my block over the last 2 years for no good reason or explanation.”

LACK OF TRANSPARENCY ABOUT FEES

Multiple tenants told us about property managers charging them fees that they had not been warned about in advance.

One respondent requested to end a fixed term contract because she bought a house. The property manager said it was company practice not to allow tenants to leave fixed term contracts under any circumstances, however, after the tenant requested three more times, the property manager sent her what appeared to be a standard company form for ending fixed term agreements. The tenant told us:

“This was a standard form, which they appear to use every time a tenant requests to break a fixed term contract... They required us to pay \$470 before they would re-advertise the property. When we initially signed our fixed term agreement, they gave us no warning of this fee.”

Myself and this other tenant both felt the company was making money off our need to break our lease; simply exploiting the fact we had no alternative. They never gave a satisfactory breakdown of what the fee was for.”

3.4 Discrimination

Section 12 of the RTA prohibits landlords from discriminating on the basis of employment status, family status, disability, race or other criteria outlined under the Human Rights Act.

Despite this, stories from renters and our own analysis of application forms suggests that discrimination can and does occur. We saw application forms that asked tenants:

- Whether they receive a benefit, and the contact details of their case worker
- Whether they are a student
- If under 18, whether they are married
- Proof of income and other financial information
- Whether they have been to the Tenancy Tribunal

We also heard accounts of property managers asking prospective tenants for health information. This information could be used to discriminate on unfair grounds.

Among renters' stories we received eight accounts detailing discrimination by property managers. Three cases involved parents who reported feeling judged by property managers:

“I had many property managers instantly judge and tell me I wouldn't be accepted for a property when they found out I was a single mother on social welfare.”

“On the first inspection the property manager was very judgmental. I had a baby and she openly criticised me for not having a perfectly spotless home and asked why I did not have the curtains open.”

“I am a solo dad. Any mention of this can lead to a very frosty conversation.”

When a group of four younger renters failed a property inspection due to having “too many TVs in the lounge” they felt it was unfair treatment due to a generation difference in lifestyle:

“Failed a property inspection because we had too many TVs in the lounge (we had three, we were a four-person student flat, we had two gaming consoles). We saw this as a generational difference issue between the managers and tenants. It was not damaging the house. The house was clean.”

Several renters felt that questions asked by property managers – pertaining to income and health – were invasive:

“While searching for a new place I had a property manager demand information about my health conditions, and proof of my income.”

“Our tenancy agency would ignore us for weeks or months... this was despite needing to prove our incomes & have a guarantor before we could take the property.”

Another renter described “a complete lack of trust” from their property manager, who reportedly assumed that a smell in one of the bedrooms was marijuana, and refused to remove the claim from their file:

“This observation was incorrect and completely unfounded. We are strongly against smoking marijuana and none of our flatmates smoke it. We suspect they have mistaken the smell of our flatmate's wetsuit.”

Our findings are in line with what property managers say about their own practices in a 2017 report by Auckland Council. When asked about selecting tenants, one property manager responded:

“Really how I pick someone at the end of the day is a gut call. It doesn't matter what they look like on paper, if I don't like you, I don't like you...”

Another also made decisions based on her own gut feeling:

“ I’ll fill out the form and just decide, [no I am] not going to take them on. Just a bad feeling. Naughty kids running up and down the stairs, whatever. ”

In the interests of fairness, the report also gave examples of property managers who didn’t put up with discrimination from owners. One person explained that he put a stop to a relationship with a client who had racist requests:

“ I have sacked a couple of clients because they told me ‘no certain groups’... and I said okay, that’s noted, but I still have to show everybody through. And then that particular group comes through... They are a great family, they are working, they have references and I go back to this client and say there is nothing wrong with this family you really need to consider them, and they say no. ”

The fact remains, however, that it is all too easy for less morally-conscious property managers to discriminate against prospective tenants.

3.5 Withholding bond

Several tenants shared stories about property managers withholding bond at the end of the tenancy. In two cases, property managers asked tenants to sign a blank bond form before completing the final inspection.

One instance was reported by the parent and guarantor of a tenant, who gave the impression that they thought the agent tried this often with unsuspecting tenants.

In another instance, the tenant reported having “trouble with some major intimidation tactics” from the property manager:

“ The agent told me I had to sign BEFORE the inspection took place. I told her that isn’t how bond release forms work, and that I wouldn’t sign until we had agreed a release amount. ”

Some time later, the agent finally completed the inspection and proposed taking a large amount of the bond. We eventually agreed, because it had taken so long to release the bond and we needed the money for a new flat. ”

One tenant reported that the property manager instructed him to re-establish the lawn in the back yard in order to get the bond back, even though the property was being flattened and subdivided:

“ When we finally moved out, despite us doing so because bulldozers were coming to flatten the back section, the property manager insisted we turn the garden beds back into sewn lawn, and initially used that as a reason to withhold bond. ”

3.6 Wrongly claiming arrears

Some of the tenants we heard from had been held liable by property managers for rent arrears that they were not responsible for. In one case, the arrears was reportedly unpaid from eight years prior:

“ I had another property manager [...] who tried to claim rent arrears from us for rent that was unpaid eight years beforehand - when none of the tenants had so much as lived in the city... ”

Someone else reported that their property manager had given notice that their student flat was in arrears with one week's rent being owed. When they were unable to pinpoint the week missed, they went back to the property manager and it turned out the arrears was from a previous group of students. They were told, however, that nobody would be allowed to move out until the arrears was paid:

“ At this point, we were able to reach verbal agreement that the arrears would be taken out of the bond when the tenancy expired, and people that wanted to move out were allowed to. We didn't receive a written record of that agreement, and [property management company] later denied that it had taken place. ”

“ Eventually after I moved out, I wrote a letter to [the company] expressing my frustration. The issue went away for the

then-current tenants, but at a certain point reemerged and [the company] indicated they were going to take legal action. I again wrote them and threatened to go to the media, at which point they immediately backed down and wiped the arrears. ”

One respondent felt bullied by their property manager over rent in arrears which, according to the respondent, did not exist:

“ When I asked how the arrears came about, I wasn't given an answer, just basically told that's what their records show. I refused to accept their records, knowing that I was fully paid up. I was texted and basically bullied and harrassed by the over-zealous office manager, who still could not provide me with how I got into arrears, and why it took them until the last day of my tenancy to contact me about it. ”

Some of these cases could be put down to property managers' negligence in record-keeping, which, given the relative power of property managers over tenants, caused significant distress.

3.7 Invading privacy

There were several cases where tenants felt a property manager had breached their right to privacy or quiet enjoyment of the premises, in breach of section 38 of the RTA.

One renter reported that they were given

incorrect notice periods for inspections. Someone else reported that their property manager “on a number of occasions circled the house peering through our bedroom windows”.

Another recalled how someone came around to do the gardens on a day that there was water leaking from their laundry and had relayed information about this to the property manager, claiming that the tenants did not act quickly enough. Whether or not this was the case, the tenant felt it was inappropriate for the property manager not to stick to inspection protocol. They also suspected that the gardener was the husband of the property manager, which “felt very much like spying”.

One extraordinary case was of a property manager rearranging furniture and remaking the bed during an inspection, at which the tenants were not present:

“I arrived to discover the chairs around the dining room table had all been pushed in flush against the table... The two armchairs in the lounge had been repositioned. The blankets on the couch had been re-folded and placed on the couch in a different spot...

I then get upstairs to find the bed has been remade. The sheets are folded totally differently to how we'd ever fold them, and for absolutely no explainable reason - we'd left the bed tidy and neatly made... ”

Feeling uneasy about this, the tenant rung the property manager, who brushed the actions off as being automatic, something she hadn't thought twice about. She then enquired about

various things hanging on the wall that she had taken a liking to, which the tenant felt was out-of-place and inappropriate:

“It was a very strange conversation that had me going from stressed and anxious, to relieved, to thoroughly weirded-out. ”

Section 38 of the Residential Tenancy Act (1986) states with regard to Quiet Enjoyment that, “the tenant shall be entitled to have quiet enjoyment of the premises without interruption by the landlord or any person claiming by, through, or under the landlord or having superior title to that of the landlord (i.e. a property manager acting on behalf of the landlord)” and that “the landlord shall not cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant.”

Given this, it is reasonable to assume that the actions of property managers in the above cases were a breach of the RTA.

3.8 Using unenforceable clauses in contracts

Some tenants' stories, and analysis of leases, suggest to us that property managers are requiring actions from tenants that are not enforceable under law.

One tenant told us she signed a property management company application form that included the clause: “I accept the property in its current condition” (see overleaf). This clause is not enforceable, as landlords cannot contract out of their obligations to provide the property in a reasonable state of repair.

However, the fact this company includes this clause may be leading tenants to believe they have signed away their right to proper maintenance.

R: [REDACTED]		*DATE: [REDACTED]
[REDACTED]		*RENT PER WEEK: \$ 450
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	*I ACCEPT THE PREMISES IN IT'S CURRENT CONDITION: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
THE ABOVE PREMISES FOR: Fixed term: <input type="checkbox"/> 6months <input checked="" type="checkbox"/> 12months or Periodic <input type="checkbox"/> Commencing on: 26/8/16		
ED		
ssed, please attach at least one colour copy of photo identification		PHOTO ID ATTACHED <input type="checkbox"/>
plication are: (tick if attached)		
<input type="checkbox"/> Tertiary Acceptance Letter	<input checked="" type="checkbox"/> Proof of Income	<input checked="" type="checkbox"/> Bank Statement
	<input type="checkbox"/> Letter of Recommendation	<input checked="" type="checkbox"/>

Several leases contained clauses which stated that tenants must not authorise any repair work. Such clauses may mislead tenants, as in certain circumstances tenants do have the right to order repair work (for instance if the landlord has refused).

♦ The tenant must report any repairs required to the rented premises via the landlord's Maintenance telephone line [REDACTED]. The tenant **shall not** authorise any work to be done.

One lease contained a clause specifying a fee for subletting. This is likely unenforceable, as the landlord can only recover expenses reasonably incurred in such a changeover, which is likely much less than "2 weeks rent and \$100 advertising fees".

SUBLETTING:
The Tenant(s) agree(s) not to assign, sublet or part with possession of the premises (or any chattels therein) belonging to the Landlord. Should the Landlord provide written permission to allow the reassignment of the tenancy – the Tenant agrees to pay the fees for this being 2 weeks rent and \$100 advertising fees.

Another lease specified that the tenant must leave the property "at least in as clean and tidy repair as when the tenants first took up the lease". This clause does not acknowledge the tenants' rights to cause fair wear and tear.

TERMINATION AND RETURN OF KEYS
The tenants must yield up the property in a clean and habitable condition on termination of the lease or other termination. Prior to leaving the property you will clean all of the following, paint-work, window, floors, cupboards, fittings, benches, toilets, ovens and range hoods. The property must be at least in as clean and tidy repair as when the tenants first took up the lease. If the landlord has to incur any costs for cleaning, removing rubbish and /or making repairs, such costs may be deducted from the bond, but not limited to this amount. The tenant/s agree that at the termination of the tenancy, to leave

In a number of cases, respondents had been required by a property manager to get their rental property commercially cleaned. We have obtained copies of tenancy agreements which include clauses such as "Have all carpets inside the property professionally cleaned should they vacate the property". Under the RTA, a clause such as this is not enforceable - the judgement as to whether commercial

cleaning is necessary can only be made at the end of the tenancy if the premises are not left in a “reasonably clean and reasonably tidy condition.”²²

It isn’t possible to say whether these instances were resulting from unenforceable clauses in the contracts, or from taking verbal instruction from the property manager, but it is clear from the first-hand accounts we received that tenants felt they must comply if they were to get their bond back.

²² MBIE (n.d.) *Breaches of the Residential Tenancies Act*. Accessed at www.tenancy.govt.nz/disputes/breaches-of-the-residential-tenancies-act

4. CONCLUSION & RECOMMENDATIONS

The above sections highlight a range of practices by property managers that tenants or landlords consider harmful. Some practices mentioned are illegal under existing law, yet still occur. Other practices mentioned are not illegal, or are of uncertain legal status, yet are harmful to tenants or landlords. This suggests that additional regulation and enforcement mechanisms are needed.

It is worth mentioning that of the 45 different property management companies mentioned in the complaints we received through our survey, six of them are members of the IPMA. From our survey, 6 firms were mentioned in more than one first-hand account, and of these, two were IPMA members.

Despite the laudable efforts of independent organisations to better the industry, there is only so much that voluntary self-regulation can do. A legislative approach is long-overdue.

We recommend that swift action be taken to regulate property managers.

This could be done in a way that draws upon existing regulation of real estate agents and other sectors in New Zealand. Experience could also be drawn from regulation of letting agents in the United Kingdom.

Industry-wide standards need to be put in place and accreditation with a regulatory body should be mandatory for all property managers regardless of whether they are part of a firm, or a lone agent.

4.1 Examples in other sectors

Most service industries in New Zealand are subject to industry-specific regulation. These usually function via an independent regulatory board, tasked with managing a mandatory licensing system. In the case of real estate agents, licensing is handled by the Real Estate Authority. There are equivalent regulatory schemes²³ for builders; plumbers, gasfitters and drainlayers; electricians; registered architects; chartered professional engineers, and more.

In New Zealand, electricians are individually licensed by the Electrical Workers Registration Board, which is made up of both electrical workers and lay people. To become registered, an electrician must satisfy a 'fit and proper person' criteria and complete the necessary training.²⁴ They may also opt for voluntary membership with Master Electricians, which offers extra training and quality assurance.

²³ MBIE (n.d.) *Occupational regulation*. Accessed at <http://www.mbie.govt.nz/info-services/building-construction/occupational-regulation>

²⁴ Plumbers, Gasfitters and Drainlayers Board (n.d.) *R.A.C (Report A Cowboy) App*. Accessed at <http://www.pgdb.co.nz/app.html>

Electricians, as well as plumbers, gasfitters and drainlayers, are all subject to a robust complaints process. The 'Report A Cowboy' app allows anyone to search a tradesperson on the public register and report concerns about non-compliance.²⁵

4.2 Regulation of letting agents and property managers in the UK

England is currently in the process of tightening regulation of its property management sector.²⁶

Since 1 October 2014, all letting agents and property managers in England have been required to join one of three government-approved redress schemes, so that tenants and landlords dealing with property managers are able to complain to an independent person about the service they received.²⁷ In 2016, these three redress schemes received over 20,000 enquiries and 5,000 complaints about property agents.²⁸ Since May 2015, letting and property management agents have been required to publish a list of their fees.

In April 2018, the U.K. government announced their intention to regulate letting and property management agents.²⁹ They intend to do this by:

- Instating an independent regulatory body;
- Requiring all agents to undertake a nationally-recognised qualification and professional development;
- Creating a mandatory and legally-enforceable Code of Practice which will set minimum set standards for:
 - transparency of potential conflicts of interest;
 - transparency of current and future financial commitments to which clients are agreeing;
 - service charges;
 - communication and customer service;
 - handling of clients' money;
 - dispute resolution.

Robust regulation already exists in Wales. In 2015, Rent Smart Wales was established as the Licensing Authority under the Housing (Wales) Act 2014, and Letting Agents operating in Wales are required to register with this service.³⁰ Part of the membership criteria is that they have purchased professional indemnity insurance, are a member of a consumer redress scheme, and are able to offer their landlords and tenants client money protection.

²⁵ Electrical Workers Registration Board (n.d.), *Before you apply*. Accessed at <https://www.ewrb.govt.nz/registration-and-licensing/apply-for-registration-and-licensing/before-you-apply>

²⁶ UK Parliament (2018), *The regulation of letting and managing agents* (England). Briefing Paper No. 6000, p. 3.

²⁷ Department for Communities and Local Government, UK Parliament (2014), *Lettings Agents and Property Managers*, p. 2.

²⁸ UK Parliament (2018), p. 7.

²⁹ Ministry of Housing, Communities and Local Government, UK Parliament (2018), *Protecting consumers in the letting and managing agent market*, p. 5.

³⁰ UK Property Redress Scheme (n.d.), *What is Rent Smart Wales?* Accessed at <https://www.theprs.co.uk/news/what-is-rent-smart-wales>

4.3 New Zealand must follow suit

Regulation of property managers in New Zealand is long-overdue. The examples given show that there is plenty of existing knowledge to draw on in order to get this done.

At a minimum such regulation should involve:

- Mandatory licensing of all property managers
- Instating a regulatory body, comprising of representatives of property management companies, renters and the public, which:
 - issues and renews licences, and manages a public register of licence-holders;
 - determines mandatory qualifications;
 - establishes a code of conduct for the sector;
 - manages a robust complaints process and sanctions non-compliant licence-holders, in severe cases by withdrawing their licence to operate.

An entity such as the Real Estate Authority would be best-placed to manage this. An organisation such as the IPMA could then provide additional membership to set a higher standard for the industry in the same way that Master Electricians exists to provide another level of quality assurance for electricians.

While the Tenancy Tribunal settles thousands of disputes every year, many tenants fear retaliation or blacklisting for bringing a case. More critically, many of the above complaints against property managers are outside the Tribunal's scope, meaning sufficient recourse against property managers who repeatedly disregard existing rules is lacking. A specific regulatory body for the property management sector is urgently needed.

We suggest that the above outcomes could be achieved by amending the Real Estate Agents Act to include property managers (as was suggested ten years ago), or by the passing of a new Act. Whatever the path, action needs to be taken swiftly - for the sake of tenants, property owners and ethical property managers alike.

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