

## Tenancy Services

# Tenancy Compliance webinar

A Property Institute webinar for PROMINZ members  
27 October 2021

Presented by **Steve Watson, Francisco Maiava**  
Tenancy Compliance and Investigations

**Raymond Suen**  
Tenancy Services Information and Education



## Tenancy Services



**Steve Watson**  
National Manager,  
Tenancy Compliance and Investigations

Steve has a 35 year career in law enforcement and regulation. He was previously a Police Officer, but his last 10 years have been spent with MBIE and its former agency the Department of Labour.

His previous roles include Compliance Manager for Immigration New Zealand and National Operations Manager of the Labour Inspectorates. He was awarded an MBIE Chief Executive Leadership Award in 2016 for his leadership in the All of Government collaborative regulatory work in the Immigration and Employment fields for the Canterbury Rebuild. He is passionate about achieving goals through collective action and by breaking down silos.



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**Francisco Maiava**

Operations Manager – Northern,  
Tenancy Compliance and Investigations

I have a background in law enforcement and regulatory enforcement both domestically and abroad. I spent years in NZ Police as a Detective and Uniform Sergeant and worked for the United Nations in a peacekeeping capacity in countries such as East Timor. I have also spent time in local government managing teams in Auckland Council – Alcohol Licensing & Building Compliance Investigations.

I have a BA in History & Social Policy from Victoria University and a Masters in International Relations with distinction from Massey University.



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**Raymond Suen**

Senior Engagement Advisor,  
Tenancy Services Information and Education

Raymond leads the engagement with property managers and investors as part of his work in Tenancy Services Information and Education. He can provide information to support your business activities in the residential tenancies market, and help you understand the regulatory and compliance obligations.

He is fluent in English, Chinese (Cantonese and Mandarin) and can speak basic Korean, and has worked in local government and a Crown entity with roles in community projects, sector development and international business.



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## Tenancy Services

In this presentation:

- » About Tenancy Services
- » Tenancy Compliance and Investigations
- » Our compliance approach
- » Support for property management sector  
Tenancy Services Information and Education
- » Our recent engagements with the property management sector
- » Where to find help with tenancy questions
- » Questions & feedback



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- » About Tenancy Services

Some of the key teams you may have interactions with in your business activities.



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Te Tūāpapa Kura Kāinga  
Ministry of Housing and Urban Development



MINISTRY OF  
JUSTICE  
*Takiri o te Tere*  
TENANCY TRIBUNAL



- » Tenancy Information and Education
- » Tenancy Compliance and Investigations
- » Tenancy Dispute Resolution Services **TENANCY MEDIATION**
- » Tenancy Bond Services
- » MBIE Service Centre **0800 TENANCY**

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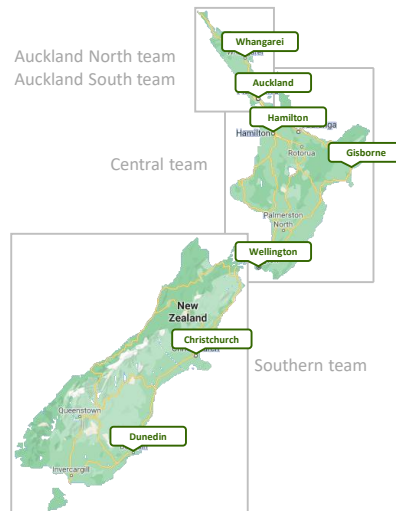
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### » Tenancy Compliance and Investigations



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## Tenancy Services

### » Our compliance approach

The Tenancy Services Compliance and Investigations Team monitor and enforce compliance with the Residential Tenancies Act 1986 (the Act).

Where ongoing breaches are identified, the team uses a number of interventions and enforcement activities to make sure landlords comply with their obligations under the Act.

As well as investigating alleged breaches, landlords and property management companies are proactively visited, and their business processes and systems are assessed for compliance with the Act.

The team have a range of compliance tools to ensure landlords are meeting their obligations. These include (but are not limited to) formal warnings, enforceable undertakings, improvement notices and infringement notices. In the most serious cases, the team may decide to take proceedings against a landlord in the Tenancy Tribunal.

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## Tenancy Services

- » Support for property management sector
- » Our recent engagements with the sector
- » Where to find help with tenancy questions

### Tenancy Services Information and Education:

- » Website resources – e.g. [factsheets](#), [case studies](#), [online tools](#), [translated content](#)
- » [Recorded webinars](#) on key tenancy topics
- » Tenancy Services [newsletter](#) and [statistics](#)
- » Quarterly email [newsletter for property managers](#)

### Key sector relationships and communications:

- » [Tenant Advocates Network](#)
- » Citizens Advice Bureau, Community Law, etc.
- » Property management companies and industry bodies
- » Property investor groups
- » Media
- » Service providers for the residential tenancy sector – e.g. tradespeople, software vendors, etc.

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- » Questions and feedback

1. With the lockdowns that have and are occurring, is there going to be an extension on the 90 days for compliance with Healthy Homes given there is also a shortage of product due to importing issues?

The Ministry of Housing and Urban Development (HUD) is aware of the supply issues and difficulties with carrying out property maintenance under the COVID-19 Alert Level restrictions.

HUD is responsible for strategy, policy, funding, monitoring and regulation of New Zealand's housing and urban development system. They are assessing options to ensure improvements in the quality of our rental homes in New Zealand can be achieved in a timely and practical manner.

The healthy homes standards became law on 1 July 2019. We encourage landlords to start any necessary maintenance work early to avoid unforeseeable delays in order to meet their compliance deadline.

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### » Questions and feedback

2. There has been much discussion in recent months around the accuracy of the heating tool, and the effect this had on over investment by many landlords in order to attain compliance, is there any acceptance from MBIE that this is incorrect and any indication of pending change to it ?

The Heating Assessment Tool on the Tenancy Services website is developed based upon the heating formula in [Schedule 2 of the Residential Tenancies \(Healthy Homes Standards\) Regulations 2019](#). The tool is accurate and in accordance to the calculations outlined in the Regulations.

The Ministry of Housing and Urban Development (HUD) is aware of feedback on the heating formula potentially over-calculating the heating requirements for certain properties in some situations. HUD is assessing options to ensure the heating formula is aligned with the heating requirements for rental homes.

Should there be changes to the heating formula in the Regulations, the Heating Assessment Tool will be updated to reflect any changes accordingly.

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### » Questions and feedback

3. How many landlords have had any form of healthy homes audit – by email, going through portfolio in office or other methods. What percentage of those landlords are property management companies and how many are private landlords?

Since 1 July 2021, TCIT has resolved 653 proactive investigations/audits . There has been one breach (from PM) on heating, and one breach (from landlord) on insulation.

TCIT's proactive work stream is a review of a landlord's practices to ensure compliance with the RTA, which includes healthy homes standards.

There is insufficient data readily available on healthy homes compliance as the first compliance deadline (for boarding house landlords) only lapsed about four months ago. Our work on boarding house compliance has been affected in this period since 1 July 2021, as New Zealand regions were under varying COVID-19 Alert Level restrictions.

Further, there will be an increasing number of private landlords needing to comply for new or renewed tenancies after 1 July 2021. With '90 days to comply from the start of any new or renewed tenancies', this effectively means a healthy homes compliance deadline as early as 29 September 2021 (from about a month ago).

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» Questions and feedback

4. What are the timelines (for auditor & auditee) if a PM is audited?

As required depending on the complexity of the audit or if any issues identified.

5. Where does TCIT draw the line as far as 'unenforceable' clauses in tenancy agreements (e.g. smoking clauses picked up as non-compliant in audits)? Would this come under a property manager's own best practice/risk assessment rather than compliance?

You can't write clauses into tenancy agreements that conflict with the Act. The Tenancy Tribunal may consider such clauses to be unenforceable – meaning they have no effect and in some cases these clauses may amount to an unlawful act.

Generally clauses likely to be unenforceable are clauses that:

- » ask a tenant to do more than the Act requires them to do
- » try to remove or reduce the tenant's rights or give the landlord more rights
- » evade the requirements of the Act.

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» Questions and feedback

6. Can you please explain the infringement fees, as its really quite complicated.

[Schedule 1A – Amount for unlawful acts](#) (Residential Tenancies Act 1986)

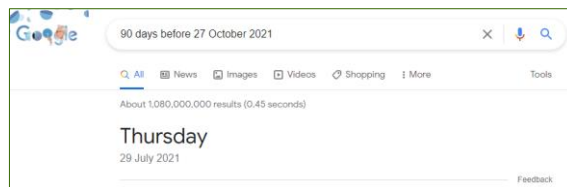
[Schedule 1B – Fines and Fees for infringement offences](#) (Residential Tenancies Act 1986)

7. Will tenancy services be created a link on their website where you can enter a date you want to serve notice and it automatically advises what date the 14 days is up etc. It really would be most helpful.

[Decision tool: How much notice do you have to give?](#) (Tenancy Services website)

Use Google to calculate the date for when to serve a notice.

E.g. "90 days before 27 October 2021" is Thursday 29 July 2021.



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### » Questions and feedback

8. How can owners who have their properties in a trust give notice to a tenant if they want to move in, as I understand the Tribunal sees a Trust as a business and therefore a family member can't move in.

**We encourage landlords to seek legal advice on this matter.**

#### » Trusts

Trustees are the legal owners of trust property. Trustees can be considered the "owner" of the premises and that where a property is held in a trust, the trustee may be able to terminate a periodic tenancy using the "moving in a family member" ground. However, this issue is ultimately subject to the determination of the Tribunal.

Furthermore, trustees must exercise their powers in line with the various legal responsibilities imposed on them by common law, including the duty to act in the best interests of the beneficiary. These obligations, which go beyond those imposed by the RTA, may also affect what they can do with the property, including the use of termination grounds.

#### » Companies

Landlords who are companies will not be able to terminate a periodic tenancy using the "moving in themselves or a family member" ground, but they will be able to use the other grounds if applicable. As legal persons, companies do not require properties to live in, and do not have families. Owners of rental properties can make decisions about how to structure ownership, taking this termination ground into account.

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### » Questions and feedback

9. What is the solution for 18m2 apartments where there is literally no wall space to install a heater.

Electric heating is not permitted except for living rooms needing a heating capacity of 2.4kW or less. In these cases, electric heating still needs to meet the requirements for a qualifying heater.

See our [Heating Guidance Document](#) for more details. Guidance document for the individual healthy homes standards is available on our website, search 'Healthy Homes Standards' under [Forms & Resources](#).



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### » Questions and feedback

10. Can you please explain the difference between a renewal and an extension? We are advised where its just a new end date its an extension and it doesn't need to comply with the healthy homes standards, but where it's a renewal then it must.

We strong advise against offering tenancy extensions as a way of delaying healthy homes compliance. This may also be challenged at the Tenancy Tribunal.

A fixed-term tenancy can be renewed on the same terms and conditions for the same length of time as the original fixed-term tenancy. New and renewed tenancies from 1 July 2021 must comply with the healthy homes standards within 90 days of the start of the tenancy.

A fixed-term tenancy can be extended by changing the end date of the tenancy but all other aspects of the agreement remain the same. Extending a fixed-term tenancy does not change the healthy homes compliance date for the property.

See website for more information on [making changes to a tenancy agreement](#).



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### » Questions and feedback

11. Can you have a fixed term tenancy with a period more than 12 months?

There's no maximum term for a fixed-term tenancy. Landlords and tenants should talk together and agree on an arrangement that works best for both parties.

12. Where we have professionals doing the Healthy Homes Reports, and we find out later their 13A Statement is not compliant, what happens there? So long as we are sending the whole report to tenants will we be covered?

We encourage landlords to use our [healthy homes compliance statement template](#) to ensure all their legal requirements in information supply is fulfilled. If landlords choose to use their own statement templates, or other forms of record keeping, they need to ensure the information supplied fulfils all requirements. Where identified issues are relatively minor, e.g. missing information or record keeping on certain aspects of the level of healthy homes compliance (e.g. ducting dimensions or air flow measurements of an extractor fan), then this could be a simple fix – just provide the required information as soon as practicable.



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For more information:

- » **Tenancy Services** website  
[tenancy.govt.nz](https://tenancy.govt.nz)  
[tenancy.govt.nz/law-changes](https://tenancy.govt.nz/law-changes) (latest legislative updates)  
[tenancy.govt.nz/healthy-homes](https://tenancy.govt.nz/healthy-homes) (healthy homes standards)
- » **Unit Title Services** website  
[unittitles.govt.nz](https://unittitles.govt.nz)
- » **Raise the standard** website (healthy homes standards)  
[raisethestandard.nz](https://raisethestandard.nz)
- » Tenancy Services newsletters  
[tenancy.govt.nz/subscribe](https://tenancy.govt.nz/subscribe)
- » Tenancy Services Facebook  
[facebook.com/tenancynz](https://facebook.com/tenancynz)



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