

Changes to the Residential Tenancies Act 1986 (RTA) will provide landlords with a new pathway for responding to anti-social behaviour in periodic tenancies. These changes will take effect from 11 February 2021.

These changes are additional to the existing options available for resolving anti-social behaviour under the RTA, which usually require quite serious behaviour before the Tenancy Tribunal will agree to end the tenancy. The new changes are designed to cover situations of anti-social behaviour that reoccur, and that are more than minor, which aren't currently addressed by the RTA.

These law changes are part of the Residential Tenancies Amendment Act 2020, which was passed in August 2020. Under these changes, anti-social behaviour means:

- › *harassment; or*
- › *any other act or omission (whether intentional or not), if the act or omission reasonably causes alarm, distress, or nuisance that is more than minor.*

What are the law changes about anti-social behaviour?

- › From 11 February 2021, a landlord may apply to the Tenancy Tribunal to end a periodic tenancy if:
 - on three separate occasions within a 90-day period, a tenant (or a person in the premises with the tenant's permission) has engaged in anti-social behaviour in connection with the tenancy; and
 - a valid notice for anti-social behaviour was served on the tenant following each of those occasions.
- › The notice for anti-social behaviour must clearly describe:
 - the specific behaviour considered to be anti-social;
 - who engaged in the anti-social behaviour (if this is known to the landlord);
 - the date, approximate time and location of the behaviour; and
 - how many other notices (if any) have been issued in connection to anti-social behaviour at the same tenancy within the same 90-day period.
- › The notice must advise the tenant that they have the right to challenge the notice in the Tenancy Tribunal.
- › Tenancy Services provides a template '**Notice for anti-social behaviour**' on its website.¹
- › If a tenant challenges a notice of anti-social behaviour in the Tenancy Tribunal, the landlord must prove the anti-social behaviour occurred and that the three notices met the above requirements.
- › If the Tenancy Tribunal considers that the notices were issued in accordance with the RTA, it must terminate the tenancy unless:
 - doing so would be unfair because of the circumstances in which the behaviour occurred or the notices were given; or
 - the landlord was partly or wholly motivated to apply to end the tenancy by the tenant exercising their legal rights or making a complaint (a retaliatory response).

What will be considered anti-social behaviour?

Note: This is a new change to the law and this guidance is provided in good faith. It will be regularly reviewed and may be revised as future Tenancy Tribunal decisions provide greater clarity.

General examples of behaviour that may be considered anti-social, depending on the situation, include:

- › loud, aggressive behaviour by tenants towards the neighbours or to each other if it reasonably causes alarm or distress to others²
- › parking across a shared driveway repeatedly, especially if someone is not readily available to move the vehicle
- › leaving rubbish in shared areas/footpaths – the longer that it is not removed and the more dangerous or smelly the rubbish is, the more likely this will be viewed as anti-social behaviour that is more than minor
- › noise control callouts where a problem has been found
- › any intimidating behaviour, including 'hate speech' expressing hate or behaviour that encourages violence towards someone based on race, religion or sexual orientation
- › invasion of privacy by, for example, peeping or peering into someone's home, including via CCTV, or loitering on someone else's property
- › graffiti or other damage to a neighbour's property or public property.

¹ tenancy.govt.nz/assets/forms-templates/notice-of-anti-social-behaviour.pdf

² Some situations involving loud, aggressive behaviour may involve situations of family violence. Where the tenant is experiencing family violence, the Tribunal has in some cases decided that the perpetrator is not at the property with the permission of the tenant, and therefore the tenant is not responsible for their behaviour. The Tenancy Tribunal may not terminate a tenancy if the Tribunal considers it be unfair to do so after considering the circumstances in which the anti-social behaviour occurred.

What are some accepted examples of significant anti-social behaviour?

The Tenancy Tribunal determined the following cases of **significant** anti-social behaviour under the temporary COVID-19 Response (Urgent Management Measures) Legislation Act 2020 (COVID-19 legislation).

Note: There was generally a higher threshold for anti-social behaviour under the temporary COVID-19 legislation than there is under these new changes taking effect from 11 February 2021. It is very important to note that the temporary COVID-19 legislation defined anti-social behaviour as any intentional act that reasonably causes **significant** alarm, distress or nuisance. In contrast, the new changes to the RTA define anti-social behaviour as any other act or omission (whether intentional or not), if the act or omission reasonably causes alarm, distress or nuisance that is **more than minor**.

This means less serious actions or omissions are likely to be viewed as anti-social behaviour by the Tenancy Tribunal. Serving a notice in relation to the below behaviours, or similar, may provide a more reliable basis on which a landlord could seek termination of the tenancy by providing three notices within 90 days as outlined on the previous page. A list of all behaviour that would warrant a notice warning cannot be definitively provided, but this guidance will be updated after some Tenancy Tribunal orders are made.

ACTUAL EXAMPLE 1 under temporary COVID-19 legislation

Loud noises on numerous occasions in early morning hours

The landlord presented 16 noise control complaints made to the District Council over a period of six months. The complaints included:

- › loud alarm noises at 3.23am
- › repeated loud banging noises at 1.55am
- › shaking metal cans at 2.10am
- › additional loud banging and yelling
- › loud television noise.

The Tribunal found that the tenant or person on the premises with the tenant's permission had engaged in anti-social behaviour and terminated the tenancy.

ACTUAL EXAMPLE 2 under temporary COVID-19 legislation

Foul and abusive language, accumulated rubbish and dog faeces

The landlord reported repeated complaints from a neighbour about a number of matters, which included:

- › accumulated rubbish along the fence with unbearable smell, which attracted mice
- › tenant's dog wandered onto neighbour's property and defecated on lawn
- › yelling with foul and abusive language at all hours of day and night
- › removal of branches that had provided privacy for neighbour
- › 14-day notice to remedy ignored and breaches continued.

The Tribunal found the tenant's activities caused significant alarm, distress and nuisance to the landlord and neighbours. It found that anti-social behaviour was proven and the tenancy was terminated.

What are some possible examples of anti-social behaviour under the new law changes?

The following devised examples could represent possible examples of anti-social behaviour under the new law changes – which require either harassment, or any other act or omission that reasonably causes alarm, distress, or nuisance that is more than minor.

POSSIBLE EXAMPLE 1 under the new law changes

Loud music and singing in early morning hours

A landlord receives reports of a tenant who sings loudly to music after midnight most nights, including week nights. This noise keeps neighbours awake as it is a nuisance, and causes distress due to ongoing disturbance and repeated instances of missed sleep. This ongoing behaviour does not comply with council noise rules.

POSSIBLE EXAMPLE 2 under the new law changes

Tenant parks over shared driveway

A landlord receives reports that a tenant has parked across a driveway that is shared with the neighbour, blocking the exit and entry of the driveway. The neighbour has previously asked the tenant not to park over the shared driveway when the tenant did it in the past, because the neighbour has mobility issues and health concerns, and needs to be able to use the driveway. The tenant left the car there for over an hour and was not around to answer requests to move the car. The tenant did not have a good reason for parking over the shared driveway on this occasion.

What if the anti-social behaviour doesn't occur three times within 90 days?

The RTA already enables a landlord to apply to the Tenancy Tribunal to end a tenancy where the tenant:

- › has assaulted or threatened to assault the landlord or their family, the owner or their family, neighbours, or other occupants of the building, or
- › has caused, or permitted another person to cause, or has threatened to cause, substantial damage to the premises.

An incident like this only needs to occur once before a landlord can apply to the Tenancy Tribunal to terminate the tenancy – these existing sections are being retained as part of the RTA and landlords will still be able to use them. The new RTA changes apply when the tenant or a person in the premises with the tenant's permission engages in anti-social behaviour three times within a 90-day period.

The RTA also enables a landlord to apply to the Tenancy Tribunal to end a tenancy where the tenant breaches their obligations under the RTA or their tenancy agreement. For example, a breach of their obligation to not interfere with the reasonable peace, comfort or privacy of neighbours, or a breach of their obligation to not use the premises for an unlawful purpose.

Whether this alternative approach can be used to terminate a tenancy will depend on the seriousness of the breach, and whether the breach can be remedied (i.e. fixed). If the breach can be remedied, the landlord must first give the tenant the opportunity to remedy the breach via a **14-day notice to remedy**.

Further information on how tenancy law can assist landlords to deal with anti-social or unacceptable tenant behaviour is provided in the Tenancy Services anti-social or unacceptable tenant behaviour **decision tool**.