

# Te Toi Mahana – Debt and Credit Policy

05/01/2024

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## 1. Policy Intent

The intent of this policy is to proactively address rental arrears and tenant debt, focusing on prevention, containment, and recovery. Our goal is to minimise financial impact, ensuring maximum revenue for housing programmes and operational costs while maintaining tenant support. Te Toi Mahana will actively work to prevent overdue payments, contain and address current arrears, and formalise and recover unpaid debt. This includes addressing various types of debts such as rental arrears, tenant damage, tenancy bonds, Ministry of Justice (MOJ) fees, and former debts.

## 2. Background

Rental income is the primary source of revenue for Te Toi Mahana and levels of debt-to-income ratio are closely monitored. This Procedure has been developed alongside a wider review of Tenant Debts and Credits. It assumes that at the end of the review all remaining tenant debt has been reviewed, agreed, substantiated, and documented or written off. It also assumes that any tenant credit held meets the criteria set out in this procedure.

## 3. Document Owner & Review

This document will be owned by the General Manager Tenancy. They have the responsibility (including building and developing the necessary expertise and operational processes and guidelines) to work with other relevant parts of the organisation and external agencies to operationalise this document.

The document will be reviewed and updated as required. A comprehensive review will be conducted at least every two years.

## 4. Framework

This Document is consistent with the provisions of *the Residential Tenancies Act 1986* (the RTA) and the aims and objectives of Te Toi Mahana.

## **5. Tenant Support**

Te Toi Mahana will provide support to tenants who are facing financial difficulties to minimise debt levels. A tenant may be assessed for ARL eligibility and/or offered a payment arrangement that is tailored to their situation.

Tenant may also be referred to appropriate social agencies (such as Budget Advice, Ministry of Social Development (MSD)) for assistance with financial management and support.

Tenancy Services provides information related to the rights and responsibilities of landlords and tenants. This includes Dispute Resolution support and services.

## **6. Internal Debt Management**

The relevant Tenancy Advisor will manage current tenant debt. This includes established debt by current tenants from former tenancies.

Tenants who transfer between Te Toi Mahana properties with outstanding debts will have the debts transferred to the new address following a signing of the new tenancy agreement that includes a clause that stipulates that the debt will be recoverable at the new address. Note it is critical to only transfer to and from the same account type (i.e. Rent, Tenant Damage etc).

Formalised vacated debt will be regularly monitored and reported.

## **7. Debt repayment**

Te Toi Mahana may enter into a repayment agreement with current tenants to pay off debts by agreed instalments if:

- the debt has been substantiated;
- the tenant has accepted liability; and
- payment in full is not a viable option

A repayment agreement will generally not be offered where there is capacity to repay in full.

Re-direct will be requested to MSD if a tenant is receiving Income Related Rent Subsidies.

Repayment agreements should be formalised by an application to the Tenancy Tribunal where appropriate, as detailed below.

## **8. Disputed debt**

If the debt cannot be resolved, either party can apply to the Tenancy Tribunal for a legally binding Order.

## **9. Tenant Rent Credit**

No tenant rent account is to be more than 4 weeks rent in credit in addition to any rent in advance requirements unless the tenant is paying rent monthly.

## **10. Applicants with Former Tenant Debt**

If a former tenant re-applies for a property with Te Toi Mahana and is offered a tenancy, a repayment plan for any substantiated former debt must be in place to demonstrate that regular payments are being made from the time of the application is accepted.

## **11. Rent arrears**

Arrears occur when a tenant has used all the rent already paid. Rent accrues on a daily basis (weekly rent divided by 7 days).

There are two approaches to dealing with rent arrears:

1. One-off / low level rent arrears
2. Repeated instances of rent arrears

The approach taken is at the discretion of the Tenancy Advisor.

### **One-Off / Low Level rent arrears**

The relevant Tenancy Advisor will contact the tenant promptly by letter (as soon as possible after the Tenancy Advisor becomes aware that a rent payment has been missed). When any rental arrears first appear on a rental account, tenant will be advised that the payment has been missed. This will initiate contact to discuss the missed payment to prevent further increase of arrears.

If the rent is 7 to 13 calendar days in arrears, Tenancy Advisors will contact the tenant to discuss the arrears. An informal arrangement can be made to repay the arrears. This must be agreed with the tenant, documented, signed and stored on file. If an agreement cannot be **reached**, then a "14-day letter to remedy" will be issued. Agreements must be in writing. Note that text messages, TMS notes, or verbal agreements are not deemed to be "in writing".

If the arrears exceed the equivalent of two weeks' rent (14 – 20 calendar days), or the “Letter to Remedy” is not complied with, the Tenancy Advisor will arrange a home visit or phone call to discuss and understand the circumstances that have led to the arrears. The tenant will be advised that application to the Tenancy Tribunal will be made reflecting the appropriate dispute resolution outcome. Options include FastTrack, Mediation or a Tenancy Tribunal Hearing – see the ‘Dispute Resolution’ Section.

If the amount of arrears exceeds 21 days, the Tenancy Advisor will apply to the Tenancy Tribunal for an Order. This order may seek termination in addition to formalising the rent debt and repayments. Tenancy Advisors are to discuss the types of orders sought with their manager.

### **Repeated Rent Arrears**

The RTA contains a process where if the rent is in arrears by more the 5 working days three times in a 90-day period, then an application can be made to the Tenancy Tribunal to end the tenancy.

If a Tenancy Advisor wishes to use this process, they need approval from the General Manager Tenancy. They will need to demonstrate that every effort has been made to support the tenant to resolve the arrears. If this process is used and the Tenancy Advisor wants to terminate the tenancy, final approval must be sought from Chief Executive before a Tribunal application is made.

## **12. Damage**

There are two main categories of damage that occur during a tenancy. The level and cause of damage requires an appropriate and proportionate response.

Any claim for damage to chattels or the property will consider the depreciated value when assessing the value of damage. Staff should refer to the Tenant Damage Guide. No costs for damage should be attributed to a tenant/tenancy without being documented, agreed or substantiated.

*Fair Wear & Tear* Tenants are not responsible for fair wear and tear.

*Accidental Damage* Tenants should not be responsible for damage that is accidental, rather than careless.

Tenancy Advisors will assess any damages that may fall into the above category and will discuss and agree with the tenant the appropriate level of cost recovery dependent on individual

circumstances. If a tenancy advisor is in doubt if the damage meets the above criteria, they will discuss and agree this with their manager.

*Careless or Intentional* Tenants can be held responsible for the cost of remedying damage that is deemed or accepted as careless or intentional.

Where tenants accept that the damage is careless or intentional,

Tenancy Advisors shall:

1. *where the cost of repairing the damage is less than \$350.00*, enter into an informal arrangement to repay the costs. This must be agreed with the tenant, documented and stored on file, or
2. *where the cost of repairing the damage is more than \$350.00*, apply for a 'FastTrack' mediation Order through the Tenancy Tribunal.

Where there is a dispute over the responsibility for damages, or what type of damage has occurred (careless vs accidental) an application to the Tenancy Tribunal can be made to resolve the dispute.

Standard Tenancy: Non IRRS tenants If tenants or their guests carelessly damage a rental property, they are liable for the cost of the damage up to four weeks' rent or the landlord's insurance excess (if applicable), whichever is lower

IRRS Tenancy: Tenants on income-related rents will be liable for careless damage up to four weeks' market rent or the insurance excess (if applicable), whichever is lower.

Te Toi Mahana will attempt to recover the full cost of intentional damage. Every effort will be made to resolve disputes over any type of damage caused at Te Toi Mahana properties.

### **13. Vacated Debt & Transfers**

When a tenancy ends, any outstanding debt in dispute will be resolved via an application to the tenancy tribunal. The level of outstanding debt that will trigger an application to the Tribunal is in the Operational Guidelines and Procedures. Any such Orders not paid within 30 days will be forwarded to Te Toi Mahana Debt Collection Agency or enforced via the Collections Unit at the District Court.

Based on the resources required to recover debt, debt balances under \$100 will be written off and not pursued.

Tenants who transfer between Te Toi Mahana properties (initiated by Te Toi Mahana) with outstanding debt will also have an application lodged with the Tenancy Tribunal. Where there is an agreement in relation to the debt owed, Te Toi Mahana will accept a payment plan

formalised via mediation or FastTrack. If the debt is disputed, an application to the Tenancy Tribunal will be made. If no payment is made within 30 days from the tribunal outcome, the debt will be passed to Te Toi Mahana Debt Collection Agency or enforced via the Collections Unit at the District Court.

If a payment arrangement is agreed prior to the tribunal hearing, the hearing will still proceed and the debt will be formalised through the tribunal order.

If a tenant has entered into a payment arrangement prior to the tribunal hearing and the 30-day limit, the tribunal hearing will still proceed to formalise the debt.

If the tenancy agreement has a clause that specifies that the tenant is responsible for debt collection expenses, then the tenant will be liable for costs related to debt collection.

Tenant applications for a standard transfer who have any debt that is not being paid off shall not be accepted for a transfer. Any exceptions to this will be considered on a case-by-case basis by the General Manager Tenancy.

#### **14. Dispute Resolutions**

Every effort will be made to resolve disputes at tenancies managed by Te Toi Mahana. Unless otherwise stated in these procedures, an application to the Tenancy Tribunal will be the course of action of last resort.

If Te Toi Mahana and the tenant cannot agree on the responsibility for or the repayment of debt, the RTA contains a dispute resolution process – the Tenancy Tribunal. Applications to the Tribunal will be used in one or any of the following circumstances:

- The amount of arrears is in dispute;
- The amount of arrears is agreed and is 2 weeks or more;
- The responsibility for damage or other costs is in dispute;
- The tenancy is ending (including a transfer between properties) and there is outstanding debt.

There are three (3) types of Tribunal Orders and Te Toi Mahana will attempt to secure the most appropriate Order proportionate to the level of debt and considering the individual circumstances of the tenant.

*FastTrack Mediation* This type of Order is appropriate where there is agreement on the responsibility for the debt, the amount of the debt. There also needs to be an agreement on the level of repayment, and the consequences if the tenant does not meet the agreed outcome. A Monetary Order will be sought for the remainder of the debt to become full and payable.

*Sealed Mediated Order* This type of Order can be secured as an alternate to a Tribunal Order. The Mediation is facilitated by Tenancy Services, with the agreed outcome documented and referred to the Tribunal to be 'seal' by the Tribunal if it is needed for enforcement if the agreed outcome is not complied with. You may want to spell out that all orders need to be sealed as standard practice.

*Order of the Tribunal* This type of Order results from a formal Hearing where an Adjudicator will consider the evidence brought by Te Toi Mahana and determine the outcome of the application.

All Orders (Mediation and Tribunal) that are sealed by the Tribunal that need to be enforced can be done either through the District Court or a Collections Agency.

Te Toi Mahana should always seek the inclusion of a *consequential clause* meaning that if any agreement reached is not complied with, that CH has the option to enforce the Order. Recovery of the application fee will also be sought.

## **15. Death of a Sole Tenant**

Refer to the [Residential Tenancies Act 1986 Section 50A](#) for the process required to be followed to terminate the tenancy.

Te Toi Mahana will refund any credit to the legal Next of Kin or Estate. The Estate or Next of Kin can claim any bond monies held directly from the Tenancy Bond Centre.

Where there is no legal Next of Kin or Estate, debt will be recommended to be written off.

Where there are funds held by Te Toi Mahana and there is no Will or Estate, a person known to be connected to the tenant can complete a Statutory Declaration to claim any money held in credit.

Where there are unclaimed funds in credit held by Te Toi Mahana, the processes contained in the Unclaimed Money Act 1971 will be followed.

## **16. No Asset Procedure & Bankruptcy**

Tenants who are the subject of a No Asset Procedure (NAP) will have all debts incurred up to and including the specific date written off. A copy of the NAP will be requested and stored on the tenants' record.

More information on No Asset Procedures: <https://www.insolvency.govt.nz/personal-debt/personal-insolvency-options/no-asset-procedures/>.

In the event a Tenant is declared bankrupt, Te Toi Mahana will follow the instructions of the Official Assignee as required.

### **17. Possession Orders (Eviction)**

Te Toi Mahana will only enforce Possession Orders ('Consequential clauses' contained in Tribunal Orders) when all other avenues of debt recovery or repayment arrangements fail. Enforcement of Possession Orders requires the approval of the GM Tenancy and the Chief Executive.

### **18. Enforcement and Costs**

The collection of any debt formalised by the Tenancy Tribunal will be enforced either via a Debt Collection Agency or via the Collections Unit at the District Court. Te Toi Mahana will recover any enforcement or collection costs incurred.

#### **Collection Costs**

If, at the end of the tenancy, there is an unsatisfied debt by way of Money Order, the Tenant agrees that the Tenant is liable for and shall pay for all costs of recovery of the Money Order, which costs shall be collected by a debt collection agency. Costs payable by the debtor shall include legal fees, commissions, fees and disbursements and/or court filing fees and disbursements.

#### **Policy Review**

This policy can be reviewed at any time, at the Chief Executive's discretion and must be reviewed within two years of the policy's approval.