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'Under Someone Else's Roof' Tenants' Knowledge and Experience of Tenancy Rights in the Manawatu

A thesis presented in partial fulfilment of the requirements for the degree of MA (Social Policy), Massey University

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ABSTRACT

This thesis examines Manawatu tenants' awareness and knowledge of the Residential Tenancies Act 1986, as well as tenants' attitudes and experiences of renting within the private residential market. It is based upon the responses of five tenants, four housing workers and two government housing officials to questions asked in semi-structured interviews. The Residential Tenancies Act 1986 has been in force for ten years, but are tenants any the wiser? This is a particularly important question, given changes in housing policies and the state's withdrawal from the direct provision of housing assistance as it looks to the private rental market to pick up the slack. The findings reported in this study indicate: that tenants, in the main, conducted their rental affairs from a position of ignorance; and that those tenants who were uncertain about their rights and obligations were reluctant to seek advice on tenancy matters, or to pursue any formal line of complaint in case they faced eviction.

If tenants expect to receive fair and non-discriminatory treatment in their relationship with private landlords, they need at the very least to be aware not only of tenancy law, but their rights and obligations therein. Therefore, the dynamics and tensions that exist between tenants' knowledge of the law and their relationship with private landlords, fee-paying letting agencies and state functionaries, form a central part of this thesis.

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CHAPTER 1

INTRODUCTION

In 1987 and again in 1989 research (Hooper, 1987; Freeman, 1989) was conducted to determine the level of knowledge that tenants of residential properties had of their rights and responsibilities accorded to them in the Residential Tenancies Act 1986.[1] The findings of both these studies prompted extensive and expensive publicity campaigns in 1992 and 1993 (Rivers Buchan Associates, 1994). Ten years after the introduction of the Act, are tenants any wiser for the experience? Through the use of semi-structured interviews this study attempts to describe and understand the awareness, knowledge, experience and attitudes of tenants with regard to tenancy law in the private market.

According to many community-based housing workers, tenants remain largely ignorant of their rights and responsibilities. Given that there has been a greater responsibility placed on the private market than on the state to meet housing need (Crawshaw, 1991; Knight, 1991; Craig et al, 1992), community housing workers argue that tenants are more vulnerable to unfair treatment by landlords and their agents. The supply and demand economics of the residential property market has meant that private landlords[2] have formed a well organised, well informed, articulate lobby group. Tenants, on the other hand, are fractionalised not only by physical distance but also by age, class, race, and status. This problem is further compounded by the fact that tenants

1. Also referred to as 'the Residential Tenancies Act' or 'the Act'.

2. The term 'landlord' is used generically, to represent both male and female property investors. It is a term used by housing workers, housing officials and tenants alike to denote the property owner rather than reflect their gender.

as a group are transitory. It is not surprising then that the relationship between tenant and landlord is an unequal one.

The former Minister for Housing, Phil Goff (1988:1), said "The fact that 80 per cent of the clients of the Wellington Bond Division are landlords reflects one problem... while most landlords are aware of the Act many tenants are not." Tenants who are not aware of their rights and obligations could consent to the terms of an agreement without knowing the full implications of what they have agreed too. They could be unjustly evicted, required to pay more in bonds or advance rents than the Act allows, or denied accommodation based on discriminatory practices by landlords. Therefore, security of tenure, the right to quiet and peaceful enjoyment, and non-discriminatory practices are important issues for tenants. To have at least a basic understanding of one's rights and obligations as a tenant would obviously be an advantage in securing and maintaining a rental lease agreement.

PURPOSE OF THE STUDY

In a number of public opinion surveys and texts, New Zealanders have revealed a strong desire and ambition to own their own home (Chapman, 1981; Gordon, 1982a; Ferguson, 1994; Davidson, A. 1994). Renting is perceived as an interim measure until people have either saved enough money to put towards the purchase of a home or until they are ready to settle in the one place.

Those who live in rental properties are generally young people, who have left their parents' home to pursue their interests and careers; and people who for reasons of poverty are unable to afford their own home. They are all vulnerable and more often than not ignorant of the rights and obligations accorded them through the Residential Tenancies Act 1986.

In an article written for the New Zealand Housing Network's newsletter, Alston (1993) describes the nature of what are termed parasites - real estate agents, lawyers, and rental accommodation brokers. These are people who are not a direct party to the actual

tenancy but who profit from it by providing unnecessary services at a cost usually to the tenant. Of brokers, Alston (1993:2) says:

> In my view, accommodation brokers provide a service, which, at best is no superior to the services that can be obtained from reading the "to let" ads in newspapers. At worst, it is deceptive and dishonest: brokers commonly list properties which do not exist or copy ads from newspapers... the prospective tenants may end up paying fees to both the broker and the agent..

A fixed tenancy can also be a problem for the unwary tenant. A fixed-term tenancy is one that is set for a specific period, usually six or 12 months. It has been noticed by housing workers interviewed for this study that students often consent to such tenancies. Students return at the beginning of an academic year, when rental accommodation is in short supply. Landlords will offer students agreements on the condition that it is for a 12 month fixed term. Students sign because they believe they will not easily find other accommodation. The problem arises when students wish to leave at the end of the year and find they are still responsible for the payment of rent for another three or four months.

The business of renting and leasing residential properties can be a daunting and unpleasant experience for the uninitiated, the unwary and the naive. The nature of leasing or letting rental properties has changed over the years; landlords have turned owning and letting properties into a major commercial enterprise with some landlords owning several properties at any one time.

Since 1987 landlords have been vigorously organising, forming alliances, and actively lobbying both central and local government in order to further advance and protect their interests. Tenants' interests on the other hand have been represented by community or voluntary organisations such as Tenants Protection Associations or Tenant Unions. On the whole these organisations lack the political power and resources to be able to effectively ensure that tenants rights are not abused, overlooked or reduced.

In the early 1980s, tenant protection agencies and Tenant Union groups

began campaigning for the reform of tenancy laws. They were concerned that there was ineffective control of high rents, and that tenants were being evicted unfairly with little notice. It seemed that tenants rights, provided for in existing legislation, were unenforceable (Alston, 1993).

In 1985 the then Minister of Housing, the Honourable Philip Goff (1985:2), announced that legislation governing the transactions between tenants and landlords was in serious need of reform:

> Everyone agrees that reform of tenancy law is long overdue. Too often disputes have been settled not by fairly judging the merits of the case, but according to the law of the jungle.

The Residential Tenancies Act came into force on 1 February 1987. A large publicity campaign was initially undertaken and again in 1992 to better inform people of their rights and obligations under the new Act. The Act effected a number of major changes to the law, which included issues of security of tenure, other rights and duties of relevant parties, rent control, bonds, and administration. According to Alston et al (1993) the Act gave a greater measure of security of tenure to tenants. It also established a large administrative body consisting of the Tenancy Tribunal for the hearing of disputes, Tenancy Mediators for matters of arbitration outside the Tribunal, and the Tenancy Bond Division, all of which ensured that the rights and obligations of landlords and tenants would be better protected. The issue of rent control meant that landlords could only increase the rental on a property once every six months and made the requirement that landlords give 60 days notice of an increase in rent. In the area of bonds, the Act introduced two major changes. First, it provided that bonds were no longer to be held by landlords, but by the Tenancy Bond Division of the Housing Corporation. Secondly, the maximum amount of bond was substantially increased from two to four weeks.

On the whole, Goff's reformist measures were successful, and went a long way to achieve the Government's stated aim of establishing "a system which will be fair and impartial in resolving tenancy disputes and in establishing rules governing the behaviour of both parties"

(Goff, 1985:2). The importance of this study lies in its attempt to describe and understand the awareness, knowledge, experiences and attitudes of Manawatu tenants' with respect to the terms, conditions and rights of tenancy law and of anti-discrimination legislation in the private rental market. In this context an attempt will be made to determine if tenants: are aware of their rights; know where to seek assistance on matters of recourse if required; and whether or not they are generally content with their rental circumstances.

The four objectives of this study are:

1. To explore the extent to which tenants are aware of residential tenancy law and anti-discriminatory legislation as it pertains to rental accommodation.

2. To determine the level of knowledge that tenants actually have of the Residential Tenancies Act 1986 and their understanding of anti-discrimination law.

3. To identify and examine incidents where tenants believe their tenancy rights have been infringed.

4. To document tenants' experiences, attitudes and views regarding the of tenant/landlord relationship, renting, and their future housing prospects.

The adage that knowledge is power is an apt saying. If tenants are unsure of or simply do not know their rights they are immediately disadvantaged and in a position of powerlessness.

BACKGROUND TO THE STUDY

The idea for this thesis arose from an incident that occurred in 1990 when, working as a community housing worker, I came across a blatant case of discrimination. A young man in his mid 20s walked in and asked if he could use the phone to call about a two bedroom flat he saw advertised in the paper. The call was very brief. After giving his name

(which was obviously Maori) the landlord wanted to know if this prospective tenant was working, which at the time he was not. The conversation ended at that point with the landlord announcing that she was only interested in renting to people who were working.

The young man thanked me for the use of the phone and began to leave. I asked him to wait, and if he didn't mind, to tell me the content of the conversation. Needless to say he was surprised, when I informed him that it was illegal to discriminate on the grounds of employment. The case went to the Tribunal, and as a consequence the young man was awarded damages. The case made local and national news,[3] and was reported to be the first of its kind for Palmerston North.

I was left with two thoughts. The first was that the young man simply did not know what his rights were. In this case, he blithely accepted unemployment as grounds on which landlords could actively discriminate. The second was a disbelief that this was the only case of discrimination in Palmerston North. Hence my interest in undertaking a study that looked at the relationship between tenants' knowledge of their rights and their experience of living under someone else's roof.

Arguably it is not possible to keep a research project bias free (Oakley, 1988). It needs to be recognised that I bring to this research a number of values and biases, which are elaborated upon in Chapter 3. As a researcher I entered into this project with the knowledge and experience of five years (1988-1992) working with people who had serious housing needs and difficulties. To a large extent this study is motivated by that knowledge. It is intended that this research will contribute to a growing body of knowledge on tenant experiences and awareness of tenancy law and their responsibilities and obligations therein. It is also proposed that this study will be of use to tenants and community housing agencies who want a review of current policies for the betterment of tenants and their housing circumstances.

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3. For details see Evening Standard, 27 July 1990

A PROFILE OF PALMERSTON NORTH

Palmerston North's population at the 1991 Census (Dept of Statistics, 1992:17) numbered 70,000. Of the 23,900 properties in Palmerston North a total of 8,883 properties were privately rented dwellings. In 1996 about 16,000 students took up full-time tertiary study at either the University, Polytechnic or Teachers College. The number of students returning to Palmerston North annually has a considerable impact on the availability of rental accommodation and also the standards of rental properties (Gray and Davey, 1981; Gordon, 1982b; Johnston, 1988; Xing and Morris, 1989). There are a number of communty-based housing groups which offer assistance and housing advice to tenants and landlords alike. Palmerston North also hosts the regional branches of both the Tenancy Service Office and the Tenancy Tribunal.

THE STRUCTURE OF THIS THESIS

There are seven chapters in this study. The first chapter begins with a discussion of the legal and political issues tenants contend with, whether consciously or not, in securing and maintaining rental accommodation in New Zealand; its focus then moves to housing workers' perceptions of tenants' experiences. Subsequently, consideration is given to tenants' own views of renting in the 1990s including their understanding and awareness of tenancy law. Finally the study examines the state's key functionaries and the role they play in administering tenancy law as well as their perceptions of tenant/landlord relationships.

Chapter 2 provides both an historical and contemporary view of tenancy law in New Zealand, and the issues surrounding the role of the state in the provision of housing and how this role has impacted upon tenants renting from the private market. This chapter also includes a theoretical discussion concerning the influence of libertarian ideology on the development and implementation of New Zealand's current housing policies.

Methodological issues involved with tenants' awareness, knowledge, attitudes and experience in renting accommodation and the research method employed are discussed in Chapter 3. Within this chapter I also explore the ethical and political issues encountered in undertaking this research and how these were resolved.

Chapter 4 focuses on the views of four housing workers in Palmerston North and their perception of tenants' relationships with landlords, fee-paying letting agencies, and Tenancy Services and the Tribunal. A number of issues raised in this discussion are taken up again in the fifth and sixth chapters of this thesis.

Chapter 5 is the story of tenants' rental experiences, their understanding of their rights and obligations as tenants, and their future housing aspirations. The final section of the chapter focuses on their impression of tenant/landlord relationships and whether they perceive tenancy law to be fair.

In Chapter 6, issues raised by housing workers and tenants about the effectiveness and administration of tenancy laws are addressed by a Tenancy mediator and an adjudicator, as they describe the role of the tribunal and mediation services. These two housing officials also provide a critique of tenancy services and tenancy law as well as their views on the tenant/landlord relationship.

The study's findings are summarised in the final chapter, which includes a discussion and analysis of the findings in relation to the thesis objectives. A number of recommendations are made as well as outlining suggestions for further research. This chapter concludes with a reflective look at the tenants who participated in this study and at recent changes to tenancy law in New Zealand.

CHAPTER 2

THE SOCIAL AND LEGAL CONTEXT OF CONTEMPORARY HOUSING POLICY IN NEW ZEALAND

This chapter considers the relationship between: tenants and tenancy law; tenants and landlords; and tenants with regard to New Zealand's housing policies. The chapter begins with an analysis of the development and operation of the Residential Tenancies Act 1986. This statute is central to both the undertaking and understanding of this study. It provides a source from which a pool of relevant questions has been derived, and it gives definition and legal parameters and guidelines to what is correct tenancy law.

The history of the Act has been a contentious one, with proponents from both tenant and landlord organisations arguing that legislation favours the other party. Thus, there is a need for an examination of the relationship between tenants and landlords, and the commercial versus social need debate in the provision of rental housing.

A closer look at New Zealand's housing policy illustrates the influence that libertarian ideology has had on the development of current policy and how this is expressed in the state's retrenched role and the market's developing role in the provision of housing assistance. This is discussed in terms of how it impacts on people renting in the private market. To add depth and meaning to the social context of tenants' experiences as well as to provide a backdrop to the objectives outlined in the introduction, reference is made throughout this study to relevant New Zealand research and literature.

THE EMERGENCE OF THE RESIDENTIAL TENANCIES ACT 1986

According to McMorland, (1975:1) a barrister and solicitor of the Supreme Court of New Zealand, there are three essential elements of a lease. The first is that a landlord must give exclusive possession of the premises to the tenant; second that the term of the lease must be for a definite period; and third that the lease must be properly created.

In 1982 the Justice Department established the Property Law and Equity Reform Committee to review the law relating to residential tenancies. Davis (1987:245) indicated that there was a need to replace the voluminous and often cumbersome provisions of the then existing tenancy law which were to be found scattered through the Property Law Act 1952, the Rent Appeal Act 1973 and the Tenancy Act of 1955, with a single accessible statute. The Committee, having drawn upon submissions and consultations with numerous interested parties, delivered a report to the Minister of Justice stating that reform of residential tenancies was much needed, and proposed that a number of objectives be adopted (Property Law and Equity Reform Committee, 1985:9).

Seven objectives were recommended, the main five were to ensure that: (a) all existing tenancy law would be consolidated into a single, easily read statute; (b) there would be timely regard to the matter of tenancy disputes; (c) there was a fairer system for dispute resolution; (d) legislation was formulated to define the obligations of both tenant and landlord; and (e) in the light of objectives (b) and (c) that criminal offences would be introduced sparingly.

The Property Law and Equity Reform Committee's work ended with the introduction of the The Residential Tenancies Act on the 1st of February 1987. The Act is described in its Long Title as:

> **An Act to reform and restate the law relating to residential tenancies, to define the rights and obligations of landlords and tenants of residential properties, to establish a tribunal to determine expeditiously disputes arising between such landlords and tenants, to establish a fund in which bonds payable by such tenants are to be held and to repeal the Tenancy Act 1955 and the Rent Appeal Act 1973 and their amendments.**

The document itself is 87 pages in length, is divided into five parts, and contains a total of 144 sections. The Residential Tenancies Act applies to all residential tenancies except those that are expressly excluded in sections four and five of the Act. Part One sets out the application of the Act. Of note, is section 11 which states that parties to a tenancy not mentioned within the exclusion section of the Act cannot by agreement or arrangement exempt themselves, modify, or restrict the operations of the provisions as set out within the Act. The Act allows for a certain degree of flexibility between landlord and tenant by stating that it will not prevent a landlord from waiving voluntarily all, or any, of their rights and powers if they so choose, or if by choice take on more onerous obligations other than what is stipulated (s 11(2)). The Act, however, adds that, if a tenant waives their rights and powers, then it shall have no effect within the law (s 11(3)).

Part Two of the Act focuses on Tenancy Agreements and is divided into four sections. The first section contends with the preliminary matters of the Act, such as who may enter into a tenancy agreement, with due consideration given to the conditions of eligibility of minors. This section also defines the types of tenancies (indefinite or fixed) and the need to supply to each party full names, addresses and occupations. It is interesting to note that the Act (s 13) does not insist that a formal written agreement between parties be mandatory, instead the Act makes agreements conditional if either party chooses to have one. This section also outlines the grounds under which discrimination is unlawful, broadening the scope of the Act by including the then provisions of the Race Relations Act 1971 and the Human Rights Commission Act 1977.[4]

The second section of Part Two focuses on defining the terms and conditions of key money, bonds and rents; how much a landlord can ask in bond and rent as an advance; and their duties upon receipt of this money. This section also describes under which circumstances the Tribunal can order rents to match with market rent levels (s 18-32). The

4. The Race Relations Act 1971 and the Human Rights Commission Act 1977 are now accommodated under the Human Rights Act 1993. Further discussion within this study regard anti-discrimination legislation is done so in relation to the Human Rights Act 1993.

Act also clearly states that any sum of money defined under the term of key money is prohibited (s 17) and expressly prohibits the seizure of tenants' goods in payment of rent (s 33).

The third section of Part Two spells out the rights and obligations of both tenant and landlord, with particular regard to repairs and maintenance, quiet enjoyment, and rights of entry. The fourth section outlines the conditions under which a tenancy can be terminated, with consideration to abandonments of premises and the eviction of squatters. Tenants within a periodic tenancy have greater security of tenure as a landlord (if for no other lawful reason) must give tenants 90 days notice to quit. Under a fixed-term tenancy, giving notice to quit is superfluous given that the tenancy will expire on the specified date. Where a tenant is in breach of their agreement, an eviction order may be obtained upon application to the Tribunal.

Part Three explains how the Act is to be administered with specific reference to the role, function and jurisdiction of the Tenancy Tribunal and Tenancy Mediation. This area is divided into six subsections, the first focusing on matters of constitution including appointments and placements of Adjudicators, their use of tenancy officers and protection under the Act. The second subsection outlines the powers and jurisdiction of the Tribunal. While it is the intention of the Act to allow the Tribunal a degree of flexibility and informality, it nonetheless has a wide range of powers comparable to other formal judicial bodies. The third subsection, while substantive, outlines the procedure given to the filing of dispute applications to the Tribunal. The points of note here, are that dispute cases must first be offered mediation (s 87(1)), where the Tenancy Mediator's function is "to attempt to bring the parties to a dispute to an agreed settlement" (s 88(1)). Should either party refuse mediation or mediation be unsuccessful then the case is referred for a hearing before the Tribunal for adjudication. Another aspect of importance is section 85 which allows the Adjudicator some flexibility in providing judgment and which states that "the tribunal shall not be bound to give effect to strict legal rights or obligations". The fourth subsection gives consideration to matters of enforcement. Also listed are those acts deemed unlawful by the Tribunal in respect to both

landlords and tenants. The fifth subsection deals with miscellaneous provisions and rules of procedure. Finally, the sixth subsection establishes the conditions under which the Tribunal's decision can be appealed to either the District or High Court, and the powers invested in the Judge in regard to appeals.

Part Four of the Act is divided into two sections. The first has a focus on the function and powers of the Chief Executive who is responsible for the general administration of the Act. The second section makes reference to the Residential Tenancies Trust Account and outlines what funds are deemed to be Trust money, for example, bond money. Part Five, is a collection of miscellaneous provisions dealing in part with the effect of other legislation on the Residential Tenancies Act, serving of documents, recovery of money paid in error, and the right of the landlord to waiver any breach of tenancy by the tenant. Of interest in this section are the listed provisions under which the business of accommodation brokering can be regulated with the condition that the Governor General, through an Order of Council, enforce it.

The Act, has introduced a number of substantive reforms. The establishment of key functionaries such as Tenancy Services and the Tenancy Tribunal for the sole purpose of quick and expeditious dispute resolution is an excellent example of the reforms. So, too, was the introduction of a Bond Centre for the collection of bonds relating to tenancies, whereas previously landlords kept their tenant's bonds. The sheer administrative machinery required to make the above possible is quite staggering.

Despite my somewhat condensed summation of the Residential Tenancies Act 1986, it would seem that the seven point approach recommended by the Property Law and Equity Reform Committee (1985:9), in the main, found expression within the provisions of the new legislation.

RELEVANT STUDIES

Since the introduction of the Act, there have been relatively few studies

in New Zealand directly focused on tenant awareness and knowledge of legal rights and obligations. This may be viewed as surprising given, as Stephenson (1988:66) notes, that one of the four consolidated aims of the Act was increased awareness of mutual responsibilities of landlords and tenants. For the most part, these studies were conducted by either staff of the then Housing Corporation of New Zealand or by research firms commissioned by the now Ministry of Housing. Nonetheless, the studies proffer an early insight into tenants' awareness of the Act as well as providing a gauge for the findings of this study. Other studies that have particular relevance to this thesis are those that investigated the tenant/landlord relationship, the private rental sector, and the effectiveness of key functionaries such as Tenancy Services and the Tribunal.

The Hamilton Study (Hooper, 1987)

A study into (a) tenant, landlord and real estate agent awareness of the Residential Tenancies Act, and (b) the effectiveness of the Tenancy Bond division in meeting the needs of tenants and landlords was undertaken by Louise Hooper (1987) from the Housing Corporation New Zealand. The study had three objectives: the first was to determine whether further publicity of the Act was needed; second to determine which part(s) of the Act respondents had the least knowledge of - so that publicity could be targeted to cover these areas; and finally she focused on the delivery and services of the Tenancy Bond division.

Hooper mailed three hundred open-ended questionnaires to prospective participants within the city of Hamilton and received 134 responses. The questionnaire consisted of ten questions. The first set of five questions, of particular relevance to this thesis, related to basic knowledge about: (a) bonds and rents in advance; (b) the frequency with which a landlord could inspect the property; (c) the maximum notification period a landlord must give to a tenant to quit the tenancy without reason; (d) the notification period that a tenant must give to a landlord; and (e) what a landlord's course of legal redress is when a tenant fails to quit tenancy.

Hooper's results showed that for tenants the correct response to all five

questions were relatively poor in comparison to real estate agents and landlords. With respect to the first question, 12 per cent of tenants could correctly identify the number of weeks bond and rent in advance that a landlord could legally request, as opposed to an 82 per cent and 26 per cent correct response from real estate agents and landlords. In answer to the second question a surprising 62 per cent of tenants replied correctly, compared to 78 per cent of landlords and 65 per cent of real estate agents. The third question showed 34 per cent of tenants knew the correct notification period their landlord needed to give them as opposed to a stunning 100 per cent correct response from real estate agents and 70 per cent from landlords. In question four, 100 per cent of real estate agents, 85 per cent of landlords, and 47 per cent of tenants gave the correct notification period that tenants were required to give landlords of their intention to quit. The fifth question again showed a high correct response for real estate agents (82 per cent) and to a lesser extent landlords (55 per cent), but only 35 per cent of tenants gave the correct answer.

The second set of five questions related to the use of, and client satisfaction with, the services of the Tenancy Bond division. Hooper's findings indicated that 80 per cent of those using Tenancy Bond services did so to lodge bonds. In addition, 80 per cent of respondents indicated that mediation was a good avenue to resolve disputes.

However, there are a number of concerns with Hooper's study that warrant discussion, in particular the low response rate involving only 45 per cent of the 300 prospective participants. As noted by Babbie (1992:267), a response rate is indicative of the representativeness of the sample respondents, the higher a response rate the less chance of a significant response bias. Babbie's guide, although rudimentary, suggests that a "response rate of at least 50 per cent is adequate for analysis and reporting"(Babbie, 1992:267). Given this, it could be argued that Hooper's study lacked an adequate response rate and therefore the representativeness of the sample respondents (tenants, landlords and real estate agents) is open to question.

A second concern which was acknowledged by Hooper (1987:14) was the construction of the questions. Babbie (1992:148) notes that the

questionnaire must be clear, unambiguous, and concise. Respondents, particularly tenants, may not have been familiar with terms such as "notification periods" or "legal notice to quit". This is particularly relevant given that the timing of Hooper's study was conducted not long after the enactment of the legislation. Indeed, some tenants, if first time renters, may have been unsure as to what "bond" is or may have interpreted the question to mean the number of weeks bond they were asked for by their landlord, which could have been less than the maximum four weeks stated in the Act.

Having noted this, Hooper's overall findings indicated that the level of knowledge and understanding of those tenants surveyed was not high; that landlords demonstrated an adequate knowledge of the Act; and that the knowledge of real estate agents was considerably higher. She concluded that future advertising needed to be directed at the tenant population and that this advertising needed to be on a regular basis as the tenant population tended to be transitory.

The Palmerston North Study (Freeman, 1989)

A second study conducted by Freeman (1989) surveyed Palmerston North tenants' awareness of their rights and responsibilities in regard to the Residential Tenancies Act. This study was a replica (with minor alterations) of one he undertook a year before. Again a postal survey was employed. A total of 443 questionnaires were distributed to tenants within the Palmerston North region with 324 responses (73 per cent) returned within a six week period. Freeman's study was divided into five sections focusing on:

1. How respondents found out about the Residential Tenancies Act and the Tenancy Bond Division.

2. The law regarding tenants rights and obligations. Similar in nature to the questions posed by Hooper (1987) study.

3. How respondents used the Tenancy Bond Division and their thoughts on the service they received.

4. How respondents felt about the law.

5. Tenant use of the Tenancy Tribunal and their thoughts on the service they received.

With regard to section one, the most significant finding (Freeman, 1989:34) was that 20 per cent of respondents had not heard of the Residential Tenancies Act, nor did they know of the services of Tenancy Bond Division. The study revealed that 36 per cent heard about the Act or the Service through targeted radio or newspaper advertisements compared with 32.5 per cent who heard from someone else. Of this latter figure 34 per cent of tenants noted that they first learned of the service from their landlord/real estate agent.

With regard to tenant knowledge of their rights and obligations, Freeman's findings showed that 31 per cent of tenants gave the correct response to the legal number of weeks notice they must give their landlord, while 40.5 per cent wrongly indicated a fortnight as the correct period. When questioned on the maximum number of weeks bond a landlord could request, 43 per cent of tenants answered correctly. However, 15.5 per cent indicated that they 'did not know'. The next question asked tenants to identify the maximum number of weeks rent in advance a landlord could request, to which 63 per cent responded correctly and 18 per cent replied 'don't know'. The fourth question asked tenants what the correct notification period was that a landlord needed to give to gain entry onto the property. Forty one per cent gave a correct response, while 10 per cent indicated they didn't know. The fifth question asked tenants to identify the minimum notification period a landlord has to give a tenant to quit the tenancy. The most significant finding in this regard was that the majority of tenants (37 per cent) answered that they did not know, followed by 32 per cent giving an incorrect answer, and of those remaining 27 per cent gave the correct response while 2.7 per cent didn't respond at all. In the sixth and final question, Freeman asked tenants what the correct legal action was that a landlord should take if tenants remain in a tenancy after legal notice to quit has expired. Not surprisingly, 27 per cent of tenants replied they didn't know, however 61 per cent indicated that the correct legal action was for landlords to refer the matter to the Tribunal.

It is interesting to note that 'correct' responses only ever surpassed the 50 per cent margin in two of the six questions. It was surprising that a high number of respondents (195 tenants) knew the correct answer to question six given that the question focused on the legal action that the landlord should take. One reason for this is that throughout much of Freeman's questionnaire he employed the 'tick box' approach from which participants are asked to choose an answer from the options provided. In the case of question six, the 'incorrect' options lacked plausibility. Another point of interest was the 'don't know' option which was readily ticked for all six questions; in fact on every question between 10 and 20 per cent of respondents indicated that they did not know the answer.

Section three focused on tenant use of Tenancy Bond services. The results here indicated that nearly 60 per cent of tenants had not used Tenancy Bond services while 31 per cent had used the service with regard to bonds. It is interesting to note that Freeman asked respondents to identify if they were happy with the service they received and that 93.5 per cent indicated they were.

The question Freeman posed in section four of the questionnaire referred to tenant attitudes, whether positive, negative or indifferent in regard to the Act. The significant finding here was that 41 per cent were indifferent or 'neutral', 37 per cent expressed a positive attitude toward the Act, while 3.5 per cent indicated a negative attitude. Eighteen per cent of tenants did not respond. But when Freeman asked tenants what was the basis for their attitudes 46 per cent failed to reply, an additional 24 per cent stated they didn't know enough about the Act, while 27 per cent thought the Act was 'fair'. The same sort of results were obtained when Freeman asked tenants about their perception of the mediation services and their basis for those perceptions. It would appear that the majority of tenants were so unfamiliar with the Act and the tenancy mediation services that they were unable to adequately respond.

The fifth section focused on those tenants (2 per cent) who, for one reason or another, were involved with a hearing that had been held before the Tribunal. Four of the seven respondents lost their cases, two

tenants had a split decision, while a third tenant had a favourable ruling. When Freeman asked if they were happy/unhappy with their court decisions, three participants failed to answer, another three tenants thought the Tribunal offered a fair legal solution, while one tenant, obviously displeased with the outcome of his hearing, indicated that not only was he unhappy but that he had been "outdone". Given the very small number of cases involved, these results should be treated with considerable caution in terms of their credibility.

In comparing this study with an almost identical one he conducted in 1988, Freeman (1989:37) notes that tenants level of knowledge with respect to their rights and obligations under the Act had not increased, and was in fact unreasonably low. In comparing Hooper's and Freeman's studies there is a strong suggestion that tenants were either unaware of or unclear about the Act and their rights and obligations contained therein. Also of note was the lack of awareness that tenants had regarding the role and services of the Act's key functionaries, namely Tenancy Services and the Tenancy Tribunal.

THE TENANT/LANDLORD RELATIONSHIP

Not surprisingly, the response to the legislation then, as it is now, was mixed. As Stephenson (1988:66) noted, although the Act reflected a Labour Government objective that human rights were more important than property rights, concerns were raised from a number of different quarters.

Within Parliament House, opposition was directed, not only against specific aspects of the Bill, but against unnecessary state intervention (New Zealand Parliamentary Debates:466:6903 and 472:2976). The main thrust of the opposition related to:

(a) the mandatory requirement that landlords must lodge bonds with the (then) Housing Corporation;

(b) the requirement that landlords give a longer minimum notification period (90 days) to tenants of intention to quit;

(c) the establishment of a Tenancy Service and Tribunal that was going to be costly and cumbersome, arguing instead that cases should be dealt with through the Small Claims Tribunal;

(d) the provisions within the Act which would discourage landlords from entering the private rental market thus creating greater dependence on the State's housing stock.

As summed up by Mr McClay (New Zealand Parliamentary Debates:466:6899) the National Member of Parliament:

> The government has no right to play such a big part in what is only a matter of small importance to a small number of people. Bringing in this Bill is like calling the armed offender squad to stop children from throwing stones. Opposition members object to the Government's overly bureaucratic approach. Where is the theory of the free market?.

And as highlighted by Mackey (1985), a private landlord, in a submission on the Residential Tenancies Bill:

> When a private landlord and a tenant make a tenancy agreement it is a private business deal between the two parties, bond and all. It has absolutely nothing to do with the Government or the Housing Corporation... If I own a property and decide to rent it out I feel I have the right to call the tune - it is not for the Government to handcuff me in making a private business deal.

The predominant bone of contention expressed in both these quotes is that Government should not interfere in what is considered a private arrangement. The problem, however, extends beyond this. It is about oppositional ideologies in regard to housing; that is, the antagonism between protecting peoples' (tenants) right and need to housing, against another group's (landlords) view that housing is a commercial, marketable enterprise.

Stewart (1989:3) argues that the relationship between tenant and landlord is essentially oppositional; that any legislation designed to accommodate these two groups would be based on compromise and concession, which he indicates is a source for dissatisfaction and

discontent:

> Firstly landlords see the landlord/tenant relationship as a private matter, and not one for government interference. The second is that landlords see it as a commercial matter rather than a social matter. If one is of the view that this is solely a private-commercial matter, dissatisfaction with the legislation is inevitable.

The tenant/landlord relationship is a complex one. While most tenants would agree that their first duty or responsibility is to pay the rent, there is the premise that the house they rent represents their home. To the landlord, the house is not a home but an investment. For Stewart (1989:4) this poses an irony for the landlord:

> They [landlords] see the property as an investment rather than a home, but expect the tenant to treat it as a home rather than an investment... expecting their [landlords] properties to be treated with a care surpassing that [with] which they treat their own residences.

New Zealanders have been brought up with the view that housing is not only a basic human need, but is also a basic human right (Roberts, 1992). At any point a landlord can exercise the option of quitting the rental market but tenants simply do not have that option. It is clear that the relationship between tenants and landlords is not an equal one. Not only are landlords able to exit the market as they chose, but they hold a position of power in the choice of tenant and tenancy agreement because they own the product that is in demand. Given this then, it would seem that it is necessary to regulate not only the terms and conditions of renting, but also the actual relationship between tenant and landlord - rather than leave it all to private and voluntary transactions.

HUMAN NEED, CITIZENSHIP AND WELFARE RIGHTS

There is a considerable body of literature which propounds the argument that a government has a moral obligation to meet the basic needs of all its citizens. The following discussion draws upon the work of Taylor-Gooby (1991) and to a lesser extent the works of Weale (1983), Plant (1985), and Doyal and Gough (1984).

Underlying most theories of human need is Kant's (1959:82) analysis of moral life. Morality he claimed, requires people (who he viewed as citizens) to treat each other with respect - as an 'ends-in-themselves'. According to Taylor-Gooby (1991:173), Kant's formulation means:

> There is an over-riding obligation to take the ends of others as seriously as you take your own... people should strive to organise social relations so that the basic needs which may underlie the manifold ends of others may be met.

In this respect, Taylor-Gooby claims that a theory of human need must first identify needs that are central to any theory of political obligation; that is, the level of obligation the state has to its citizens and vice versa, thus establishing a right for basic needs to be meet. Political theory, he argues, is a prescription for political action; it defines how citizens should conduct their affairs. Weale's (1983:45) explanation contends:

> citizens must be capable of understanding the reasons contained in a political theory, defining upon their significance and framing their own plans and actions in accordance with those reasons they judge to be valid... autonomous persons are capable of planning and deliberation concerning their actions and projections.

Individual autonomy is therefore a central tenet of political theory. Different political theories define different roles for government in securing good conditions for individual citizens. Weale's (1983:50-51) principle of individual autonomy comprises two components. First that "citizens conduct their affairs in accordance with a public set of principles" and second, that "they should be capable of formulating their own affairs". Individual freedom then differs from the notion of negative liberty (the freedom of non-interference) embraced by neo-liberal political theories. He argues that any political theory that does not accept the principle of autonomy, in essence condones tyranny. Fully developed, Weale's arguments establish an argument for state provision of income security.

Taylor-Gooby, however, believes Weale's argument alone is not vigorous enough to imply an obligation on government to embrace both economic and social equality. He states this does not imply that it unacceptable for people to have differing economic power, but that his

comment provides a platform to assert a redistribution of resources by the state to secure the basic needs of those weakest in society against the excesses of free market economy (Taylor-Gooby, 1991:175):

> In advanced capitalist societies, there is a strong role for the state, since economic inequalities often enable capital to coerce unemployed people, and differences in social and economic power enable adults to coerce children and men to coerce women. Thus it is possible to argue for state intervention on the grounds... that it enhances individual liberty ... [because] it is a moral obligation.

Plant (1985) includes individual survival and well-being as equally important as autonomy in developing a theory of human need. Plant (1985:19) argues that foreseeable constraint is just as harmful as deliberate constraint on the autonomy of the individual, in that the effect is the same. For example, landlords who ask for the full legal amount in bond and rent in advance may not intend to discriminate against lower socioeconomic tenants, or employers who fail to provide child-care may not intentionally discriminate against the recruitment of women who are mothers. His account argues a lot more aggressively that government has an over-riding obligation to ensure equality, through such measures as the provision of medical and social care. For Taylor-Gooby (1991:179) then:

> The principle of meeting human need turns into a principle of equality, justifying unequal allocation to ensure an equal worth of life... the result then is a presumption in favour of state intervention to provide equal satisfaction of basic needs.

Doyal and Gough (1984), bring to the discussion the importance of social context in developing a theory of human need. Taylor-Gooby (1991:180) notes that within this framework, individuals are able to make choices, moulding themselves with the opportunities they find within their social circumstances. However, at the same time, the myriad of social exchanges that occur between people also construct an individual's social circumstances. Social institutions then, contribute to the development of an individual as a social being. Doyal and Gough (1984:23), extending Plant's notion of well-being and autonomy, argued that to be successful, autonomous individuals a process of learning needs to be embraced. They argued that "the process of learning and the ability to put it into practice" could emancipate the individual from the

arrangements of any social system. The development of Doyal and Gough's argument establishes at a basic level an argument for government provision to education.

For Taylor-Gooby (1991:190), the aim of welfare policy is to meet human need. He distinguishes between substantive and procedural approaches. A substantive approach to citizenship argues that government's role is to enhance opportunities that encourage citizens to participate in the communal and political life of society. Procedural approaches to a theory of citizenship, argue that citizens inherit a bundle of basic rights that government must defend. Weale (1983:132-8), argues that this approach is not about participating in a collectivity, but about claiming rights. In this sense, a substantive approach to rental housing would argue that the rights and obligations of landlords and tenants would need to be defined so that tenants can participate equally in society. Taylor-Gooby (1991:191) concludes:

> The objective... is to highlight the significance of co-operation in social arrangements. The net result is a presumption in favour of equality: everyone carries an equal share of the burdens necessary for producing these collective benefits plus the additional benefit of not having to contribute their share of time and effort.

TOWARDS LAISSEZ-FAIRE

The history of New Zealand housing has always been vulnerable to the political push and pull of successive governments. According to Roberts (1988:154), housing policies have never developed to their full potential given that Vote:Housing, which is delivered on a yearly cycle, does not easily lend itself to the development of long-term planning. The past 75 years reveal that state/public expenditure on housing has either been the saviour of a flagging economy, or a financial burden to the New Zealand tax payer to be downsized so as to reduce social spending and deflate New Zealand's overall Gross Domestic Product.

On the 30th July 1991, a nine month old National Government took the latter approach and introduced a number of social policy changes that radically altered not only housing provision, but the face of the welfare

state. The National Government argued that New Zealand was in the throes of a fiscal crisis and that social spending was at the heart of the nation's burden of debt (Richardson, 1990:442). Ministerial committees were established with the aim of restructuring the state's provision of housing, health, education and welfare.

Crisis containment, according to Pierson (1991:149) and Taylor-Gooby (1985) has three main characteristics. First, there is usually a break from the traditional consensus style of welfare management. Second, there would be a 'sea-change' in public opinion (usually expressed in the election of a right wing government) away from collective solutions to problems of social need, to one that supported market provision to meet individual welfare needs. Third, welfare cuts and the redesign of a state's welfare provision are indicative of the greater change from a universal model of welfare rights to a residualist needs-based system of public respite.

According to Ruth Richardson (1991:B6:8), then the Minister of Finance, *real* welfare begins at home:

> Real welfare is created by people and families through their own efforts. Our redesigned welfare state will support those efforts and assist those who cannot assist themselves.

At the heart of libertarian ideology, discussed later, is a concern about the effect that government intervention has on an individual's respect for traditional sources of authority, especially the family, and on self-reliance/family responsibility. It would seem that National's social policies reflected this concern as indicated by the above quote.

National's Housing policy reforms comprised three main features: first, the introduction of an Accommodation Supplement as the "primary form of Government housing" (Luxton, 1991:iii); second, the restructuring of the Housing Corporation into a State Owned Enterprise so that it would be placed on a commercial footing with the private market; and third, the sale of the Housing Corporation's prime rate mortgages. The then Minister of Housing, Jonathan Luxton (1991:8), argued that the levels of housing assistance between private and state

tenants were inconsistent and "patently unfair":

> Families receiving rental assistance through the Housing Corporation receive an average subsidy of $70 per week... By contrast, families in similar circumstances on the Accommodation Benefit receive on average $22 per week for the properties they rent from the private sector.

The point made here is a valid one. Certainly discrepancies of equity existed between the level of state assistance for both private and state tenants, but rather than wrestle with the inadequacies of the Accommodation Benefit, state tenants were again singled out. Rents, it was said, were too low and their housing costs excessively subsidised by public money. McLeay (1992:175) adds that to have lifted the Accommodation Benefit to an equitable level of housing assistance, would have meant an increased fiscal cost of housing subsidies, which was contrary to the Government's expressed goals of reducing social spending and overall government expenditure. Luxton (1991:13), claimed that New Zealand's housing policies would:

> yield significant benefits: improved fairness and consistent treatment for clients, better targeting of assistance, greater choice and self-reliance, and incentives to keep accommodation costs down.

There was some general acceptance by the National Government that state involvement in housing was, in fact, necessary but that this assistance would be indirect. It would only be minimal, and it would be targeted to those individuals who met the criteria. The introduction of the Accommodation Supplement, then, was National's solution to the provision of equitable housing assistance for both state and private tenants, even though it meant that state tenants and those on Housing Corporation waiting lists would be under extreme stress both financially and emotionally.

McLeay (1992:176), argues that the equity and fairness of policy outcomes are a lot more complex than the Government's argument allows. Weale (1978:21), points out that 'fairness' alone is not necessarily achieved by 'fair and equitable' means but that the justice of the outcome and who benefits must be taken into consideration. Therefore, the drafting of social policy must be considered in light of the impact

policy will have on disadvantaged groups, like Maori, women, Pacific Islanders, and disabled persons. Members of these groups are likely to be further discriminated against by private landlords, that the private market is unlikely to provide appropriate accommodation for people with specific needs, and that tenants will face insecurity of tenure in the private market. A report by Parata (1991:67), which focused on Maori women's views about housing, highlighted these concerns:

> The private sector unfortunately is under no such obligation to Maori women.. Discriminatory attitudes and practices are unlikely to evaporate given the apparent ideological attitudes of superiority and inferiority within the private sector. It is unlikely that the Accommodation Supplement in itself will be able to address issues of discrimination, intimidation, lack of information, and lack of supply.

DISCRIMINATION AND THE PRIVATE RENTAL MARKET

Discrimination in the rental market is not a new issue but it has in recent years taken on renewed significance given National's change from direct provision of housing to indirect support based on an Accommodation Supplement. There have been a number of recent studies and papers (Macdonald, 1986; Hirsh, 1988; Knight, 1991; Crawshaw, 1991; Harvey, 1993; Young, 1994; Ministry of Foreign Affairs and Trade, 1996) that have refocused attention back to the general issues of discrimination and more specifically to discrimination in rental housing.

Knight's study, commissioned by the Office of the Race Relations Conciliator (hereafter referred to as the Race Relations Office) to look into racial discrimination in the private rental market, comments that the states's shift from direct delivery to income supplement is based on the following three premises (Knight, 1991:53):

1. that competition will provide for people's housing needs in an efficient and effective manner;

2. that all people will be able to exercise choice with regard to the housing provider and will be free of discrimination;

3. that the supply will adjust to meet the need.

Knight concluded that "institutional racism in the private rental market is an influencing factor in the selection of tenants... " and that the government perspective "fails to take account of these realities" (Knight, 1991:54).

Crawshaw (1991:26), indicated that the introduction of a voucher system in the United States showed, amongst other things, that a cash based transfer system of housing assistance exacerbated patterns of discrimination in the private rental market. Given this, the Ministry of Housing commissioned a market research firm, Colmar Brunton, to undertake a study into tenant knowledge, attitudes and behaviour with respect to existing legislation regarding discrimination in the rental accommodation market (Young, 1994). Young (1994:1) indicated that the Ministry of Housing had relatively few complaints from tenants in regard to discrimination. The Ministry assumed that tenants (a) lacked awareness of anti-discriminatory legislation; (b) were reluctant to use mechanisms available for recourse; or (c) were not being discriminated against.

Young conducted face-to-face interviews with 750 tenants and 177 landlords. Each tenant interviewed was asked for the name and phone number of their landlord. Of these landlords, 469 either refused an interview or were not contactable. Young's key findings indicated that only 33 per cent of tenants were aware of the existence of anti-discrimination laws found in the Race Relations, Human Rights Commission and Residential Tenancies Acts, and of these, only 14 per cent were actually able to name a specific Act. However, 65 per cent of those landlords interviewed knew that such legislation existed and 45 per cent of them could name a specific law.

In regard to awareness of unlawful grounds of discrimination in the rental market, Young's study found that a high percentage of both landlords and tenants did not know that it was unlawful to base choice of tenant on grounds other than race. However, it is important to emphasis that more than 50 per cent of tenants were aware that it was

unlawful to discriminate on grounds other than race. The third key finding was that 49 per cent of tenants were able to identify an organisation that administers anti-discrimination law (Race Relations, Human Rights, Tenancy Mediators) that they could go to if they felt they had been discriminated against, as opposed to 69 per cent of landlords.

In regard to perceived incidents of discrimination, 14 per cent of tenants believed that they had been discriminated against at some point in their renting history. Of this group Young found that 61 per cent failed to do anything, 35 per cent looked elsewhere for accommodation, six per cent 'protested' to their landlord and only three per cent actually complained to an appropriate organisation.

Landlords were read a list of grounds and asked which ones they would take into consideration when choosing a tenant. Fifty-four per cent said they would discriminate in their choice of tenant if they had pets; 51 per cent if the tenant was obviously a gang member; 12 per cent based on the tenant's employment; five per cent because the tenant had children; and four per cent with regard to the tenant's race or ethnic origin.

In regard to attitudes, Young's study found that 82 per cent of tenants and 76 per cent of landlords agreed that discrimination occurred in the rental market. Both tenants and landlords, 71 per cent and 63 per cent respectively, agreed that anti-discriminatory laws were worthwhile; indeed, 62 per cent of tenants and 54 per cent of landlords thought anti-discriminatory laws deterred or stopped landlords from actively discriminating. It is interesting to note, however, that while both parties felt that anti-discrimination law was worthwhile, 50 per cent of landlords nevertheless felt they should have the right to choose whichever tenant they wanted. Does it not follow then, as Knight (1991:53) suggests, that the market fails to allow tenants the freedom to exercise choice free of discrimination.

Young's overall findings suggested that there were three main obstacles that hindered tenants in making complaints about unlawful discrimination. They were: (a) a lack of awareness with regard to anti-discrimination legislation; (b) that tenants lacked knowledge of where

they could go to complain against unlawful discrimination; and (c) that the process of laying a complaint would be stressful, expensive and time consuming.

It was of interest that Young, in releasing these key findings, did not include a discussion of their outcomes nor did she make public any recommendations resulting from the study. To date there has been no additional research undertaken by the Ministry of Housing nor policy implementation with regard to Young's findings. It is not clear whether the Incident Report (Harvey, 1993:19)[5] which was intended to "investigate the nature, level and extent of discrimination in the New Zealand rental market" is still in the pipeline or has been abandoned by the Ministry of Housing.

If the latter is the case it would indicate that the Ministry has placed a far greater emphasis on Young's results regarding tenant awareness of unlawful grounds of discrimination and those incidents of perceived discrimination, than it did with regard to the fact that 67 per cent of tenants are unaware of anti-discrimination laws or that 51 per cent of tenants do not know where to go to report an incident of discrimination. The finding that 59 per cent of tenants would be unlikely to lay a formal complaint of discrimination because they perceived it would be too stressful, time consuming, expensive or too difficult to prove they had been discriminated against, is also reason for concern.

The role of the Human Rights Commission and Race Relations Office, in regard to discrimination, is quite clear. The introduction of the Human Rights Act 1993 "effectively combined" the Race Relations Act 1971 and the Human Rights Commission Act 1977 into one statute. The premise of the Human Rights Act states:

> **That wherever possible, all citizens should have fair access to the resources of our society: whether they be jobs, public amenities, goods and services, or education... the intention of the Act is to give people equal opportunity before the law, and to prevent unfair treatment on the basis of irrelevant characteristics. (Human Rights Commission, 1994:2)**

5. The Incident Report was intended, by the Ministry of Housing, as a more detailed investigation to Young's (1994) research.

Previously, it was unlawful to discriminate against people on the grounds of: sex, marital status, religious or ethical beliefs, race or colour, ethnic or national origins, or age in regard to employment only. The Human Rights Act 1993, however, has extended some of the older grounds and included new grounds on which discrimination is now not permitted: disability, political opinion, employment status, family status, age, and sexual orientation. Protection against discrimination exists only within the public domain of: employment, education, and access to public places, in the provision of goods and services, and housing and accommodation (both business and residential).

THEORETICAL INFLUENCES ON HOUSING POLICY

The ideological foundations at the heart of National's redesign of the welfare state are undoubtedly libertarian in nature. A libertarian view considers society to be essentially no more than the sum of its parts - individual human beings. For this reason libertarian theory is considered anti-collectivist in that individuals, not collective bodies, determine what is in their own interest and that individuals should have the choice and freedom to pursue their own interests for individual good and gain. There is no tolerance of collective representation since it is individuals who must determine their own providence. Libertarians (Upton, 1987; Barro, 1996) argue that the welfare state actually fosters state dependency and thereby limits individual freedom. Thus there is a separation between the role of the state and that of the individual in the provision of welfare assistance.

The main reason for a move away from state-provided welfare is to strengthen choice for the 'consumer of services'. Freedom, to a lesser extent, refers to an absence of coercion and restrictions - which placed in the context of social policy, refers to freedom or independence from state-provided welfare assistance. Fiona Williams (1989:25) notes that if individualism, that is self-reliance and responsibility are fostered and encouraged, then state funded welfare would no longer be desirable nor necessary for most members of society. Those who are unable to meet their basic needs (for which very tight criteria would apply) would be

targeted for state assistance, but the level of this welfare assistance would be minimal. The justification for keeping benefits extremely low is that it would deter dependency and at the same time control state spending (Boston, 1992:3).

The inequality that exists between the wealthy and the poor is, therefore, an accepted part of society, in that it illustrates the natural diversity of individuals (Green, 1991). The redistribution of wealth, then, is kept to a minimum and is only through tax rebates or cash transfers, as was illustrated by National's proposal to cancel the Accommodation Benefit and in its place introduce an Accommodation Supplement. This, effectively was a cash transfer to private capital/landlords by the state.

The Supplement, unlike the previous Accommodation Benefit would be available to those in both private and state rental sectors. Rather than the provision of direct housing assistance, Luxton (1991:14) argued the Supplement would provide families with a "greater control and choice about where they live...and whether to use their supplement for rental or home ownership costs".

The overriding influence or emphasis of a libertarian approach to the welfare state is the expectation that individuals must first take responsibility for their own wellbeing or look to charitable organisations or the voluntary sectors for assistance, or look to have their needs met by the market. As for the welfare state, interventionism is an unnecessary temptation and must be kept to a minimal level. State intervention, where it must occur, is imparted as a necessary public good - such as the police, prisons and the armed forces (Cheyne, 1992) that will assist or protect the choice and freedom of the individual.

THE ROLE OF THE MARKET-PLACE

> A properly understood market process is not just a generator of economic welfare, it is also a protection for liberty and an efficient method for the realisation of many desirable social goals". (Loney, 1987:171)

The withdrawal of the state from direct provision of social services to a system that distributes minimal assistance based on cash transfers and tax rebates or incentives is no mere coincidence. National's redesign of New Zealand's welfare state separates out it's commercial commitments from it's social role and makes a clear distinction between the state as funder, rather than provider. This redesign opens up what Upton (1987:1) refers to as a "closed society" by the contracting out of social services to the private market, allowing for greater individual choice and freedom as to where services are appropriated whilst strengthening "libertarian views of the desirability of individual responsibility and the undesirability of collective provision" (Cheyne, 1992:141).

For Upton (1987:33), the message is clear. The market-place if given the opportunity, would create a "lucrative" welfare scheme of the future. It came as no surprise then that National's intent would be in the market delivery of health, welfare and housing services for New Zealand's future. On Budget night, Luxton (1991:iii) delivered the outline of New Zealand's housing policy which included the following statement:

> The dominance of the Housing Corporation in the accommodation market has hampered both the drive for efficiency in the Corporation and fuller participation by the private sector in providing accommodation.

Richardson's (1990:44) closing comment in her December 1990 Economic Statement was that New Zealand's economic recovery would be led by the private sector. National's housing policy was very much in keeping with this line of thought as it prepared to strip the Housing Corporation of its social responsibility and allow the private market to provide for the "supply and distribution of housing goods" (McLeay, 1992:169).

The restructuring of the Housing Corporation into a state owned asset, and the requirement upon the Income Support Services of the Department of Social Welfare to take responsibility for administering the Accommodation Supplement, as a cash transfer, were steps taken to divest the Corporation of its social role and to place it firmly on a commercial footing in the market-place. Community and special needs

housing would become the responsibility of the Community Funding Agency, while the Tenancy Bond division would detach itself from the Corporation and operate effectively as a stand alone business. Given that a conflict of interest existed with the Housing Corporation of New Zealand being a landlord and charged also with the responsibility for administering the 1986 Residential Tenancies Act, this particular change was long overdue.

SUMMARY

In this chapter I have emphasised that the relationship between tenants, landlords, policy and tenancy law has a degree of complexity, but it would seem that, in the main, tenants are neither aware of the interrelatedness of these elements nor of their rights. From previous studies, it is clear that tenants are generally unaware of the services of the Tribunal and Tenancy Mediation or of other agencies that deal specifically with matters of discrimination.

The importance of these previous studies is that they also provide a useful barometer to the issues tenants face in the private rental market regarding awareness and knowledge of tenancy law, as well as matters of discrimination and complaint processes. One question is whether the issues raised in the 1980s studies are still applicable today. Stewart's (1989), Freeman's (1989), Knight's (1991) and Parata's (1991) observations and findings indicate that they are.

In relation to this study, the literature reviewed provides a useful springboard into the exploration of the realm of residential renting. These studies have raised a number of key topics and questions that will be addressed in the course of this study; topics such as the nature of tenant/landlord relationships, the relationship of tenants and letting agencies; and questions such as is tenancy law administered fairly and without bias, and is tenancy law fair. These topics and questions will be explored via the presentation and discussion of results obtained through semi-structured interviews, rather than the 'tick-box' questionnaires favoured by others.

CHAPTER 3

METHODOLOGY

My initial introduction to science, and for sometime beyond, was that the approach to and the methods used in science were based on the premise of objectivity and impartiality. Logic, empiricism and rationality were and still are concepts on which good science was always based. This view of science came largely from my days as a student of the physical sciences, where the practice of science, replete with test tubes, white lab coats and safety glasses, epitomised the ideal of dispassionate, uncoloured, true science. However, having left the lab rooms and dog fish dissections well behind, I realised that those values inherent in the positivist tradition did not necessarily enhance my understanding of the real world of human social interrelatedness.

This chapter focuses primarily on issues of methodology. In discussing methodology it is important for me to establish at the outset the approach taken in this study. I have been influenced predominantly by feminist literature and feminist scholars (Westkott, 1979; Harding, 1983; Stanley and Wise, 1983; Smith and Noble-Spurell, 1986; Oakley, 1988; Roberts, 1988; Cook and Fonow, 1990) who, in the main, embrace a qualitative approach to social science enquiry. Although this thesis is not primarily a study about women, my approach has nonetheless been influenced by the feminist genre of inquiry which incorporates Freire's (1996 revised) concepts of critical thought and conscientisation of the disempowered (Mies, 1983; Reinharz,1983). Accordingly, the predominant method used in this thesis to examine tenant awareness and knowledge of tenancy law, their relationship with their landlords and their experiences and attitudes regarding renting, was a focused,

semi-structured interview with four housing workers, five tenants and two government housing officials.

Over the years there has been some confusion amongst academics as to the meaning and use of the terms, epistemology, methodology and methods. For the purpose of this study, I refer to Babbie's (1992:18) interpretation of epistemology as the science of knowing. Stanley and Wise (1983:26) contend that epistemology differs from methodology in that epistemology is a theory of knowledge that focuses on central issues and questions such as how we know what we do, and does what we know count as credible knowledge? Methodology in this context is seen as a subfield of epistemology in that methodology concerns itself with the science of finding out. Methods, thus, refers to the techniques employed in data collection and analysis.

Feminist theorists (Eichler, 1980; Mies, 1983) argue that the misunderstanding which occurs with regard to the distinction between methodology and methods can be attributed to the positivistic influence of science. According to Cook and Fonow (1990:70):

> We have been trained to think in terms of a positivist schema which equates the term 'methodology' with specific techniques for gathering and analysing information. Instead our use of the concept... refers to the study of methods and not simply to the specific techniques themselves.

For Nielsen (1990:18), the traditional model was not necessarily objective nor value-free:

> Explaining such different theories of the same phenomena in terms of bad versus good science, then implies that using data or observation as the ultimate criterion to prove or disprove theories does not guarantee objectivity at all.

The development of a feminist methodology, although still much debated within feminist academic circles, has nonetheless challenged conventional wisdom with regard to positivism and demonstrated that subjective approaches to social science enquiry can produce equally valuable forms of knowledge.

APPROACHES TO SCIENCE

The adage that 'knowledge is power' takes on greater meaning when we want to know what constitutes knowledge and, equally important, by what means we acquire such knowledge. For some years the prevailing epistemology has come from the objectivism versus relativism debate which Nielsen (1990:2) believes has shaped our western "discourse of knowledge". The strange mixture of relativism and empiricism has influenced the dominant trends of western thinking about whether it is possible to gain an unequivocal knowledge of the world or not. Relativism is the belief that we can never be absolute about the knowledge we hold or obtain, because it is defined by culture, time and history. It is on these grounds, that absolute agreement of what constitutes a knowable world could simply not be attained. The development of empiricism as a means of comprehending both the social and natural worlds is the assertion that we live in an objectifiable world. That by directly observing, measuring and recording in a manner that is aloof, detached and supposedly impartial, that world would then be knowable.

Schutz (1967) believed that researchers need to set aside, however temporarily, pragmatic and private concerns that influence their daily lives to be able to observe objectively the subjectivity of others. However, the interpretive and critical schools of thought introduced the working concepts that allowed "meaning" to be attached to human interaction and social phenomena. The inference here is that the study of human beings requires a degree of understanding and empathy that differs from studies of the natural sciences where hard data is sought. According to Nielsen (1990:9), critical theorists reject outright the idea that there can be objective knowledge or that researchers need to remain impartial or neutral in the pursuit of credible knowledge. She contends that critical theorists strive to "unmask" or expose existing forms of beliefs that restrict or limit human freedom.

For Rosaldo (1989:21), the traditional model of research no longer holds monolithic antecedence:

> The truth of objectivism - absolute, universal, and timeless - has lost its monopoly

> status. It now competes, on more equal terms, with the truths of case studies that are embedded in local contexts, shaped by local interests, and coloured by local perceptions. The agenda for social analysis has shifted to include not only eternal verities and lawlike generalisations but also political processes, social changes, and human differences. Such terms as objectivity, neutrality, and impartiality refer to subject positions once endowed with great institutional authority, but they are arguably neither more nor less valid than those of more engaged, yet equally perceptive, knowledgeable social actors.

The 'subjective', in both the method and methodological context of conducting social science research, is now an acknowledged value in social science literature. In considering the nature of the 'subjective' in social science enquiry, the researcher must also consider the importance of self. As Lambert (1994:45) notes, a researcher's prior experience, or lack of it, can easily colour the researcher's description of another's reality, just as easily as a prescribed mind-set can. For Rosaldo (1989:17), the researcher "occupies a position of structural location" whether based on age, gender, or other status, and that experience per se can just as readily prescribe the way the researcher observes behaviour:

> Consider for example how age, gender, being an outsider, and association with a neo-colonial regime influences what the ethnographer learns. The notion of position also refers to how life experiences both enable and inhibit particular kinds of sight.

Babbie (1992:51), argues that the traditional model of science is based on deductive logic, which prescribes the way research is conducted. Deductive accounts of research begin with a general theory and the formulation of a derived hypothesis on the nature of the problem, then move to the design and implementation of the technical procedures for data collection, and finally to an analysis of this data and the development of empirical generalisation.

For Oakley (1988:31), the deductive "protocol" to research often reveals a misfit or contradiction between theory and experience, which is not always included in deductive accounts. Oakley (1988:30) consciously decided to go beyond the bounds of textbook research by interacting and reciprocating with women who participated in her study of expectant mothers, stating that there was a gap between the "textbook recipes" of interviewing and her own experience.

> Interviews are seen as having no personal meaning in terms of social interaction, so that their meaning tends to be confined to their statistical comparability with other interviews and the data obtained from them. [The paradigm of traditional interviewing practice] .. creates problems for feminist interviewers whose primary orientation is towards the validation of women's subjective experiences as women and people, and illustrates the lack of fit between theory and practice.

Scholars like Babbie (1992) contend that quantitative research generally follows the deductive line of thought and reasoning which tends to be numbers based. Qualitative research, on the other hand, has a focus on the meaning of words and actions. Pagelow (1979) expressed reservations about obtaining only statistical data from research. In her analysis of battered women, Pagelow found that quantitative methods focused on physical abuse while disregarding verbal and psychological abuse. She argued that a quantitative method did not easily lend itself to measuring the latter, therefore statistical information in her study distorted women's experiences by neglecting material that was 'soft' data.

Thus, there has been a tendency to polarise qualitative and quantitative approaches to research and to regard them as being mutually exclusive. There are, however, a number of scholars (Jarantyne and Stewart, 1991:104) that argue for the baby not be thrown out with the bath water as an outright rejection of quantitative methodology. Jarantyne and Stewart (1991:104) assert that the inclusion of 'hard' data will influence policy makers' decisions when it comes to making improvements in the life of women:

> If the research goal is descriptive of individual lives and designed to promote understanding of a particular viewpoint of the subject, more qualitative methods may be appropriate. If the goal is to document the operation of particular relationships... how a government policy affects women, more quantitative methods may be used.

Silverman (1985:17), on the other hand, views the qualitative/ quantitative relationship as complementary, where a study should be able to incorporate both hard and soft data. Lambert (1994:47) finds agreement with Silverman, adding that both approaches enhance the picture of reality that each attempts to achieve:

> Both quantitative and qualitative studies are shaped by the assumptions of those designing and interpreting them, and they are used to investigate only one fragment of a large and complex system. Both are important in removing the distortions which occur. The picture gives meaning to the numbers; the numbers help to establish the accuracy of the picture.

Kemeny (1992:32) discusses the need to evaluate critically the reliability of official statistics and the study of social problems. Others (Hindess, 1973; Kitsuse and Cicourel, 1963) have contributed to a lively debate on the topic, which contends that statistical results are often presented as 'social fact' and tell more about the built-in biases of the social organisation undertaking statistical research. For Kemeny (1992:26):

> The point would be to show the extent to which housing statistics are a product of the organisation that generates them rather than a gauge of the phenomena of which they appear to be measures.

There needs to be a greater emphasis on the discursive aspects of housing policy and its implementation, and the way in which housing debates entwine concepts, data, and methods in the the context of social policy.

THE APPROACH TO THIS STUDY

Hakim (1987:26), indicates that the use of subjectivity in social science research conforms to an epistemological world view that takes, as its source of information and data, the interpretation and expression of the personal. It is not necessarily about an individual's behaviour, perceptions, beliefs, choices, thoughts or attitudes but rather the trends, themes, patterns of behaviour and experiences that can be drawn from the totality of an individual's expressions.

This study utilises quantitative data from government records and previous empirical studies of relevance to this thesis, but does so with a primarily qualitative approach. I have acknowledged Kemeny's concerns regarding the reliability of this statistical information, particularly in critiquing the results of studies undertaken or commissioned by the Housing Corporation of New Zealand and the

Ministry of Housing mentioned in Chapter 2.

This research attempts to understand the social reality of tenants living in private rental accommodation, to find out what they know about tenancy law, to listen to their experiences as tenants and to gain through their accounts, a sense of what is important and what is not. The use of qualitative methodology in this way acknowledges and credits the person/individual with a sense of intimacy and understanding that they have about their world, one in which tenants, not I as researcher, become the expert.

Harstock (1983) discusses the notion of standpoint epistemologies. She argues that a standpoint epistemology is based on several assumptions, for the purpose of this study, it can generally be seen as the relationship that exists between powerful and less powerful members of society. Those who are in positions of subordination who are exposed to the interest, opinions and world view of the dominate group, culture, class, would need to have, as a matter of survival, the knowledge and awareness of not only their own class consciousness and world perspective, but also that of the dominant group to whom they are exposed. As Nielsen (1990:11) explains:

> The less powerful group's standpoint has to be developed or acquired through education (including consciousness-raising); its own distinctiveness from the more widely shared dominant group's view cannot be taken for granted. Without conscious effort to reinterpret reality from one's own lived experience - that is without political consciousness - the disadvantaged are likely to accept their society's dominant world view.

For tenants then, it is evident that they are in a position less powerful than that of landlords. Following Harstock (1983) and Nielsen (1990), it is argued that it is in tenants' best interests: (a) to be aware of and know the law that governs the relationship they have with their landlord; (b) to be aware of the way the landlord views their relationship; and (c) to be aware of the expectations and attitudes of landlords regarding both their property investment and that of their tenants. In additions it is suggested, if tenants become aware of their circumstances and those of their landlords, then tenants have, through consciousness-raising and political activity, the potential for change.

ETHICAL ISSUES AND PARTICIPANTION

Much has been written about ethical considerations involved in undertaking social science research (Bryson, 1979; Finch, 1986; Oakley, 1988). Babbie (1992:464), argues that different groups agree on different codes of conduct. It is therefore important to know what society considers to be ethical and unethical. He contends that the same holds true for the social research community. Guided by these points, this study has conformed with the requirements of the Massey University Code of Ethical Conduct for Research and Teaching involving Human Subjects (1989). Consent to undertake this study was granted by the Massey University Ethic's Committee.

Access to Participants

Participants in this study were not solely tenants but included housing workers and government housing officials. Having spent a number of years as a housing worker (1988-1992), I had built up a number of contacts with tenants and other housing organisations. Tenant participants for this project were selected via: (a) existing personal contacts and relationships with the researcher; and (b) with the assistance of relevant agencies, such as housing/welfare based agencies, Student Associations, and Maori women's organisations. The one criteria I imposed on the selection of tenants was that they had to have at least five years private rental housing experience. This was in order to test the assumption that long-standing renters would be relatively knowledgeable about tenancy law.

This procedure posed certain ethical issues. With regard to the role of the agencies in the selection of tenant participants, it was recognised that privacy legislation was an issue. To counter this difficulty, agencies were required to obtain permission from prospective participants to have their name and address revealed to me as a researcher. There was no doubt that there was also a potential conflict of interest between: (a) my role as researcher; and (b) my personal relationship with one of the participants. In dealing with this difficulty I made it clear, as part of the process of obtaining informed consent for all participants, that the participant should feel no obligation to commence or continue with the

project if she believed it contrary to her interests. A total of five tenants were selected.

Housing worker participants were selected by contacting non-commercial community organisations that provided free advice and assistance to tenants. Contact was initially made by phone, where I briefly outlined the study and asked whether I could visit to further detail the content and focus of my research project. All three agencies approached agreed to participate.

The third group of participants were government housing officials. Access involved first gaining written permission from the Ministry of Housing and the Principal Tenancy Adjudicator to interview a Tenancy Mediation Officer and a Tenancy Adjudicator. Approval was given along with a contact name and number for each organisation. Each agency's reply also noted that they had sent a letter with my request attached to the contact people, whom I duly rang to confirm their willingness to participate.

Informed Consent

In the process of recruitment I took considerable care to ensure that participants, particularly tenants, were fully aware of the focus and intent of my study. An information sheet (Appendix 1) which outlined both my intention as researcher and that of the research project was handed to each potential participant. Participants who agreed to participate were also presented with a consent form (Appendix 2) which indicated that they: (a) had read and understood the information sheet; (b) that confidentiality would be maintained; and (c) that participants would be provided with a copy of their interview transcript for comment, and would be given access to a summary of the study's findings when it was completed.

The consent form also indicated that participation in this study would be strictly voluntary. There was no obligation for tenants, housing workers or tenancy officials to participate if they did not choose to do so. Participants could also refuse to answer any particular question and were free to withdraw from the study at any time.

Confidentiality

As a researcher I recognised the need for confidentiality to protect the privacy of participants. Accordingly, all information gathered was securely stored, true names and identities were changed, and no one other than myself transcribed the audiotapes or had access to either the tapes or the transcripts. As specified in the consent form the interview tapes would be erased when the study was successfully completed.

Potential Harm

Bryson (1979) contends that harm to participants can arise at any given stage of the research process. Given the nature of this research project and the information being collected, I recognised that some tenants could be subjected to harassment or possible eviction by landlords. Other participants could loose their jobs or the agency they worked for (in the case of housing workers) could find its funding denied because of comments made. It is for this reason that strenuous efforts have been made to maintain confidentiality throughout the investigation and to avoid any disclosure of participant identity.

Truthfulness

Babbie (1992:468), writes that it is unethical to deceive people either in the recruiting of participants, during the interview process or in the writing up of results. To the best of my knowledge, no deception occurred at any stage of this research. The interview transcripts that were available for comment and change, the presentation of the summary of findings to participants, and the availability of the completed thesis are steps that I have taken in order to be accountable, transparent and truthful in the undertaking of this study.

Social Sensitivity

The fifth principle of Massey University's Code of Ethical Conduct focuses on social sensitivity which requires the researcher to take into consideration the social differences associated with age, ethnicity, gender, culture, religion and class. Social sensitivity is reflected in the

selection of participants from varying cultural, social backgrounds, and ages.

THE INTERVIEW DESIGN

> Interviewing is rather like a marriage: everybody knows what it is, an awful lot of people do it, and yet behind each closed door there is a world of secrets. (Oakley, 1988:41)

As Fontana and Frey (1994) note, the technique of interviewing is considerably more complex than merely asking questions and receiving answers. Like any other research method, the face-to-face interview has both its strengths and weaknesses (Yin, 1994). On the one hand, there has always been the problem of ambiguity with both the spoken and written word regardless of how well worded and formatted the question may be. Another problem with this method is one where the participant can give information that the participant thinks the interviewer wants to hear. Yet the interview is a powerful tool in trying to understand our fellow human being. According to Benney and Hughes (1956:142), interviewing assists the study of interaction:

> Both parties behave as though they are of equal status for its duration, whether or not this is actually so.

As mentioned already, this study has adopted a face-to-face semi-structured interview as the data collection method. A major reason for employing this technique was that it doubled as a descriptive and explanatory tool. I constructed three separate interview schedules; one for housing workers (Appendix 3), one for tenants (Appendix 4), and one for tenancy officials (Appendix 5). I relied mainly on my personal knowledge of the subject matter to define the scope and content of the schedules. These were checked by my supervisors for scope, structure, and clarity of language.

The initial set of interviews was carried out with housing workers. I hoped that by interviewing housing workers first I would be able to pick up on any significant issues relating to tenants that I had inadvertently missed. This way I could incorporate relevant questions in subsequent

interviews with tenants and/or tenancy officials.

Form of Interview

Each interview was arranged over the telephone and was usually held at the participant's home or, in the case of housing workers and tenancy officials, their work places. Only two participants indicated that they preferred the interview to take place in my home. In both cases the participants indicated that it was a matter of convenience for them given that I lived centrally. It is possible that that the two tenants concerned were relaxed enough to come to my house as I indicated to them that I rented as well. It is also possible that a venue away from their own home offered privacy or freedom from interruptions. Each interview ranged from two to three hours in duration. Only once did I need to return to complete an interview.

The Interviews

At the beginning of each interview I reminded participants that they could declined to answer any questions I put to them, and that they could withdraw from the study at any point in time, stressing that this meant not only before the interview but during or after the completion of the interview. I only had one tenant withdraw from the study. This prospective tenant had indicated through an agency that she was interested in participating, but that she would like more information. Having rung and made a time to meet I turned up at the participant's home to find that she was not in. I rang a few times later but received no reply. In the end, I decided that probably the woman had reluctantly agreed to participate in my study. I decided that it was in both our interests not to continue and left the matter at that.

My interview with each tenant normally began with a cup of coffee and I took it upon myself to provide or take biscuits. During this time I would setup the tape recorder and explain how the interview would proceed. Normally I would test run the recorder and ask the tenant to assist. This had the double effect of ensuring the recorder was functioning properly as well as helping allay any concerns the participant had with the recorder. As the interview progressed we

(participant and researcher) often forgot about the taping, only to be reminded by the subtle click when the tape needed turning over.

The interviews with housing agencies were similar in nature, but the interviews conducted with tenancy workers were considerably more formal. Unfortunately the interview with Bruce, the tenancy mediator was held in the Tenancy Service's interview room, which carried other office noise. The end result was that the tape was swamped with external noises which made it very difficult to transcribe and at times content was lost. However, time was not on my side to conduct another interview with Bruce. Instead, I limited my use of the transcript to clean, clear dialogue. At the end of the interview, Bruce apologised for the inadequate room, noting that it was not the best of conditions in which to conduct mediation let alone interviews. I informed him that I had difficulty focusing in the initial 15 minutes of the interview as the lighting and slated blinds created a visual distortion leaving me at times feeling giddy and sometimes nauseous. He was pleased that I had mentioned it because he had noticed that other people who attended mediation often had problems settling into the room, and my comments confirmed his suspicions that the room's decor actually made people physically ill at ease.

Interview Interaction

According to Oakley (1988:41), the traditional in-depth interview is unethical and more interactive models of interviewing need to occur:

> ... (1) use of prescribed interviewing practice is morally indefensible; (2) general and irreconcilable contradictions at the heart of the textbook paradigm are exposed; and (3) it becomes clear that, in most cases, the goal of finding out about people through interviewing is best achieved when the relationship of interviewer and interviewee is non-hierarchical and when the interviewer is prepared to invest his or her own personal identity in the relationship.

The important part of this style of interviewing was that it allowed participants, in particular tenants, to answer how they wished. I found that I was also being asked by women tenants to respond to their questions about my own personal housing experiences which I did so without hesitation. I was conscious, however, of not wanting to

dominate conversation or to influence others thoughts, so I commented on my personal circumstances only when asked. The interviews conducted with other participants generally lacked this personal input, though I was asked my opinion with regard to housing issues, both by housing workers and tenancy officials.

DATA ANALYSIS

All participants received a transcript of their respective interviews and were given the opportunity to make alterations or general comment. Three participants, of whom two were tenants, took the opportunity to provide feedback and make comment. A third tenant forwarded additional information about their circumstances, which I then included. As previously mentioned I transcribed all the tapes which allowed me to become very familiar with the major themes and issues. I noted, however, that once transcribed the written word lost the intensity and passion of the spoken word, as well as the little nuances of gestures, pauses and laughter that non-traditional, face-to-face interviews can engender.

As themes emerged I cut and paste written dialogue from transcripts and compile a set of reference notes which could be best described as a database. This was done for each interviewed group so that I could not only compare comments and issues with each participant within that group, but could also see whether these concerns were raised or had any relevance to other comments made within other interviewed groups. I ended up with several thick documents of information. Though the cut and paste technique was laborious, even when done with a computer, the process was a useful one in that it helped sift and delete the irrelevant and unnecessary material.

It is important to note here that this database is not available for other researchers to view. Like the audiotapes and transcribed interviews, this database will be destroyed once the research is successfully completed in order to maintain confidentiality. Clearly, there is a tension between, on the one hand, the need for data and analysis to be scrutinised and reviewed (to ensure trustworthiness), and, on the other,

the need to protect the privacy and safety of participants.

As it turned out a number of contentious issues were raised. However, not all participants saw these issues in the same light. As Lambert (1994:43) notes, not everybody will see a particular event in the same way, but this does not necessarily invalidate their views or perceptions:

> Content analysis of different perspectives will show areas of agreement and disagreement. For example, we might agree that a particular social structure is hierarchical, but disagree about who holds the most power within it. Some views will build logically on others and some will give rise to anomalies. There are therefore, many different versions of the truth.

Throughout the chapters dedicated to the presentation of results I have injected 'choice' quotes from participants that assist in the recounting of their experiences, perceptions, attitudes and standpoints. It has not been necessary to delineate truth from fiction. I have treated the reports of each interviewee as reports of their reality (Hammersley and Atkinson, 1983).

Included with the information gathered from the interviews are other forms of data that have been obtained from previous studies concerned with tenant awareness of tenancy law, or studies undertaken to explore the theme of discrimination in private rental housing. These studies are a mixture of quantitative and qualitative data from both government and non-government sources. For the most part, this data has been discussed in detail in the body of Chapter 2, with further references dotted throughout the later chapters.

CHAPTER 4

HOUSING WORKERS

This chapter presents and analysis data from three interviews conducted with four housing workers, representing three separate housing agencies within Palmerston North. These agencies have a long history of providing free tenancy information, advice, and assistance to those seeking rental accommodation and to those who experience housing difficulties. They tend in the main to work at the 'coal face' of tenancy issues, where the economic rigours of the private rental market meets the human face of homelessness. Together these three agencies have a collective experience of 30 years. My decision to undertake and include interviews with housing workers as part of this study was based on what they could provide: first, a valuable insight into the day-to-day relationships between tenants, landlords and the law; and secondly, a broader conceptual framework within which to analyse the political, economic and social contexts of these relationships.

In part, this chapter is divided into areas that housing workers perceived as tenant issues. My intention is to examine and compare these issues with those that tenants themselves identified. The subsequent discussion has three central themes: (a) housing workers' perceptions of the relationship between landlords and tenants; (b) their perception of tenants' experiences, their rights and understanding of the law, including tenant relationships with Tenancy Services and the Tenancy Tribunal; and (c) housing workers' perception of fee-paying letting agencies in the rental market.

It is important to note that although sometimes the term 'tenant agencies', is used it is unlikely that workers from these agencies would identify with this term as it fails to recognise that their work also

revolves around other aspects of housing. I have used this term, albeit sparingly, as it accurately reflects that part or nature of their work that is central to this study.

HOUSING WORKERS

All four housing workers interviewed in this study identified themselves as community workers. Community workers see themselves as agents advocating structural changes within society, so that people experiencing social injustices will be better off (Craig, 1983). Elliot (1978:21), in a discussion regarding the Church's role in community work, argued that community work:

> seeks to identify the needs and aspirations of those who are excluded, exploited or oppressed by the structures of society; to enable them to perceive and understand the causes of such oppression; and to empower them either to change the structures, or to create counter structures which fulfil human potential and establish justice and dignity.

Each housing worker believed that access to affordable and appropriate housing is a fundamental human right - not a privilege. As such, they argued, housing cannot be viewed in isolation from other social needs like health, education, employment and welfare, which they claim is the responsibility of government to meet. Finally, all four housing workers identified themselves as pakeha New Zealanders. They have each worked several years, in either a paid or voluntary capacity, as community workers in a number of social service agencies.

Mark, was in his 30s, held a Social Work degree and had tutored in community work studies. He has assisted in the development, collation and analysis of a number of community-based research projects all of which have been published. Mark owned his home.

For Elizabeth, living under someone else's roof has been a central and continuous theme in her life. Brutally separated from her family and home by the constant bombing of her English home town at the age of six, Elizabeth was one of many children plucked from street ruins (her

home for several months) and shipped to New Zealand. The right to sound and affordable housing is therefore her passion. She has been involved with a number of housing groups both locally and nationally and has been a constant advocate for social change. Elizabeth rented her home from Housing New Zealand.

Dave moved to New Zealand from Europe at least 20 years previously, he has spent the last 12 years working with tenants and advocating for the advancement of their rights. Dave also grew up in a war torn city, but left both his family (who rented a council owned home) and his homeland as a teenager. He had spent many years travelling before he decided to make New Zealand his home. Dave, like Mark, considered himself fortunate to own his home.

Chris, was in her late 20s. She had been employed as a housing worker for four years, and had previously worked as a community worker in the area of women's health. Apart from housing, her other interest was in womens' issues, where she has given her time voluntarily to a number of women's organisations. Like Mark, Chris had studied at university. Chris rented her home from a private landlord. It is important to note here, that both Chris and Mark are from the same agency.

Tenant Agencies

I asked housing workers from each agency to provide a statement of intention that defined the role of the 'tenant agency' they worked for. The general flavour of their responses was that the agencies worked towards ensuring that all people living in New Zealand were housed adequately and appropriately. To this end all three agencies have conducted their own research into housing needs in the Manawatu, and have monitored and responded to local and national housing policies. On a more day-to-day level, they provided advocacy and advice services for tenants.

All three 'tenant agencies' were established by local community workers and tenants from a ground swell of discontent with unaddressed housing issues within Palmerston North. One agency arose in direct

response to the proposed sale of Palmerston North Council owned flats; another developed from the Rent Mart[6] affair which saw tenants paying to see lists of available accommodation; and the third organisation developed primarily to coordinate and articulate political action in regard to local and national housing issues.

THE UNHOLY UNION: PERCEPTION OF LANDLORD/TENANT RELATIONSHIPS

I was interested to know how housing workers generally perceived the relationship between tenants and landlords. The question was twofold. I asked if they could describe first what they considered the nature of landlord/tenant relationships to be, and second what they considered the quality of this relationship to be.

Power, Commerce and Inequality

For Dave, the nature of landlord/tenant relationships has everything to do with business and power. He claimed that there are some landlords in Palmerston North who own three or more properties purely as leases. Private landlords, he argued, are not into the rental market for the "sheer joy of it". Their motivation behind letting properties is investment and profit. The landlord, in essence, is a business person, wanting to minimise risks and maximise profits. Tenants are to an extent the unknown quantity in the equation:

> **It is all about business. Power and business. Landlords have it [power] and tenants don't. I always tell tenants that they are entering into a business agreement.**

As Dave noted, a responsible tenant is less likely to be in arrears with rent or cause damage to the property and therefore poses less of a financial risk to the landlord. In wanting to minimise the risk that tenants pose, landlords exercise their authority and power in a number of ways: exercising choice of tenant, setting the price of rent and the how and when of payment; determining the type of tenancy (eg. fixed-term

6. Rent Mart was the name of the first accommodation brokerage in Palmerston North and was the subject of vigorous protest by tenants and community workers. The business eventually closed.

as opposed to standard) and the number of people who can live in the house and whether tenants can have pets. It is not uncommon for a landlord to direct tenants as to whether posters or pictures on the walls are acceptable. In the final instance a landlord can evict his or her tenants. For Mark the possibility of eviction is the greatest threat a landlord could exercise against his or her tenant:

> I don't think it is an equal relationship. The landlord has so much power because they are providing the house people are living in. Even under the law, the relationship is not an equal situation in the sense that a landlord can evict a tenant at any time for no reason - that is a vulnerable position to be in. As long as the landlord gives proper notice and meets his/her responsibility as prescribed in the Act, a tenant can be evicted at any time.

Most housing workers believe that a landlord's primary concern is to "look after" their investment by controlling how tenants live within that property. The threat of eviction, whether spoken or implied, is a "draw card" landlords could use to intimidate or manipulate tenants. According to Mark, landlords use the law to assert their control by fully exercising their rights within the Residential Tenancies Act and by dictating the terms and conditions of the tenancy they expect the tenant to sign:

> I think it's bizarre that the tenant is so powerless when the tenant is providing the landlord with a major asset. That at the end of it, a landlord gets a house that they have not had to pay for.. and the tenant has nothing. So yes I think it is a very powerless, unequal relationship.

From my discussion with these housing workers and my own personal experience, it seems that tenants are usually unable to negotiate the terms or conditions of their tenancy. Their choices are normally limited to either declaring an interest in leasing a given property or continuing to look elsewhere, or choosing to agree to or declining the prescribed terms and conditions of a tenancy if they are the successful applicant. Tenants who do not agree with the terms of the agreement find that the terms are not open to renegotiation. Landlords simply take the next suitable applicant(s) who agree to the conditions. Therefore tenants have relatively little influence or power in the process of leasing a property.

Another aspect, identified by both Elizabeth and Dave, that gives weight to the power imbalance between each party view, is that tenants do not know their rights and obligations. Tenants experience a sense of powerlessness if they are unclear about what their rights are, while often relying on the landlord's honesty. For Dave, tenants' ignorance of the law is due mainly to a lack of education and a degree of apathy, whereas the landlord will in most cases have a sound working knowledge of the Act. So for Elizabeth, an information gap exists between tenant and landlord that only serves to further disempower tenants.

A Climate of Fear

> I'd say that a lot of tenants don't want to cause waves; housing is about social and economic power. Landlords know that they have it and that tenants don't, so tenants don't like rocking the boat. There is a climate of fear out there.

Dave had experienced a number of tenants phoning for advice but too frightened to leave their names or addresses. He puts it down to the fact that tenants are worried they may be evicted from their homes if they are found to be 'making waves'. Chris's comments, too concur, with Dave's. She argues that some tenants are fearful of falling out with their landlord, of being harassed or ultimately of being made homeless:

> Yeah - there are different kinds of fear. For example, the situation of desperately needing a house, a place to stay, and the landlord is unpleasant or fear of harassment from your landlord.

When I asked housing workers to describe what they perceived to be the quality of tenant/landlord relationships, it was interesting to note that, on the whole, they thought that most relationships between landlord and tenant were reasonable:

> There's no argument there, most landlords and tenants get on okay, and I'd like to think that most landlords are reasonably fair and decent people. But you can't loose sight of the fact that landlords actually have a lot of power and control over their tenants and that some landlords... just exploit a lot of tenants. (Dave)

Dave recalled an incident, which occasionally transpires, where the landlord became irate because the tenant had left. According to Dave, the landlords in these situations have usually built up a cozy relationship with their tenant, and the expectation is that the tenant will remain loyal to the landlord.

For Mark, it was a matter of parameters. He argued that there was a continuum of different relationships but that, regardless of the quality of that relationship, tenants were still in positions of powerlessness and susceptibility:

> Within the parameters of vulnerability there is a wide variety of quality relationships... I suppose the reality is that most of them are reasonably civil, but some aren't.

I asked Chris, who was from the same agency, why she thought tenant/ landlord relationships were so fraught with potential difficulties or problems, but agreed that the majority were amicable:

> It's not always so fraught. We generally see the worse cases. Everyone that comes in seems to have a problem. I have a good relationship with my landlord, but it concerns me that he has the power to tell me under what conditions I can live within, the house he owns, but that I pay the rent for.

Even though Dave believed that most relationships are reasonable he was advocating for the introduction of a type of landlord register. He was concerned that the introduction of the Accommodation Supplement had seen an influx of younger, less scrupulous landlords into the property investment market looking to make a quick dollar. Their appearance signalled some warning bells for Dave, who was worried that slum housing or poor standard rental properties were likely to become the standard:

> If people can't afford state houses and end up having to move to the private sector, we really worry that they [tenants] will be moving into cheaper properties - we are talking slums here. That's why I have been pushing for landlord registrations, after all they [landlords] are being subsidised by tax payers - I don't have the figures but it's money in the bank.

But, Dave contends, landlords would argue it is the tenant not the landlord who is actually subsidised, since money is targeted to low income earners. And it is up to the tenant whether they choose to spend the extra money on their rent. But for Dave the issue was very real.

PERCEPTION OF TENANT' EXPERIENCES

Previous studies into tenant knowledge and awareness of the Residential Tenancies Act 1986 indicated that tenants showed an appalling lack of knowledge with regard to their rights. I asked the housing workers to describe the Palmerston North situation; that is, whether or not they thought tenants possessed a reasonable understanding of the provisions within the Act.

For Chris and Mark, Palmerston North tenants are no different. On average they saw about 25 tenants every week seeking advice about their rights. The bulk of these enquiries, they say, are about who is responsible for repairs and how to get their landlord onto the problem. Other areas that tenants seem concerned about are whether they have received proper notice from their landlord or what they need to do to give legal notice. Another area of concern for Chris and Mark, was that tenants didn't seem to realise the importance of obtaining receipts. Chris said that whenever there are disputes over rent/bond payments, many tenants are unable to provide evidence that they have actually paid. She contended that these are fairly basic enquiries but it still surprised her that tenants seemed not to know. More importantly, tenants lacked a reasonable knowledge and understanding of the Tenancy Tribunal. However, she did believe that tenants have a 'reasonable' understanding of what their responsibilities are and she put this down to the fact that landlords are very good about telling their tenants what is expected of them:

> Reasonable?... from the number of tenants that are shocked to hear there is a Tenancy Tribunal, I don't think so!. They come to us with a problem and one of the things we say is, you could take it to the Tenancy Tribunal. And they say 'Who are they, what do they do'? And they don't know how to enforce their rights. So, I do not think that is at all reasonable... I think they have a larger idea of what their

> responsibilities are in terms of keeping the place clean, paying the rent on time, not breaking stuff. But landlords seem quite good about telling their tenants what their responsibilities are.

The other aspect of this, says Chris, is that tenants simply do not know where they can get help. Chris's agency places adverts in the local newspaper about their services. They also receive a number of referrals from other social service agencies. But what worried Chris was that it seemed that a lot of tenants simply didn't know how to enforce their rights. In part, she claimed, some tenants simply do not want to express concerns for fear that the landlord may tell them to leave, whereas others simply put up with problems because they are unaware that help is available.

Dave believed that tenants' lack of understanding about their rights or their unwillingness to enforce their rights was also, in part, due to tenants' apathy:

> It's probably me, but I think that apathy in this country is like a religion. When you start talking to tenants on the phone ... it is amazing what people [landlords] have gotten away with. It's lack of education in many ways. A lot of tenants don't bother about getting clued up on the basics, about what they can or can not do when they go renting.

Dave receives a number of enquiries from students. He argued that the student population in Palmerston North drives the rental market rents, and his concern was for those "permanents" who find it hard to pay the higher rents. For Dave, students are transitory and essentially have a future, whereas, the people he was concerned about were "trapped" into a future of renting. Dave thought that there was a mentality amongst the general public that tenants are into demolishing flats. It does occur from time to time but Dave was of the opinion that most tenants are not like that.

For Mark and Chris, students also seem to make up a significant proportion of their clients at the beginning of the year when they are seeking accommodation, or at the end of the year when they have problems regarding fixed-term tenancy agreements that they had signed into at the start of their academic year. "Yeah - fixed-term tenancies are

a big problem. We get a big pile of enquiries from students about how to get out of one".

A TERRIBLE ABUSE: FIXED-TERM TENANCIES

A fixed-term tenancy is an agreement that provides for a specific date that the tenancy is to end, for example, "this tenancy is for a fixed-term from 1 February 1996 to 1 February 1997". At the end of the term the tenant is required to quit the tenancy, with the possibility of renewal. A periodic tenancy, on the other hand, is for an indefinite period and is only terminated upon the landlord or tenant giving the other party the required notice. Under a fixed-term tenancy, tenants are required to rent the property for the duration of the specified period, and in most cases are unable to assign or sublet the property (unless permission had been granted as part of the conditions of the contract). However, the landlord is unable to sell, raise the rents or terminate the tenancy until the due date. For Elizabeth, the fixed-term tenancy has led to the exploitation of many tenants:

> I am well aware of the work other housing groups have done to ensure that tenants understand their rights and don't sign fixed-term tenancies. That [fixed tenancies] has been a terrible abuse. It has been something that has been promoted by the Property Investors [Landlord Association] to ensure that they have a steady income without accepting that the tenants that sign these contracts often don't know what they are agreeing to or how their circumstances will change during the time of a contract.

It seems that housing workers advise tenants not to enter into a fixed-term tenancy unless they are: (a) certain that they want to live in the premises the full term of the tenancy; and (b) able to meet the rental for this term.

According to Chris, Dave and Mark, there have been a number of cases where students have signed a 12 month fixed-term tenancy and tried to leave after their end of year examinations only to find that they are locked into another three or four months of payments. Chris said that usually flatmates leave when their academic year has finished, leaving the tenant(s) who signed the contract to carry financial responsibility:

> I think that a lot of the new youngies just don't know and simply sign the contract. Others may have heard about fixed-term tenancies, but don't understand the full implications until they're in it, or have heard that it is okay so long as you find someone else to take over the agreement. However, come November that's impossible.

Tenants looking for accommodation in November are less likely to take on a tenancy that expires within a few months. Dave claimed that for a lot of tenants fixed-term tenancies end up being a "financial albatross around their neck". There is little tenants can do if they are wanting to leave a fixed tenancy. Dave's advice to tenants is stay clear of them and certainly not to sign such an agreement.

THE TRIBUNAL AND TENANCY SERVICES

According to Mark, Tenancy Services are unable to assist with resolving the problem of fixed-term tenancies as it requires adjudication not mediation. The only way a decision can be reviewed, is for the case to be appealed. According to Mark, tenants' appeals have met with mixed success. In one case the Tenancy Adjudicator found in favour of the tenants, stating:

> ... the Tribunal has major reservations about the practice [Fixed-Term Tenancies] and its impact on the lesser educated and the worldly wise, especially in a University Centre with large concentrations of young students.

It is important to note that the Tenancy Adjudicator quoted above does not normally adjudicate within Palmerston North. But Mark and Chris were concerned with some of the rulings made by Palmerston North adjudicators, who often seem to base their judgments on a completely different interpretation of the law. As Chris put it:

> The law says you can get out of a fixed-term tenancy if the tenant finds another tenant to take over the tenancy. But adjudicators here [Palmerston North] say that tenants not only have to find someone else but that the tenant has to pay a $150 administration fee to the accommodation broker/ landlord for the finding of another tenant. We believe that this fee actually fits under the definition of key money.

But it seems the local adjudicators don't agree.

The legal definition of key money as contained in the Residential Tenancies Act 1986 (s 2) is:

> Any sum of money demanded by way of fine, premium, foregift, or otherwise as consideration for the grant, continuance, extension, variation or renewal of a tenancy agreement, or for consent to the surrender or disposition of the tenant's interest under a tenancy agreement or a subletting by the tenants; but does not include any sum payable or paid by way of rent or bond.

According to Mark the previous adjudicator indicated that it "would be harsh and unconscionable" to make the tenant pay an administration fee. I asked both Mark and Chris if they were concerned at the difference in legal interpretations on the same topic. Mark replied as follows:

> Yes, it does raise some questions - definitely. We are quite concerned there is a real inconsistency about decisions right across the country. It seems from anecdotal information from tenant agencies in _____ and _____ that they are surprised at some of the decisions that get handed down here... but it seems from the people we talk to the quality of adjudicators doesn't seem to be very high.

Chris stated that there was really no formal pathway to challenge decisions adjudicators make, other than to make a request for a rehearing. Concerns can be put in writing to the principal adjudicator and also to the Minister of Justice, but it seems that very little comes from it. A tenants' organisation from another region wrote to the principal adjudicator about the inconsistency of decisions between adjudicators. The letter that was received in reply said that if they were unhappy about the outcome of a given case, they could ask for a rehearing. Chris and Mark felt that this is was issue that needed to be addressed but that those within the adjudication business had put it into the 'too hard basket'.

When I asked Dave what he thought about the adjudications in Palmerston North, he replied:

> Inconsistency is the word I would say to describe it all. It's supposed to be one law

> all over the country, but it seems from the networking I've done that different viewpoints and different interpretations prevail here. I have a lot of misgivings about some of the adjudicators that we have here in Palmerston North... some of the adjudicators here really rip into tenants, which I think is really uncalled for ... and puts them [tenants] at a disadvantage.

Dave would like to see the Tenancy Tribunal removed from the courthouse to somewhere that is more neutral. He contends landlords are a lot more comfortable in the court surroundings than tenants, who in the main are unfamiliar with court protocol or proceedings and find it intimidating:

> ...you just have to mention that the hearings are held at the court house and they [tenants] just freeze. I can relate to the fact that it is intimidating. Landlords play the game. They zoom in there with their suits and are well presented with their case. Needless, to say tenants are anything but prepared.

Mark stated that 90 per cent of cases taken to the Tribunal are made by landlords and only occasionally by a tenant. According to Chris, if tenants would like assistance from an advocate representing their case, they first have to apply to the adjudicator and state why they are unable to fully represent themselves. She said that it is not an automatic right that tenants get someone to speak for them. Chris argued that the Tenancy Tribunal has become very formal and that it doesn't need to be like that. I asked Mark what an alternative would be, and he replied that: "In some situations it might be more relevant to hold hearings out in the community".

Chris thought that the way adjudicators were selected could be revisited, arguing that there needed to be more representation from within the local community. She favoured a "panel" approach to adjudication:

> The way it is now is the adjudicator sits aloof, up on a high desk with a microphone. If you go with a tenant to support them, the adjudicator questions your motives for being present. If you haven't anything to say, you are told to wait outside. Tenants aren't encouraged to bring support people, which I think they should be able to.

Chris recalled a recent incident where a tenant had made an urgent application to the Tenancy Tribunal based on the grounds of harassment. Three months later she still hadn't been given a date for the hearing. When she asked at the court house what the complaints procedure would be she was told that she would probably have to write to the principal adjudicator, but that they didn't know who he was or the address to write to. The tenant checked the walls for poster and information leaflets but it was bare. In the end she just let the issue go.

Tenancy Services

I was interested to know what housing workers' perceptions of Tenancy Services were given that the Tribunal had been subject to considerable criticism. I asked housing workers to describe: (a) their perception of the role of Tenancy Services; and (b) their perception of the performance of Tenancy Services. The responses I received were mixed.

All housing workers agreed that they viewed the role of Tenancy Services was to mediate between landlords and tenants to mutually arrive at some resolution. Disputes that couldn't be mediated or resolved were then forwarded on to the Tenancy Tribunal for adjudication. The other aspect of this role was that Tenancy Services provided a neutral service, favouring neither landlords nor tenants.

Dave thought the people at Tenancy Services did a good job and appreciated the fact that they were impartial:

> I've got no problems with the people that run the services here, I think that it is a good service. But it seems that they are one of the busiest offices in the country. I think that it is because Palmerston North is a student driven population and the fact that we have a high number of fixed-term tenancies.

It seems that other workers are of the same opinion. However, while they agree that mediation is a good concept and that the Service is necessary, there is concern about whether Tenancy Services is under staffed particularly as it appears that the work load has increased. Mark had some reservations believing that the increase was due in part to landlords bringing more cases against tenants. At no point does a

landlord have to pay for the use of Tenancy Services (which in the main is funded by the interest generated from tenants' bond money), regardless of the fact that "90 per cent" of cases brought to Tenancy Services are brought by landlords.

DR JECKYL AND MR HYDE: FEE-PAYING LETTING AGENCIES

I asked the housing workers to describe the role of fee-paying letting agencies in the rental market and their perceptions of these agencies. In Palmerston North, real estate agents and accommodation brokers who fit within the definition of fee-paying letting agencies. It is important to point out that one of the tenant agencies participating in this study provides a free listing service to tenants, but is not a letting agency.

Chris pointed out that there was a difference between accommodation brokers and real estate agents. Estate agents are also into property management which allows them to sign up tenants on behalf of the landlord. They only charge tenants a fee if they can find the tenant a home. Elizabeth thought that estate agents generally provided a good service, arguing that the group she was involved with seldom received complaints about them. Dave, however, harboured some strong feelings about the fees real estate agents charged, arguing that one week rent was exorbitant. Even though his agency had a good relationship with real estate agents, he said that he had been battling away to have the fees standardised.

Accommodation brokers, on the other hand, provided a free listing service for landlords, where they could register their vacant rental property. The broker compiles a list of these vacant properties and charges prospective tenants a fee to view the list. Upon payment prospective tenants can view the list as often as they want, usually over a three month term. In the majority of cases, brokers also provide property management on behalf of the landlord. Unlike the estate agents, accommodation brokers give no guarantees that tenants will find a house.

Brokers define their service as one of providing information. Mark,

however, perceived the service as one that led to market capture and exploitation:

> Previously landlords had to pay for an advertisement in the newspaper to let tenants know their property was available. Now landlords provide information to letting agencies who don't charge them for that information but do charge tenants. In this sense they [fee-paying letting agencies] have captured the rental market by capturing the information, and then charge tenants to access that information... they are just exploiting the market.

According to Chris, the property management side of the business has generated a large number of complaints from tenants who find they have no choice but to sign a fixed-term tenancy once they have found a property from the list. Dave said that, by the manager's own admission, the business operates 90 per cent of their tenancies as fixed-term. Again the question of the tenant's freedom of choice, or rather lack of it, was raised by Chris along with other issues:

> Where is the choice?. You either take a house with a fixed-term tenancy or you don't have a home!. The agreement also says that if you agree to take on one of their houses you must agree to have the carpets commercially cleaned when you leave, regardless of whether the carpets are clean. And it states that should you fall in arrears with your rent that you will have to pay the debt collectors to come and sort it out. But that's what I thought the Tribunal was there for!.

Dave asserted that accommodation brokers were the "pariah of the world". This issue was so invidious to tenant agencies that they collectively organised a protest, gaining support from students, tenants and other social service agencies concerned that their clients would be beguiled into using this brokerage with the hope of being housed. As Elizabeth put it:

> With accommodation brokers there is always the potential to abuse the rights of people [tenants]. Housing is such a basic essential need that to exploit people in that situation is simply unethical.

In the course of the interviews, it came to light that accommodation brokers have had a singularly bad effect on tenants in Palmerston North. Mark, Elizabeth and Dave have collaborated to persuade accommodation brokers to adopt a code of ethics but have had limited

success. The one agency that agreed to the code did "a runner" one night, with the operator taking tenants' money with him.

THE EQUALISER? THE RESIDENTIAL TENANCIES ACT 1986

I asked the housing workers if they thought the Residential Tenancies Act was a fair piece of legislation. Their responses varied. For Dave, the Act was a "brilliant piece of legislation". Mark, on the other hand, tempered his view. While acknowledging that the Act provides a degree of security of tenure for tenants, he thought it failed to adequately meet tenants' needs, particularly in regard to fixed-term tenancies which provided a loop-hole for landlords wanting to by-pass section 51 of the Act. The other moot point for Mark was that landlords are not required to pay for a service which is used predominantly by them, namely Tenancy Services and the Tribunal. More fundamentally, however, Mark believed that:

> Because there is not an equal relationship between tenants and landlords, an Act that treats them both relatively the same means that tenants are not necessarily any better off.

Like Mark, Chris thought there were too many compromises that benefited the landlord. However, she noted that landlords would probably say the Act is anti-landlord. She cited the period of notification as a point of contention. Landlords would argue that it is unfair that tenants only have to give three weeks' notice of intention to quit the tenancy, whereas landlords have to give three months notice. For Mark and Chris, this is a double edged sword. They argued that it was harder for tenants to find suitable accommodation. The more notice tenants have from landlords the better their chances of securing tenure elsewhere. However, Mark and Chris also saw the three month notice period as undermining tenants' security of tenure. As Chris put it:

> The 90 day notice is a big deficiency, it allows the landlord to evict a tenant without having to give a reason.

The more positive side of the Act was the establishment of an

independent body (Tenancy Services). For Dave the establishment of an independent entity to resolve tenant/landlord conflicts has quelled what he saw as "the law of the jungle". He contended that previous tenancy law was so ineffectual that landlords were evicting tenants at will. Now landlords are required to give notice or make application to evict. Elizabeth argued that the introduction of the Act has brought around a number of changes:

> I think there has been a move to make it [legislation] more fairer. It wasn't previously. Certainly it acted more in favour with landlords but recent changes have gone some was to addressing the imbalance. I think the same about the Tribunal. It was seen as a great opportunity for tenants to have their concerns heard, but that [the Tribunal] now acts in favour of the landlords.

She cited the establishment of Tenancy Services as "a great innovation in its time", indicating tenants initially used their services, but that over a short period of time its focus moved towards the needs of landlords rather than tenants.

Anti-discrimination Legislation

I asked Mark and Chris if they thought tenants were aware of anti-discrimination law. They acknowledged that tenants seem to have some understanding about what is unacceptable, such as race or sex discrimination, but thought that there was a total absence of awareness of other areas:

> I think they have an understanding about some laws like discrimination, but when they look at the poster on the wall [which documents areas of illegal discrimination] they say to me "I didn't realise you could discriminate against somebody because they have children or they're pregnant". So I think tenants do have a basic awareness, but I don't know if they have a good awareness of what to do if it happens.

I raised with Mark and Chris Young's (1994) findings that 50 per cent of landlords and 36 per cent of tenants believed that landlords should have the right to choose whoever they want as a tenant, regardless of anti-discrimination laws. This did not come as a surprise to Mark:

> The reality is that landlords do choose whomever they want whether they have the right or not. I think they should have the right to select an appropriate tenant, but I do not think they have the right to impose their prejudices on that situation.

Mark believed landlords have the right to ask tenants to demonstrate that they are able to meet their obligations, arguing that tenants should be able to provide character references from the previous landlords or another referee. Chris, however, argued that people on low incomes are quite likely to have problems paying their rents and may have low credit ratings. As Chris said, "people with debts need somewhere to live as well".

For Mark, this issue highlights the dilemma about whether private landlords should rent homes:

> I think there is an argument that we shouldn't have private landlords, because they are there to make a profit out of somebody's need for housing and I don't think that is right. But the reality is we do have private landlords and we don't have enough state accommodation. So people are forced to seek accommodation through private landlords.

When I asked Dave if he thought tenants knew about anti-discrimination law, he indicated that he thought tenants had a "gut" feeling that they might have been turned down by a landlord, because they may have been unemployed, for example, or Maori. In those circumstances, Dave likes to make contact with the landlord, as well as directing tenants to either the Human Rights Commission or the Race Relations Office.

I asked the housing workers if they would refer a prospective tenant who had obviously been declined a tenancy because discrimination, to the Human Rights Commission, Race Relations Office or work through the Tenancy Tribunal and why. In most cases of discrimination, they said that they would either use the Race Relations Office or more preferably the Human Rights Commission, and by-pass the Tribunal. For Chris the matter was fundamentally one of trust and confidence in the quality of decision making:

> If it was a discrimination issue I wouldn't bother with the Tenancy Tribunal because

> of the quality of adjudicators here. I have no trust that they would make a good decision, whereas I have a lot more faith in the Human Rights Commission.

Mark claimed that often these issues were very sensitive. He said the Tribunal was similar to a court of law that deals with supposed facts, and that it would be difficult to deal with discrimination issues sensitively. Dave maintained that it was difficult to prove cases of discrimination and that the Tribunal was not well suited to cases where the evidence was not clear cut.

Within the broader discussion of discrimination, Dave raised the issue of economic discrimination - where tenants simply could not afford the rent. The Act does not view this as discrimination but I asked Dave to expand on his reasoning:

> It's about economic discrimination... it makes out that tenants have choice, its just a joke, there is no choice. It's all about power and money. If you have got the dollars in your pocket you have choice. All this rhetoric about we are making it all equitable and fair is bollocks... social justice is a dirty word in this country. A cohesive society, a decent society - its all bullshit. Until we have social justice we won't have a decent society.

SUMMARY

As mentioned at the beginning of this chapter, the objective of this set of interviews was to determine what housing workers perceived as the experiences of tenants renting in the private market. The data gathered from these interviews was easily grouped into four central themes: landlord/tenant relationships; tenants' knowledge of tenancy law and their rights therein; tenants' relationships with Tenancy Services and the Tenancy Tribunal; and the role and influence of fee-paying listing agencies.

The housing workers perceived the tenant/landlord relationship as antagonistic. They argued that the relationship is constructed from two opposing viewpoints of housing. On the one hand, the tenant's basic need for a house and home and on the other the landlord's view of housing as an investment. They claimed that: tenants are largely

ignorant of the Residential Tenancies Act and their rights contained therein; tenants did not readily know where to access information and advice on tenancy matters; tenants were generally ignorant of the process and procedures of Tenancy Services and the Tenancy Tribunal; and that tenants were hesitant of making a formal complaint in case they were evicted from their home. However, housing workers indicated that tenants seemed to have a better knowledge of their basic obligations. Although they agreed that most arrangements between tenants and landlords worked reasonably well, the antithetical nature of the relationship between tenants and landlords combined with tenants' lack of knowledge and understanding of their rights and obligations, gave rise to an imbalance of power that disadvantaged tenants.

One issue that housing workers saw as problematic for Palmerston North tenants was the passing of inconsistent rulings by the local tenancy adjudicators. Housing workers were concerned that there was a difference in the legal interpretation of tenancy law by local adjudicators, and that subsequent rulings on tenancy cases were found to be inconsistent with similar cases in other regions. They added that there was no formal pathway to challenge the inconsistencies of rulings by adjudicators other than by requesting an appeal on individual cases. In regard to cases of discrimination, housing workers were also concerned that cases of discrimination may not be adequately dealt with in the Tribunal.

Another issue was the adoption and use of fixed-term tenancies by landlords, agreements which usually locked tenants into a contract for a 12 month period. Housing workers claimed that Palmerston North had the highest rate of fixed-term tenancies for the country. They argued that fixed-term tenancies were introduced as the standard business practise of one particular accommodation brokerage (fee-paying letting agency), and were promoted and adopted by many Palmerston North property investors. In a 'university city' such as Palmerston North, the adoption of a fixed-term tenancy agreement as a standard tenancy practice exploits the accommodation shortage at the start of each academic year. Housing workers claimed that tenants (particularly students) often signed fixed-term tenancies because of a concern that they might not secure accommodation, but that they did so unaware of

the inflexible conditions this tenancy agreement imposed. The end result was that tenants paid rent on a tenancy for an extra three to four months beyond their use of it.

These findings, in relation to the overall objectives of the study, indicate that tenants operate their rental affairs with very little knowledge or awareness of tenancy law and/or anti-discrimination law. It would suggest that some tenants may not: (a) realise that their rights have been breached; or (b) know what to do on matters of redress. The central themes identified by these housing workers provided both a broader backdrop to the problems and issues tenants face in Palmerston North, and a platform from which to further explore tenants' experiences within the private rental market.

CHAPTER 5

TENANTS

This chapter presents data gathered about the awareness, knowledge, experiences and attitudes of tenants with respect to the terms, conditions and rights of tenancy law and anti-discrimination legislation in the private rental market. The chapter is divided into four areas. The first focuses on tenants' responses to questions about their awareness of the Residential Tenancies Act 1986 and anti-discrimination laws within the Human Rights Act 1993. The second section highlights tenant understanding of their obligations within the Residential Tenancies Act. The third section takes an in-depth look at those occasions where tenants perceived that their rights were compromised. This highlights possible gaps in tenants' knowledge and awareness of the Residential Tenancies Act. The final section of this chapter examines tenants' attitudes in respect of landlord/tenant relationships and their hopes for future housing.

TENANTS

At the beginning of each interview I asked tenants to give some consideration as to how they would describe themselves and to give me a bit of background information about their housing situation. Most were fairly clear as to how they saw themselves, and I have included short biographies on each tenant to introduce them to the readers of this study. In the main, the descriptions are in their own words.

Jane was a 44 year old, working class, Pakeha lesbian. She had for the most part lived her life in the South Island but had spent the last five years living in the Manawatu. Jane had always rented. She argued that

she would never own her own home, simply because she couldn't afford too. Jane was on the unemployment benefit at the time of the interview, but did a number of odd jobs to boost her income. One reason why she lived rurally, apart from the fact that she preferred the country, was that she could afford the rents, which she said were a lot cheaper than living in town. Jane lived alone.

Mike was 23 years of age and identified as a Pakeha. He had lived in Palmerston North all his life and had been renting for the past five years. He was studying at Massey and had been involved with the Students' Association over the past few years. An important part of his identity was to assist students to get better deals in all aspects of their student lives. Over the past five years Mike had rented seven houses that he had shared mainly with other students.

Rachel first and foremost identified herself as a Maori woman. She was 30 years old. Rachel was born outside Palmerston North and moved here with her parents when she was 18. Since leaving home, Rachel had rented 17 different houses. She lived with her husband and two young children. Rachel's hope was to own her own home.

Peg was in her 70s, and on a pension. She, like Jane, lived on her own in a small village setting in the greater Manawatu. Peg was a very lively character and preferred to live in the country although she spent a number of years living in a state house when her children were at secondary school. Peg was still very active, tending her garden or going on long walks. She had lived most of her adult life in rented accommodation, and believed that she couldn't afford the cost of maintenance if she lived in her own house.

Lucy was 32 years of age and had recently returned to her parents' home outside Palmerston North due in large part to an altercation with her landlord's agent. Lucy identified herself as a Maori woman, and she had two young children. Like the other tenants, Lucy had rented all her life, but hoped to own her home.

TENANT AWARENESS OF THE RESIDENTIAL TENANCIES ACT 1986 AND OTHER ANTI-DISCRIMINATION LAWS

The Residential Tenancies Act 1986 has had some 10 years of application, and until recently has been subject to relatively few alterations.[7] During this time there have been publicity campaigns by the state to increase the awareness to both landlord and tenant. The occasional Tenancy Tribunal case has even made both local and national headlines.

Given this, I wanted to know if tenants were aware of the Act and the rights and responsibilities accorded to them. I asked a simple and direct question, "Are you aware of any legislation that governs the terms and conditions of renting between landlord and tenant, and if so what is it called?" Only one of the five participants knew both that a law existed and was able to name that law as the Residential Tenancies Act. As a student representative, Mike had direct experience with the Act, having previously assisted in taking a test case to the Tenancy Tribunal. Peg, on the other hand, seemed unaware of the existence of such an Act, responding quite sincerely, "No - is there one?" Even though Peg had lived in rural rental accommodation for most of her adult life unaware of the Residential Tenancies Act, it became clear that she had a sense of responsibility about being a tenant and, conversely, that she knew what she expected from her landlord:

> I'm a good tenant, I don't knock things about and I pay the rent on time... I said to Maggie [landlord's wife] that Murray [landlord] ought to look after his tenant when he has a good one - and I told her that I consider myself a good tenant!

The remaining three participants knew that "something existed" but as Rachel said "I know that there is one but I'm not sure as to what it is called". In all three cases the participants came up with words associated with the Act. For example, Rachel's answer to my initial

7. In 1992 the Housing Corporation of New Zealand was restructured to become the Ministry of Housing and Housing New Zealand. Tenancy Bond, which was physically located with the Housing Corporation, was split from the Ministry of Housing and relocated. Its name changed to Tenancy Services. The changes reflected the Government's move toward market dominated policies as discussed in Chapter 2.

question was "the tenancy agreement", and although Jane acknowledged she didn't know the name of the Act she knew that tenancy groups existed to assist people. As a prompt, I asked if they had heard of the Residential Tenancies Act 1986 to which all three replied that indeed they had.

When I asked if they were aware of any legislation that protected their rights as a prospective tenant, the majority seemed to relate the question to issues of discrimination. Lucy asked me "..do you mean, like, you can't be discriminated against because of things like colour?". And Rachel stated that, although she thought laws existed to prevent discrimination, she couldn't name any relevant legislation. Jane, on the other hand, recalled the introduction of "new" legislation a few years ago, but couldn't put a name to it. When I added the prompt "Have you heard of the the Human Rights Act?" most responded with a confirming nod of the head. Their response was not surprising. In a study conducted by Young (1994), findings with regard to tenant awareness of existing anti-discrimination laws indicated that only 33 per cent knew that there was legislation designed to preclude discriminatory practices in the rental market. Of these, only 14 per cent could actually name a specific piece of legislation.

Of the five participants I interviewed, Mike was the sole respondent who could name specific anti-discriminatory legislation. As part of an ongoing discussion with Mike, I learned that students living on campus were not currently protected by the Residential Tenancies Act. They are required to live by rules imposed by the University which, according to Mike, had proved to be less than neutral or fair in cases where there had been breaches of University accommodation protocol. Mike again was the only one who showed any clear indication that he knew not only of other anti-discriminatory legislation but also what those Acts entailed:

> **..if you don't pay your fines, you can't get your academic record or graduate. We feel the information given to the Halls Office should have nothing to do with your academic requirements as part of the University. We are trying to put as many resources as possible in trying to sort out our problems ... we have been trying to use the Human Rights Act, we have rung the Privacy Commissioner and asked them to help us...and we are trying to get a Charter of Student Rights into the University Calendar.**

In following through on the previous question, I asked participants to identify the grounds on which they thought a landlord could lawfully choose a tenant or unlawfully deny a tenancy. Most participants were able to cite at least two or three key areas such as race, children and sex as areas that they thought were illegal to deny a tenancy on, and thought that tenants having pets was a lawful ground for discrimination.

According to Mike, students could be lawfully discriminated against:

> You are not allowed to discriminate on grounds of employment in terms of whether you're unemployed, but it seems you can discriminate on grounds of the type of employment. They [landlords] can discriminate against students because it is our choice to be students.

Mike argued that the Human Rights Act is powerless to stop willing landlords actively discriminating against students purely on the fact that they are students.

In Young's (1994) study it was shown that a high proportion of tenants knew that it was illegal to discriminate on grounds of race (83 per cent), children (52 per cent) and sex (70 per cent), but that renters generally had poor knowledge of other areas (religion, pregnancy, marital status, disability etc) on which it was unlawful to base choice of tenant. For Jane, who identified herself as a working class lesbian, the issue of not discriminating on the grounds of sexual orientation was not only mentioned but emphasised:

> I know they [landlords] can't turn you down on grounds of sexuality... but I'm still not going to say I am a lesbian when I meet them.

Jane was obviously concerned that she could be denied housing because the landlord might be homophobic. Landlords have not only denied her housing but have intimidated and harassed her into leaving an already existing tenancy. For Rachel and Lucy, the issues were similar but the circumstances different; both women had young children, were Maori and Lucy was raising her children on her own. At the time of

writing only Rachel was in paid employment.

The concern for Jane, Lucy and Rachel was that being lesbian, Maori or a solo mum could mean being overlooked as a tenant when seeking rental accommodation. So, although they may not have been fully aware of anti-discriminatory laws in the rental market, they were well aware that they could be discriminated against and (in the case of both Jane and Rachel) would attempt to minimise that risk. For example, Jane would try to obtain written references from previous landlords to testify that she was a "good" tenant, as well as not mentioning that she was lesbian. Rachel, on the other hand, would take her son along to interviews with landlords so that they could see that he was a good child.

I asked Rachel if she thought the Residential Tenancies Act was fair to both landlord and tenant. Her response was unexpected given our previous discussion. "I know it is good if you are a tenant. The tenant is more protected than the landlord". However, with further clarification, Rachel explained to me that on two separate occasions she was required to attend mediation and on both occasions the mediation effectively swung in her favour. "Both times I have dealt with them [Tenancy Services] we have won, so it [the Act] seems pretty fair to me". Other participants had different beliefs. Jane said: "It certainly is not fair to the tenants. When they brought the law out [Residential Tenancies Act 1986] I remember seeing a copy and it seemed loaded towards the landlords". Later, when I asked Jane why she thought the Act favoured landlords, she intimated that the 90 day notice landlords could give to tenants without having to justify themselves meant that the rest of the the protective measures regarding tenant security were meaningless.

I got the impression from Mike that he thought the Act went some way to addressing tenant/landlord differences, but that there was room for improvement. Lucy, too, had had contact with Tenancy Services. Her case, unlike Rachel's, went to the Tribunal for adjudication, and the final judgment went against her. When asked whether she felt the law was fair, Lucy shook her head in denial: " I thought it was until we had a problem with one renting firm here, before that I thought the law did

appear fair".

Stephenson (1988:76), in an article published not long after the introduction of the Residential Tenancies Act, contended that most tenants were blind to the provisions within the Act, at least until they were confronted with a problem.

In summary, of the tenants interviewed only one (Mike) could clearly name existing tenancy and anti-discriminatory legislation. Three tenants had a firm belief that legislation existed but were unable to name the legislation until given prompts. Only one tenant (Peg) was unaware of such legislation, a somewhat surprising result given that she had spent a number of years in rental accommodation (mostly in rural locations), and was likely required to pay bond. Since other studies have also indicated a lack of awareness among tenants about the Residential Tenancies Act and the Human Rights Act, it would seem that there is an ongoing need for education.

TENANT KNOWLEDGE OF TENANCY LAW

The previous section showed that although tenants did indicate that they knew "something" existed they were unable to name the Residential Tenancies Act or connect the Human Rights Act as legislation that protected their rights to securing and maintaining leased accommodation. However, this is not to say that tenants are completely unaware of some of their basic rights and obligations. The next set of questions, therefore, was framed to generate discussion about exactly what tenants thought their rights or obligations were when entering into a tenancy with their landlord. The central themes of the interview focused around issues to do with bonds, rents, right of entry and the termination of a tenancy.

Bonds

I began by asking each tenant if they knew the maximum number of weeks rent a landlord may charge for bond and rent in advance. Mike was able to give a correct and clear indication that the landlord could

ask for four week rent as bond and an additional two weeks rent as an advance. Lucy and Rachel each seemed hesitant with their reply asking (rather than telling) me that it was two weeks in advance but appeared to guess at the number of weeks rent for bond. Peg was aware that landlords sometimes required a bond and rent in advance, but her experience was that landlords tended to ask her for two weeks rent in advance. Perhaps Peg's age assured landlords that she was unlikely to damage property or abscond if she was in arrears with her rent.

Freeman's (1989) study showed that 43 per cent of tenants answered the maximum bond question correctly, with a 15.5 per cent "don't know" response. However, 63 per cent correctly answered the maximum number of weeks rent a landlord could ask in advance, and 18 per cent answered that they simply didn't know. Again, this result might be partially explained if some of the tenants Freeman surveyed had little rental experience; for example, if they were school leavers living away from home for the first time.

Jane answered that she didn't know and "wouldn't have known the answer anyway". As our conversation continued it became obvious that rural tenancies and 'city living' were dichotomous. Many of the properties Jane rented (as we discussed later) were on farms and were in differing states of disrepair:

> In the country areas that I have lived, I didn't have to pay bond or rent in advance. I think that they [landlords] didn't have an idea about their responsibilities as a landlord. They would do things on a whim, they would tenant a farm house on the whim, but could get rid of you on a whim too.
>
> The last place I lived in Canterbury he gave me a months' notice. I told him [landlord] that he couldn't do that and that he had to give me at least six weeks' notice. We had a long term arrangement that we could stay there for at least a year, but apparently his son got into trouble and needed a place to live which I thought was his problem. But that happens a lot, people [tenants] get kicked out of their home for the family members of the landlord or workers.

For Jane, renting in the country was sometimes a double-edged sword. Landlords tended not to worry about bonds or rent in advance. Whether this was because properties were not well maintained or

whether rural people are more trusting is uncertain. However, it appears from Jane's account that tenant isolation from any regulatory body such as Tenancy Services, coupled with the rural landlords' relaxed approach to their obligations, often resulted in a very hasty tenancy termination. If rural landlords were to take bonds it is unclear as to whether or not they would be more inclined to find out what their obligations are under the law and to then act accordingly. Certainly landlords (whether rural or urban) should not interpret the non-taking of bond money as a trade off or an exemption from their duties and obligations.

Rents

As already noted, the most rent that a landlord can ask for in advance is two weeks. This has now become common practice in most tenancy agreements. But tenants can of their own volition advance sums greater than two weeks. Most tenants were unaware of this option but felt that it was not one they would have exercised, either because they didn't have the money to do so or they were content with the two week time frame. For most tenants, it would be difficult to consistently meet the payment of rent in advance if it exceeded two weeks, but it might be convenient for those who are paid monthly or tenants absent from the property for periods greater than two weeks to make the occasional long term payment. The tenants were not aware that, were a landlord and tenant to enter into an alternative arrangement regarding the payment of rent in advance for a period greater than two weeks, approval must first be sought from the Tribunal (ss 11(1)(b) and 77(2)(h)). Should approval not be sought, the landlord runs the risk of committing an unlawful act and possibly paying penalties.

I asked the tenants if they knew how often a landlord was able to increase rents. Only one of the five was able to correctly state that the landlord could increase the rent once every six months. The variations to this arise if the landlord should substantially improve the premises or provide better facilities. Then, upon application to and approval from the Tribunal, rents can be increased within the 180 day time frame (s 24(2)). From discussion with the tenants it appeared that they rarely found their rents increasing, and in the main did not seem to have any

difficulties with it. Where rents increased the tenants felt that it was only marginal - an extra $10 per week. In situations such as Mike's, the extra cost was shared between two or three other flatmates which meant that he was paying only an extra three or four dollars per fortnight.

In addition to the rent increase, tenants were not aware that the landlord was required to give them two months notice (the Act states at least 60 days) prior to the date that their rent would increase (s 24(3)), that notice should generally be in writing, with the amount specified to which the rent was to be increased and the date from which the increase would be effective. Those tenants (Mike, Rachel, Jane) who had experienced rent increases could not remember if due notice had been given or whether notice had been handwritten or verbally given.

Where a fixed-term tenancy is agreed too, the landlord is unable to increase the rent during that period. In signing an agreement for a fixed period tenants are required to lease the property for that time frame at the specified rental, unless the landlord had written into the agreement that although the rent is fixed at a given price it may be increased in accordance with section 24(1) of the Act. Where this clause is absent from the agreement, the landlord is not able to raise the rent until the fixed agreement ceases and a new agreement is drawn up. Only then can the landlord raise the rent. Three of the five tenants had experienced fixed-term tenancies but all were under the impression that rents could not increase during that agreement. As will be discussed later, the tenants were not entirely happy about their experience under a fixed-term tenancy.

Right of Entry

Essentially the tenant has full possession of the premises and can deny access to anyone, including the landlord. However, the Act does provide the landlord with right of entry to the property regardless of the tenants' wishes, under certain circumstances. In the third question I asked tenants if they knew what the circumstances were in which the landlord could legally enter the property and whether the landlord needed to notify tenants of an intention to do so.

Again it seemed that the majority of the tenants interviewed had trouble identifying under what conditions a landlord could come onto the property, apart from the right of entry to make repairs (s 48(2)(d)). Peg, began to relate occasions on which her landlord's wife would just turn up, uninvited and unneeded. But she didn't know that on these occasions she was entitled to notice and that, in some instances, she could rightly have denied access.

The Act states that for the purpose of inspecting a property a landlord must give 48 hours notice, that the inspection can only occur between 8am and 7pm and that the property cannot be inspected more than once in every four weeks (s 48(2)(c)). Most landlords, it appears, do not carry out a formal inspection that often, but do make visits to check on any repairs the tenant may have undertaken or to undertake repairs themselves. A landlord must give the tenant at least 24 hours notice to undertake repairs, provide a reason for the repairs and again the work must be done between the hours of 8am and 7pm. Landlords do not need to provide written notice of their intention to enter the property but the onus of giving notice remains or to at least obtain prior consent if the landlord needs immediate entry (s (48(a)).

Most of the tenants had at some stage undergone a property inspection by their landlord or had repairs carried out at either their request or the landlord's. Most tenants knew that the landlord should seek consent first, or at least notify the tenant of an impending inspection or repairs visit. However, it seemed that they (with the exception of Mike) were unable to state how often a landlord was entitled to inspect a property over a given period of time. Nor did it seem that they knew what the correct notification period was that a landlord had to give before entering the property or the hours during which repairs or inspection could be done. Interestingly, 32.5 per cent of Freeman's (1989) respondents answered that they thought the landlord only had to give 24 hours notice instead of the 48 hour requirement. All of the tenants had experienced (discussed later) occasions when their landlord simply turned up, without notice or prior consent and expected right of entry. On the other hand some of the tenants had no problems with their landlord coming onto their property at any time. In a property that Rachel leased, the landlord would turn up most days to "potter

around":

> He was a chronic asthmatic and he use to come down and potter around the house. I use to invite him into the house for a cup of tea. He was a lovely old man. He passed away and the son turned up on the door step with his sister - they had decided that the properties were too much for their mother and they just wanted to sell. Both places were deteriorating .

Notification

When I asked the tenants how many weeks' notice they were required to give their landlord of their intent to vacate premises it seemed that most were generally unsure, often replying with a half answer half-question response. For example, Jane said: "Six weeks isn't it?" and then, after a bit more thought, stated: "No - its definitely three weeks' written notice", which was correct. Both Lucy and Rachel gave incorrect replies stating that a fortnights' notice was all that was required, and neither mentioned that notice was legally required to be in writing. Where an incorrect answer was given, I made sure that the correct information was given in response. In fact, most of the tenants looked for confirmation of their answer. If they were unsure or simply didn't know the answer, there was an unspoken expectation that I would provide the correct response. When I told Lucy that if she was to vacate her tenancy she would need to give her landlord three weeks' written notice (providing the landlord had not waived the right to have written notice, as some are content with verbal notification), she replied that she thought it was two weeks because landlords she had dealt with had always required two weeks' notice. I explained to Lucy that landlords can, if they wish, waive their rights (s 11 (2)) - if they were content with a fortnights' verbal notice instead of three weeks' written notice then the Act allowed for this flexibility.

However, the Act (s 11 (1)(j)) specifically states that landlords cannot waive their tenant's rights. An example would be for the landlord to state they would accept two weeks' verbal notification from the tenant and in return the landlord would give the tenant two weeks verbal notice, if s/he wanted the tenant to leave. Tenants unaware of their rights and obligations often agree to these terms, not realising that a

landlord must give 90 days written notice to a tenant to quit the tenancy without reason (s 51(1)(d)). Where a landlord intends to sell a tenanted property or is wanting either a worker or family member to reside at the tenanted address, then a 42 days' written notice period (s 51 (1)(a)) must be given to that tenant. But, where there is damage, or rental arrears of at least 21 days, then tenants can be evicted more quickly upon application from the landlord to the Tribunal for an eviction order.

Having explained this to Lucy, it became apparent that she had entered into a number of tenancies where she had agreed to a mutual two week notification period to vacate the premises. It seemed that, in the main, this arrangement was to her benefit:

> I did give one landlord a week's notice. He didn't mind because he found tenants quite quick. I have generally found most landlords, before I had kids and that,.. most of them were quite good.

Even though Lucy benefited from the shortened notification periods, should circumstances have been reversed and she had been given two weeks notice by her landlord, the Act would have found the landlord in breach of his/her obligation within the Act, regardless of Lucy's agreement. To this extent, the law ensures that the tenant's rights are always upheld and cannot be bargained or traded off.

It seems that many tenants are under the impression that they are only required to give 14 days' notice. Freeman (1989) noted that only 31 per cent of participants in his Palmerston North study gave the correct reply, compared with 40.5 per cent who wrongly answered 14 days. Another 11.5 per cent didn't know what the required notification period was. Among my respondents, only Peg answered that she didn't know the required notification period. However, unlike Freeman's study, which was based on a random sample of all tenants, participants in this study had to have at least five years' rental experience. It is therefore interesting to note that given their respective rental experiences only two tenants were able to give the correct response. This would suggest that either the tenants relied on the 'good will' of landlords or agents, as was the case with Lucy, or took little interest in the contractual affairs of their tenancy.

In summary, the five tenants selected had a firm understanding about their responsibilities to ensure that the rent be paid on time, that the premises be kept in good order and that damage or repairs were reported to the landlord. But it seemed that, in general, their knowledge regarding bonds, rents, rights of entry and termination was uncertain, if not confused. Only one of the five tenants could demonstrate with any degree of clarity and confidence a correct working knowledge of his duties, obligations and rights as a tenant.

PERCEIVED OR ACTUAL INFRINGEMENTS OF TENANT'S RIGHTS AND OBLIGATIONS

The following section focuses on tenants' accounts of incidents (whether actual or perceived accounts) where they believe their rights as tenants have either been compromised or denied. I have not attempted to ascertain whether these incidents were a matter of fact or fiction. The emphasis is that tenants in their own minds believed that their rights were breached. Some accounts were not in effect breaches of the Act, but were, in my opinion, situations where tenants were just rudely treated. Other incidents, however, were of such a serious nature that they left no doubt that if a complaint had been laid, Police involvement would have been necessary. The section concludes with a discussion of tenants' options regarding redress and whether tenants felt able or disinclined to make a formal or informal complaint and the reasoning behind their decisions.

Discrimination

The interpretation of the Act with regard to discriminatory practices (s 12(1) is fairly narrow. However, a broader interpretation can be adopted if a complainant takes their case under either the Human Rights Act 1993. I wanted to know if tenants had experienced discriminatory behaviour from a landlord or an estate agent in either the letting of a property or the termination or variation of an existing tenancy. I was cautious about using terms such as 'discrimination' or 'bias' which might be considered proactive or polemical, but, as with the previous

discussion people often recounted their experience with little or no prompting.

I asked each of the tenants if they had ever experienced a situation where they believed they had been unfairly or unjustly treated either in respect to seeking a grant of tenancy or while in an existing one. Three out of five felt they had received fair treatment in most dealings with landlords and agents. But both Mike and Jane believed they had been discriminated against; in Mike's case because he was a student and in Jane's because she was a lesbian.

Jane

Life for Jane was intended to be straight forward; travel in the summer with the horse and wagon, and winter in a rented farm house. The problem, however, was often trying to find somewhere to rent. According to Jane, rural landlords tend not to advertise in papers, instead preferring the 'bush telegraph' to circulate information. Travelling from district to district doesn't readily lend itself to the receipt of news of a given district and locals can sometimes be distrustful of new faces. "You rarely get a place through newspapers - it's usually by knowing somebody that gets you a place". However, Jane would place an advert in the local community paper furthering her chances by stating that she would be interested in doing farm work as well. Upon meeting her prospective landlord, Jane never indicated that either she or her female travelling companion were lesbians or that they were a couple. Reasons for not doing so were varied, ranging from "none of their business" to a belief that they might be denied accommodation or singled out for unwanted or undue attention:

> **I would never say I was a lesbian because chances were you wouldn't get it [rental accommodation] not unless it was blatantly obvious that you weren't heterosexual. Normally things worked out alright. It depends on how long you have been living in the area and, of course, what their prejudices are like.**

> **As a lesbian it has been touch and go although in rural areas you can get away with looking a certain way because it is expected that you're a country woman and that you'll dress a certain way, so you're not going to look like a tart going for an interview when you live in the country. You can wear your jeans, your boots and**

everything. The chances are that the landlord you are going to see is a farmer and she or he will be wearing the same gear. They actually like to recognise that sort of thing - that you're not like a towny or out of the area.

Even though Jane was not a "closet dyke", she had to balance this against the reality of needing a place to live and rural conservatism. The problem with secrets is that you cannot always keep them to yourself:

I had a particularly bad landlord, may he rot in hell, and he saw us [Jane's lover Ann] kissing in the garden. The next day was rent day and Ann had to bike three miles to pay the rent because we didn't have a car back then. When she gave him the money he gave us notice and I'm sure it is because he realised we were lesbians, but they [landlords] never say what the real reason is. He said to us that we should give someone else a chance to live in the house which sounded pathetic. But we knew we had to go and we knew we couldn't fight it.

Although Jane had no proof that their tenancy termination was due to having a landlord who was homophobic, she did not doubt that it was the reason behind him telling them they had to go. The landlord gave Jane and Ann 90 days verbal notice to quit the tenancy when in actual fact he should have placed his intentions in writing. Jane said that they found it difficult to find another place to rent, while in the meantime their relationship with their landlord deteriorated rapidly:

We had horses and dogs and that made it hard to find someplace. We didn't have a car and had to try and borrow one. We advertised, we rang up people we knew - we did everything. As it got nearer the time we had to be gone by he [the landlord] implied that we weren't trying. After that he would come by everyday and hassle us. We ended up yelling and swearing at each other.

With the landlord harassing them on a regular basis they were worried that he might break into their house when they were out and take their belongings. At that point they sought advice:

We went to the Tenants Protection people to find out what rights we had. We were scared that he would break in one day. He had been implying that he would. Soon after this he refused to take the rent... we thought that if the rent wasn't paid that he could get the bailiffs around to seize our gear, so we ended up sending it [the rent] by registered mail so that he would have to sign for it which meant he had

officially received it. We had to do this to protect ourselves.

The reality is that it is illegal for a landlord to seize tenant's goods regardless of whether it is payment for lost rent or damages, or in this case as a means of intimidation. Sections 33(1) and 33(2) expressly prohibit goods seizure and state that, regardless of the reason, to do so is an unlawful act. If found guilty, a landlord can be fined exemplary damages which is then awarded to the tenant (note s 109(4)(c) and s 137(2)). But it seems that some landlords either do not note that it is illegal to seize tenants' goods or choose to ignore the law.

Jane's problem, however, was compounded by the fact that not only were she and Ann constantly hounded by their landlord but they also became the target for intimidation and harassment by the landlord's son and his friends:

> His son would come over at night and go shooting for rabbits. Legally they are not supposed to shoot within a certain distance within the boundary of a property, but they use to put the spot light on the house and everything. It was like a war zone out there. They'd be on the back of the truck, [and] there would be about three or four of them all shooting right outside the window. Sometimes the son would come over in the weekends and start shooting again. He was so crazy I worried that he might do something to the horses ... but in the end we finally got a place.

I wanted to know if the advice they received from the tenant protection agency was in fact useful. After some deliberation, Jane thought the information was useful only to an extent. The law in her eyes was not going to act as a shield against prejudice, intimidation and domineering landlords:

> I've been in other situations where the landlord would just walk in, and my girlfriend at the time said that he was supposed to give us 24 hours' notice. He said straight away "How would you like just 12 hours' notice to get out". So it is all very well quoting the law sometimes but it doesn't help if you get thrown out of your house.

In this case, Jane chose not to follow up her "eviction" with an official complaint. She just wanted to get far away from that landlord as soon as possible. Her reasons for not laying a complaint were varied. One of

the main problems was isolation, not only because of distance but because their only forms of transportation were Ann's bicycle and the horse-drawn wagon. Occasionally they could use a friend's car but it was not something they had free and open access to. Neither were they on the phone which in the end just compounded their feeling of isolation from any form of help. Jane also had a mistrust of the judicial system believing that there was not adequate protection in the law for gays or lesbians. She was worried that in taking the matter further they were opening themselves up to further bigotry and character assassination, something they did not need when they had just been evicted.

If Jane and Ann had pressed for a complaint it is likely that the landlord and his son would have been facing criminal charges, possibly because of the illegal use of weapons next to a residence. Certainly their behaviour amounted to an unlawful act of harassment which the Act describes as "calculated and specifically directed by the landlord against the tenant" (s 38(3) and s 109(4)). In some quarters, such as the Tenancy Tribunal, Jane's 'eviction' would be described as a 'termination', but Jane asserted a claim to use the term 'eviction' to apply in circumstances where she had been asked or told to leave her home: " I consider an eviction to be a situation where you are told to leave against your choice, even if a landlord wants you to leave because they have a family member coming". The term 'eviction' is highly charged and emotive, but it captures the emotional state Jane feels when she has to move against her own volition. She believed that she would never be in a position to own her own home, which means that the house she rents is her home:

> **Wherever I live I consider it my home. It doesn't matter how long I live there, I respect it as being my home. That is why I want to have a good deal with my landlord... Where it hasn't been my choice to leave I have considered it an eviction.**

It could be argued that this is even more reason for Jane to remain silent in both word and action regarding her sexuality. For Jane, housing extends beyond the physical structure of having a roof over your head, it is a place to call home. When Jane left the afore-mentioned tenancy she managed to find a live-in job on a dairy farm as

a milker. She heard about it through word-of-mouth. "We knew someone who knew the farmer" but she said that she was "ripped off" there as well. When I asked what she did about it she replied:

> When you come from an eviction and go into another situation you don't really go for your rights, you've just found a place and you are scared that you are going to lose it.

Mike

Mike's difficulties with some landlords and agents were not unlike the experiences other students face in their quest to find accommodation during their academic year. As a student representative for two years, Mike had both first hand knowledge and personal experience of discriminatory practices against students in housing:

> The biggest problem we could see with real estate agents outside the exorbitant fee they charge, is the type of accommodation students get to see when they get to a real estate agent. Like its pretty hard to prove discrimination. I've encountered it quite a bit myself ringing up for flats saying we are students and then they [the landlord] say ..."sorry we are not interested".

The problem that some students face is essentially twofold: first, that they are often offered what is euphemistically labelled 'student accommodation' and, second, that some landlords simply do not want students for tenants. Moreover, while the beginning of the academic year is indeed a frenzied time for students, landlords have a chance to exercise a certain degree of choice regarding the type of tenant and also the terms and conditions of that tenancy.

The Housing Advice Centre has a free 24 hour listing of available rental properties. The Centre fields some calls from landlords who wish to advertise their property as student accommodation which, at best, is described as below average standard. As Mike puts it:

> Well there is a considerable variation in the standard of accommodation. I've lived in some real dives that cost just as much as some really nice places. The closer you get to the centre of the city the more likely it is going to be a scummier place for less amount of money. The further [away] you go - like Terrace End - you can get some really nice places. The other thing is that students will take just about anything.

> Those people that live on the corner _____ and _____ call their house the "Emerald Palace"; I've been inside a couple of times and it is a fairly scummy place.

The "Emerald Palace" was sited on a very busy corner of the inner city and was in its own ugly right, a landmark of sorts. From the outside the property was dishevelled and in a state of disrepair and was usually tenanted by students. For some time the landlord simply refused to maintain his property which was eventually sold and then demolished. It is fair to say that the Act doesn't legislate on issues of structural discrimination; that is where one group in society is only given access to predominantly substandard accommodation. This situation effectively highlights the 'individualistic' emphasis of the Human Rights Act. But there is general consensus from both tenant housing agencies and students themselves that what landlords describe as 'student accommodation', often translates to cheap inner-city hovels.

The second area of concern for Mike was that some landlords simply do not want students for tenants, either because the landlord is concerned they will damage the property or that they could get behind in their rent. Some landlords are not keen to have students because they prefer long-term tenants to avoid the dual problem of finding new tenants when the academic year is through as well as a possible three to four month vacancy.

As indicated on in the first section of this chapter, Mike was adamant that the law failed to ban discrimination based on the type of employment:

> Apparently they [landlords] can discriminate against students because it is our choice to be students, as opposed to gender which you have no choice about. You are not allowed to discriminate on grounds of employment, in terms of whether your unemployed, but it seems you can discriminate on grounds of the type of employment.

This assertion was supported by Chris (a housing worker):

> There are some problems with the Human Rights Act. For a start it doesn't protect people in terms of occupation. It protects them on employment status, in that you can't discriminate against somebody if they are in receipt of a benefit or if they are employed, but you can discriminate against them on their occupation and that

includes being a student.

I have had some difficulty in finding a source which states that a landlord can deny a tenancy on the basis of the applicant's type of employment (in this case for being a student). I asked both Chris and Mike to identify their source of information, and both cited the Human Rights Commission. When I contacted the Commission I was informed by an Education Officer that he thought it was unlikely that landlords were legally able to discriminate on 'type' of employment. It seems, therefore, that the only way to obtain a definitive calling on the matter would be to lodge a complaint with either the Tenancy Tribunal or the Human Rights Commission. There is little doubt amongst students and housing workers alike that some landlords do not want students as tenants. They also realise, however, that there are many landlords who actually prefer students as tenants. As one housing worker put to me, it was a case of "half a dozen of one and six of another"

The Right to Quiet Enjoyment

Sections 38(1), 38(2) and 45(1)(e) of the Act provide that the tenant's rights to peace, comfort, privacy and 'quiet enjoyment' of their rental accommodation is guaranteed, without interruption by the landlord or any agent acting on the landlord's behalf. Alston (1993:51) believes that the Act imposes a heavier sense of duty on the landlord. The Act states (s 38 (2)):

> **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.**
> and (s 38(3))
> **Contravention of subsection (2) of this section in circumstances that amount to harassment of the tenant is hereby declared to be an unlawful act.**

I asked tenants if there were occasions when they felt their privacy had been encroached upon. I was surprised to find that each tenant could name several occasions where they felt their right to privacy had been breached by either their landlord, the agent or, as in Peg's case, a member of the landlord's family:

I've got a very interfering landlord's wife. She just keeps coming over here and poking her nose in. She said that she'd come over and make part of the lawn into a garden. But I said I don't want anymore garden [Peg had a little garden outside her kitchen window which met her needs for fresh vegetables and doesn't over tax her ability to keep it maintained]. She just came round to see how I kept the house. Maggie [landlord's wife] mows the lawns here ... and she thinks she can pop round when she wants and expect a cup of coffee.

Initially Maggie's husband rang me up and asked if I'd like to return to the village to rent a place they owned - they knew I missed living here and they were looking for another tenant. I agreed to move back. Then I started to hear all these stories. They had a bloke in here before, apart from being an alcoholic they had a lot of trouble with him. No wonder with her coming down all the time. I heard that she would often turn up here, and I said that she won't do it with me.

For Peg, her landlord's family had become over familiar and breached those boundaries that would have normally have given Peg a degree of quiet enjoyment. Against Peg's resolve that it wouldn't happen to her, Maggie still managed to make a nuisance of herself by dropping in unannounced. Peg made attempts to tell Maggie to keep her distance, "You've got to say something sometimes without having to be rude of course". But Peg did not realise that she could take the matter further.

The Act clearly outlines the occasions a landlord may enter a property. A tenants right to quiet enjoyment is essentially about trying to balance the landlords rights of entry against the tenants right to privacy. What I found in the general discussion I had with each of the five tenants was that landlords, who seemed well meaning, often breached their tenant's right to quiet enjoyment by placing a greater emphasis on their own right of entry.

For Rachel, the problem was that her landlord, who had recently bought a block of flats she was moving into, was also renovating the property. Unfortunately, the landlord's exercise of his right to improve the property showed little regard to ensure his tenant's right to quiet enjoyment:

When we moved into our flat we were under the impression the work he was going to do was possibly going to take a week, maybe two weeks max. We were there for

three to four months and our privacy was still being invaded right up to the day we left with bits and pieces that needed doing. At the time it wasn't really a problem but every now and then it was. Sometimes you're in a rush and you're always conscious about little things, like making sure that there wasn't any dirty underwear lying around or that the kitchen wasn't upside down and in a state...but after all it was our home.

Unlike the others, Lucy lived near her landlord. He would often take the opportunity to tell her what she should do in regard to the upkeep of the property:

> One time he came round to do a job on the washing machine. He said to my friend "Tell Lucy she should clean up around the place. It is not very clean". I want my places to look clean and I am clean, but he was always moaning that I should open the windows to ventilate the house. It was the middle of winter and he wanted the windows thrown wide open!

It is not surprising that landlords are keen to see their properties are well-kept and are frequently concerned that this might not be happening. Jane recalled an incident where her landlord had almost sermonised on the need to keep a clean house. Apparently he had a thing about cobwebs, but upon a visit to pay the rent she found that he was not one who practised what he preached "The place was so untidy... and the cobwebs were everywhere". However, the issue of double standards aside, there is the problem of what is one person's tidy is another's untidy and can be difficult to resolve if a landlord wants to pursue the issue through the Tribunal. The important point of course, is that tenants are given adequate notice of a landlord's intention to visit and that the tenant is not then continuously put on inspection.

Due Notice

If at any time after entering into a tenancy the landlord decides to place the property onto the market for sale she/he must give written notice to the tenant. In one unfortunate incident, Mike's flat found themselves unexpectedly with a new landlord:

> I was in a flat earlier this year that didn't sign a tenancy agreement because our landlord was living in Auckland. We rang our landlord at a later date about the payment of our rent. He said that he didn't care about rent payment because he no

longer owned the property. We were quite surprised by that because we didn't know that the place was on the market. The new owners eventually showed up and told us verbally that our rent had increased and that it was backdated by two months!

We asked that the bond be swapped over and that we wanted to sign a tenancy agreement. He came in and did this big speech about how there is no such thing as a tenancy agreement, that for 90 per cent of landlords and 90 per cent of tenants it was a "gentleman's agreement."

Mike's knowledge of the Act effectively saved them money and possible eviction:

If we didn't know the Residential Tenancies Act - in fact nobody in my flat did except for me - we would have been completely stuffed. We decided that we were going to take it to the Tribunal and told him so. He backed down at the last minute. The bizarre thing about it all was this guy was a real estate agent. We thought he would have known about the Residential Tenancies Act. Maybe he didn't know or maybe he was trying to bluff us.

In this case the original landlord failed to give due notice of his intent to sell the premises. Once the property's sale goes unconditional the tenants should be given 42 days notice of termination of the tenancy. Not only had the landlord failed to notify his tenants but he had failed also to return the bond, which in this case the tenants wanted transferred to the new tenancy. The new landlord obviously intended to keep the old tenants but attempted to get them to pay a rent increase retrospectively, backdated a month from when he took possession of the property.

Mike's knowledge of the Residential Tenancies Act and his willingness to complain to the Tenancy Tribunal not only saved them time but indicated that he wasn't prepared to merely 'put up' with an obviously unacceptable situation. It is interesting to note that Mike's flatmates would have blithely complied with their new landlord's demands; they believed their new landlord must have known what he was talking about because he was an estate agent.

TENANT COPING STRATEGIES

Throughout this discussion it became apparent that in the majority of circumstances where tenants felt aggrieved there was a reluctance to either seek advice or to make a formal complaint. Tenants have the option of :-

1. Seeking advice from tenant advice agencies or the Tribunal.

2. Discussing or confronting their landlord's actions or inappropriate behaviour directly or asking for mediation assistance from tenancy services or tenant advice agencies to help resolve the problems.

3. Laying a formal complaint with either the Tenancy Tribunal, Human Rights Commission or the Race Relations Office.

4. To simply 'put up' with the problem or leave the tenancy or be evicted.

In the majority of cases the tenants were reluctant to take any formal steps to resolve the problems they had with their landlord. Peg had taken the informal step of talking to her landlord's wife "without being rude". She did not want Maggie to come around unless it was to mow the lawns or to make repairs. Unfortunately, Peg had to move. Circumstances between herself and Maggie did not improve and it got to the point where Peg thought that her only option was to move. She was totally unaware that assistance was available either through mediation, the Tribunal or tenant advice agencies.

Jane did initially seek advice from a tenant protection agency but did not lay any formal complaint. As already mentioned, Jane felt victimised. She was verbally threatened and the intimidating actions of her landlord and his family installed extreme fear. For Jane, her safety rather than her rights was paramount. She therefore made a conscious decision not to lay a formal complaint, but to move as far as possible from her landlord.

Lucy and Rachel chose the fourth option, which in each case was to simply put up with the landlord's intrusions. When I asked why they didn't take the matter further, it became apparent that they didn't want to 'rock the boat' with their landlord or to be seen to be making a mountain out of a mole-hill. Part of Rachel's reasoning was that she genuinely liked her landlord and was not wanting a confrontation. However, Rachel had to pay an extra $400 to the landlord over a dispute regarding a broken toilet seat, for which the landlord charged $150 plus a fortnights rent arrears, regardless that Rachel had proof that the rent payment had been made. But like other tenants, Rachel simply paid up and moved to start afresh rather than take the dispute to Tenancy Services.

It is significant then that Mike, who was familiar with the Residential Tenancies Act, was the only one of the interviewees that believed he knew what his rights were as a tenant, knew that his landlord was in serious breach of them and felt able to confront his landlord and, if necessary, lay a complaint with Tenancy Services. He was able to name two other organisations that he could go to for assistance and indicated that he would have no hesitation in laying a complaint with Tenancy Services if a problem arose in the future.

I also asked the other four tenants if they could name people or organisations they could go to if they felt they had been unfairly treated by their landlord and what steps, if any, they would take to address the situation. My finding was that they were generally unclear as to what their rights were, and were unable to clearly name or identify agencies or organisations they could go to for assistance. Lucy, however, had recently been sent an order to attend a Tribunal hearing to address a complaint laid by her landlord's agent. She found the proceedings daunting, demeaning and was adamant that if a problem arose she would not make a complaint to the Tribunal, preferring instead to waive any grievance she may have with her landlord.

It was interesting to note that even though none of these women had previously taken formal steps to rectify problems with their landlord, three said that they would at least seek advice from an organisation if a problem arose in the future. Jane was a little more cautious:

> It depends on my situation. Like I haven't done in the past because I have been so stressed out just wanting to get the hell out of it. I'd like to think I would but that would depend on how I am at the time.

TENANT/LANDLORD RELATIONSHIPS

A theme running through the interviews that I conducted with housing workers concerned the fear and powerlessness of tenants. I, therefore, wanted to know what the tenants themselves generally thought about the relationship between landlords and tenants and what sort of relationship they had with their current landlord. The question was open-ended, allowing respondents to interpret and answer the question how they wished.

Some, for example Lucy, mentioned that they had not really thought about the issue before but felt that, on the whole, it was not "too bad". Mike was a little more cautious, stating that two out of seven of his landlords had not been very good. For the most part, he saw the relationship between landlords and tenants as generally unequal and was wary of ending up with an unscrupulous landlord. His view of his relationship with his current landlord was to keep it as a business relationship only. Rachel, despite altercations with a number of landlords over the years, also felt that generally tenants and landlords seemed to "get on okay". She believed that people showed more respect for one another and that tenants and landlords were more aware of their rights. That said, she was nonetheless aware that:

> You will still get people out there who are still trying to rip people off. Tenants have rights and you have to live in an environment that is safe... which is totally different from how it was when I first went flatting.

It was interesting that Rachel thought tenants were now more aware of their rights. This is somewhat ironic given that she was unable to clearly identify what her responsibilities and rights were when I asked questions concerning knowledge of the Act, and given also that Rachel had a number of small altercations with previous landlords. Rachel had matured from the young woman who back in the early 1980s, only

17 and wanting freedom, went flatting with her boyfriend and two other friends. She remembered her first flatting experience with some humour. Suffice to say that there was not too much 'respect' for the landlord and his property at that time:

> It was raining one night and we were having a few drinks outside. Our front lawn was kind of like a long slide. It went down a slope to the road and of course we thought it would make a great slide if it was muddier. So we got the car up there and ripped the front lawn up, literally tore it apart. By the time the landlord got round we were covered from head to toe in mud. He gave us 20 minutes to clean ourselves up then told us we had to go.

The relationship with her current landlord seemed to be quite good:

> I found this place while I was pregnant with my second baby. I wanted a place that was three bedrooms and secure for the children. I like the people we are renting from and they liked the idea of having a young family in here. They are a young couple as well.

In an earlier discussion with Rachel I picked up a comment that suggested she would have liked to have developed a more friendly, amicable relationship with her respective landlords. Rachel recounted a situation in a previous tenancy where her 'elderly' landlord would visit them more or less on a daily basis. She liked him a lot and didn't mind his pottering around the house, even inviting him in for "a cuppa", yet she described the property as having a maggot problem and both the kitchen and bathroom were plagued with rot. In another tenancy, Rachel and her partner were disappointed that things ended badly between them and their landlord, despite the fact that he rarely gave them a day's peace for the three months they were tenants:

> I reckon we could have been good friends with the landlord if things hadn't ended the way they did. We probably would have had a beer together or something like that. But I am open to making friendships with landlords.

The notion of having and maintaining a friendship with a landlord who has failed to meet his responsibilities, and who lacked a degree of respect for his tenant's privacy, is somewhat incongruous. Friendship implies a sharing of equal ground and treatment that arises through

mutual choice not bound by external influences. The relationship between landlords and tenants, however, is in essence a financial arrangement that is regulated by statute.

Jane, on the other hand, was quite clear that the relationship she has with her landlord is strictly business. She would pay the rent and maintain the property so long as the landlord stayed away. Unlike Rachel, Jane was not interested in forming friendships with her landlord and would never consider renting from a friend as the boundaries between friendship and landlord would become blurred:

> I dug up a huge part of my back lawn and put in a vegie garden. I thought I needed a bigger garden so I just did it. I remember a friend came and visited one day. She also happens to own several properties that she lets. I showed her where I dug up the back lawn and the first thing she said to me was "Did you get permission from your landlord first."

She had an amicable relationship with her current landlord whom she classified as a liberal lawyer. Their relationship was more or less how Jane liked it. To date Jane had only meet her landlord once, when she first applied for the tenancy. He had even asked her if she wanted to buy the house, which she knew she could not afford. However, not all her relationships with her landlords have been this congenial.

How Important is the Act?

Mike was clear about the need to have legislation governing landlord/ tenant relationships:

> It is incredibly important that there is legislation. I think if you left it to the free market and people's good will, you'd have all kinds of problems. I think that it is really good that there is a Tribunal and that you don't need a lawyer to go there.

Rachel, too, was positive. From what she knew of the Act, it seemed to favour tenants. Both Peg and Lucy thought that there needed to be legislation, otherwise "They [landlords] could get away with anything". But Lucy was of the mind that the legislation favoured landlords and that she, as a tenant, had been victimised by it. Jane, although acknowledging that legislation was necessary, was none-the-less

dismayed with the 90 day termination period as she thought it undermined the other provisions granted to tenants in the rest of the Act.

Rate Payer vs Non-Rate Payer

New Zealand's housing laws are based upon the rights of ownership. Peoples actions are either enhanced or restricted depending upon whether you own or lease. Jane stated that there was a definite distinction between rate payers and non-rate payers. Even when Jane was living out of her horse-drawn wagon, she encountered problems with people who thought that she didn't have the right to live on the side of country roads simply because she didn't pay road usage charges:

> When we lived on the road in a horse drawn wagon everything we owned was in that wagon. One of the reasons we travelled in the wagon was that we didn't have to pay rent. When people knew that it was just more than a holiday trip their attitudes changed. One guy got angry at us because we didn't have a warrant of fitness and therefore had free use of the road and that our horses were grazing on the side of the road which he said we hadn't paid for.
>
> It is all about power, control and ownership of property. If you don't own anything then you are seen as contributing little and that you're powerless. When it came to battling out disputes with landlords they would try to put me in my place by saying I was just the tenant and that they paid the rates and owned the place.

The issue of power and control is an important one. For Jane the relationship between landlord and tenant is an unequal one, even though she may have an amicable relationship with her landlord, the landlord still has the right to dictate the terms and conditions of a tenancy and, when all else fails, terminate it. Jane believed that those who have ownership have power over those who do not.

TO RENT OR BUY?

The final question I asked tenants was, if given the choice, would they prefer to rent or buy. Rachel, Lucy and Mike said that they would prefer to buy and all three believed that at some stage they would own their

own home. They were much younger than Jane and Peg. Both Rachel and Mike were in paid employment and Lucy was on the domestic purposes benefit. All three have an idea of the type of house they would like to own and the kind of lifestyle they would like to live.

Rachel's dream was a spacious lake house complete with big bay windows and a master bedroom with lots of lawn and trees. Both Mike and Lucy were a little more modest in their aspirations. Lucy wanted a freehold, fenced, four bedroom house, big enough for the family dog. Mike wanted to have a home by the beach, with land to plant with trees.

But for Jane and Peg the question really wasn't if they wanted to buy or rent, They simply didn't have that choice. For Peg, renting was affordable. She was currently on a pension and, at her age, she didn't think she could afford to have her own home or be in a position to maintain it. As Peg saw it, any repairs that needed to be done for her rental home were paid for by the landlord. She simply wasn't able to meet the combined costs of mortgage, insurance and maintenance if she owned her home. Like Peg, Jane held no pretence regarding her ability to pay for a home of her own:

> There is this myth about getting your quarter acre section. That is what everybody seems to be pumping for, but it has not been a thing that I have actually strived for. My situation is that I do not have enough money to get it together to buy a place. Owning my own home is such a non issue that I don't even consider it.

Jane believed that New Zealanders were indoctrinated into thinking that you had to own your own home and that was what people should strive towards. She argued that renting had never been promoted as a viable alternative to owning your own home in New Zealand, unlike in some European countries:

> I actually don't mind people who own a lot of houses and actually live off the rents - if they maintain them and the rents are reasonable. But we don't have long-term rental situations here. In Britain they have generations of people being raised in houses, rented houses, which we in New Zealand don't have because they [Housing New Zealand] sell them off for profit and don't replace them.

Jane said that because the dream was to own your own home, tenants

saw renting as a means to an end; where you save till you can buy your own home. As a consequence many tenants become indifferent about the homes they rent:

> A lot of people I meet who are tenants never plant anything or never put money into planting trees or flowers or anything like that. And then, when they buy a house they put all this money into shrubs et cetera. It really annoys me. Some other tenant will come in [to a property you rent and beautify] and get the benefit of that. It doesn't matter if you plant a tree and you're not going to be there.

Jane believed in putting something of yourself back into the place you live, to make it more of a home. Peg, too, had always made attempts to beautify her home and garden, often developing a vegetable and flower garden and planting small fruit trees, always with the knowledge that she would more than likely have to move on. Overall, the outlook of both women was significantly different from that of their three urban counterparts, fostered in part by the need for, and enjoyment of, living off the land, but also by the realisation that they would always live under somebody else's roof. There was a need to make that place your home.

However, what was possible for Peg and Jane living in the country was not necessarily desirable or even possible for tenants living in the city. Infill, high density housing does not lend itself easily to developing such things as gardens. Landlords, in the main, require that tenants seek permission if they wish to plant a garden or change an existing one. This applies also indoors, as tenants are usually required to seek approval to place pictures or posters on the walls.

SUMMARY

The objectives of this chapter (and this thesis) were to find out: (a) tenants' awareness of the Residential Tenancies Act and other anti-discrimination law; (b) their knowledge of their rights and obligations within tenancy law; (c) what tenants perceived as infringements of their tenancy rights; and (d) their attitudes and views regarding tenant/ landlord relationships and their future housing prospects.

From the interviews, it was clear that four of the five tenants were not (initially) able to name the Residential Tenancies Act 1986 or other anti-discrimination legislation (Human Rights Act 1993), although three of these four tenants acknowledged they knew legislation existed.

In discussing tenants' awareness of the Residential Tenancies Act, four out of the five tenants indicated they were either uncertain or did not know their basic rights or obligations in regard to: (a) the maximum number of weeks rent and bond a landlord was legally entitled to; (b) the occasions a landlord had lawful right of entry to a rented property and the required notice periods tenants were duly entitled to; (c) the conditions and due process required for either tenant or landlord to give notice of their intention to quit an existing tenancy; or (d) know where to go for additional tenancy information or advice. All five tenants regarded their basic obligations as being to pay the rent on time and notify the landlord of damages or repairs.

The interview data also indicated that although the majority of tenants may not have known their rights and obligations (as noted above), all five tenants could name occasions they considered their rights were infringed. Two of the five tenants felt they had either been denied housing or evicted from an existing tenancy on the basis of their employment or sexual orientation. All five tenants identified occasions where: (a) they had not received the required notice indicating their landlord's intent to end the tenancy; (b) their right to 'quiet enjoyment' was breached by landlords entering at will and without reason or notice of intention to do so; and (c) where repairs were not undertaken by their landlord in a timely fashion.

It is significant to note that only one tenant out of the five felt able to lay a formal complaint. This tenant was the only participant who demonstrated an obvious awareness and understanding of the Residential Tenancies Act. Three tenants felt it was easier to 'put up' with landlord infringements rather than risk further harassment or eviction, indicating that they would simply 'move on' if the circumstances became intolerable.

In regard to the fourth objective, three tenants considered the relationship between themselves and their landlord as a business relationship only. However, all five tenants were clear that tenancy law was needed to govern the relationship between tenants and landlords, although two tenants considered that the Residential Tenancies Act actually favoured landlords.

An additional finding indicated that the two rural tenants felt they were more vulnerable to the whims of their landlord, given that they were rarely required to provide a bond. Although pleased that they did not have to pay extra money as a bond, they nonetheless equated the taking of a bond as an indicator that the landlord was formalising the tenancy contract. In this sense, the bond indicated to these tenants that a landlord would be less likely to act on a 'whim' and evict them.

These findings, in relation to the overall objectives of this thesis, imply that those tenants with a reasonable and firm understanding of the Residential Tenancies Act are more likely to assert their rights as tenants and meet their obligations more readily than tenants who are less knowledgeable. It is also significant that the four tenants who appeared to be less knowledgeable of the Act, and who felt less able to formalise a complaint, were women.

CHAPTER 6

HOUSING OFFICIALS

This chapter primarily discusses two interviews I conducted with a Tenancy Mediator and a Tenancy Tribunal Adjudicator. The objective of these interviews was to give insights into their experiences and perspectives in regard to their respective roles, and their views about the relationship between tenants and the law and tenants and landlords. These interviews also provided the opportunity to forward and discuss a number of criticisms voiced by tenants, and housing workers in particular, with respect to some of the practices of both Tenancy Services and the Tenancy Tribunal.

HOUSING OFFICIALS

Bruce had worked in the area of conflict resolution and mediation for many years. He moved to Palmerston North in recent years to work as a full-time tenancy mediator. Prior to this Bruce had directed and managed a voluntary social service agency. Bruce is of European descent and in the 40s age group.

Ruth had considerable experience as a family counsellor which she claimed had assisted her in her role as tenancy adjudicator. Unlike other Tenancy Adjudicators, Ruth was not a lawyer nor did she hold a law degree. However, she had gained an in depth knowledge of New Zealand's legal system from other work involvements. Ruth was in her 50s and European.

THE ROLE OF MEDIATION AND ADJUDICATION

Bruce's role as a mediator involves dispute resolution. The majority of disputes Bruce mediates are often brought to mediation by the landlord against the tenant. When an application for mediation has been lodged, Bruce sends out a letter with a time and date for mediation. Attached is an explanatory note of what mediation is and what the process will be. The way he deals with disputes between tenants and landlords is to get both parties together where they can face one another, and at some point in the process, assist them to come to some resolution. He contends that this style of mediation is not the way all mediators see their role but it is one that he is philosophically comfortable with, in that the parties involved arrive at their own resolution with minimal interference by the mediator. The other method of mediation, which Bruce is unhappy about, is what he terms "shuttle mediation":

> One method is by a computer generated letter inviting people to participate in mediation and to respond to us within five days of the invitation for mediation. This method tends to lead to shuttle mediation where the mediator is ringing one party up and then the other . I'm concerned that the mediator is left between interpreting what one party is saying and then reflecting it to another.

For Bruce, the face-to-face method has a number of positive effects. First, it gives people a chance to "front up" to an issue, while others may go back to the other party and try and resolve the problem before it even gets to mediation. But he contends that there is always a percentage that simply do not turn up; some because they are intimidated by the judicial system, others because they do not understand the process and another group who just simply fail to "front up" or recognise their responsibility.

When the other party fails to turn up, Bruce negotiates with the applicant the next step in the process. The options range from further attempts at mediation, follow-up calls or a home visit by either the applicant or the mediator. A final option would be for the the case to be referred to the Tribunal for adjudication:

> The philosophical point for me is that the applicant is in control of the process and the application, rather than a bureaucrat simply making arbitrary decisions. I am

there to help the parties come to an agreement, not to decide who is right and who is wrong.

The role of deciding who is right or wrong falls to the Tenancy Adjudicator, who is separated by distance and role from the mediation service of Tenancy Services and is based at the District Court House. For Ruth, a Tenancy Adjudicator, the Act is set up in such a way that people would ideally solve their problems by mediation. There are a number of barriers to this, including the sheer demand for the service, and many tenants simply do not reply to an invitation for mediation. Ruth contends that it is probably the tenant "once again hoping it will all go away". Another block she claims, is a matter of competency regarding the abilities of mediation officers:

The mediators, I think probably around the country but certainly here, are over worked. They have some difficulties in competence which I think is fair to say, but there are enormous problems in terms of just too much work.

Although it was not a point that Ruth elaborated on, she did indicate later in the discussion that she felt tenants were not receiving correct advice from mediators, particularly in regard to tenants' claims for bond repayment.

Ruth's role as an adjudicator is to give a hearing to both the applicant and the other party, (usually the tenant), and having heard all the evidence to write and orally present a judgement. She stated that even though adjudicators are meant to deliver an 'on the spot decision', she may deliberate on complicated cases preferring to reserve judgement for a later date. Like the mediators, Ruth found that her workload had also increased. Where a case has particularly messy evidence, or claims need to be checked, she simply cannot take the extra time needed. There may be another three or four cases still waiting to be heard in a day that originally comprised 16 to 18 cases:

In the end the whole point of this is that a hearing should be available quickly. The Act actually uses the word expeditious, ...[and]... there are quality measures that are meant to be in place - of so many days after an application is filed a hearing should be set and that sort of thing . We try to keep to those, but there are certainly problems.

Reasons for Increased Workloads

Bruce implied that one of the problems for the increased workload had to do with the way Tenancy Services is structured. One of his concerns was that as advice givers to both landlord and tenant with regard to the Residential Tenancies Act 1986, they could in effect be setting disputes up:

> If one were to take a more cynical view, it could be said that we set up the dispute, in that one party rings and we give information to that person who then acts on that information by putting an application in. Very often the other party will also ring in. So we actually set up the dispute.

As a result, Bruce believed that the Service needs to be restructured, whereby the advice side of the business was centralised through an 0800 service. This, he maintained, would ensure that the mediation side of the Service was not involved with setting disputes up and provided a purer mediation service.

Ruth, however, contended that she was seeing more cases lodged by Housing New Zealand regarding state tenants, adding that Housing New Zealand tenants were far more stressed, and were having problems meeting market rents. For Ruth this was indicative of a descent into poverty which she traced back to the mid 1980s.

Another reason why there seemed to be an increase in the workload was again related to the problem of fixed-term tenancies. According to Bruce, Palmerston North had the highest concentration of fixed-term tenancies in New Zealand. A number of applications are lodged by student tenants trying to break their contracts at the end of their academic year. In addition, landlords lodge applications because their tenants breached their fixed-term tenancy contract. When I asked Bruce why Palmerston North had such a high concentration of fixed-term tenancies, his response was the same as that of the housing workers - namely, the establishment of a particular rental (accommodation broker) agency in town:

> This has been the sole practice of one agency in town. They have sold it [fixed-term tenancies] to landlords, and landlords have bought into it. ...tenants would panic because this agency, and the property investors had a role to play, had cornered the market... but with that agency's management now having gone that situation may well change.

Ruth, too, noted the increase of cases concerning fixed-term tenancies, mentioning that they got "quite a rush of cases" towards the end of the academic year. She recalled that when the Act was first introduced, residential rentals were difficult to get. Tenants were very glad to have a fixed-term tenancy because it meant they definitely had somewhere to live for that year. But she noted that this had changed. Landlords now found it relatively difficult to get tenants, so much so that landlords now want a fixed-term tenancy to secure a return on their investment:

> There are some practices which are perfectly legal which tenants regard as unkind, for instance the fixed-term tenancy, but that is the way it is. Landlords are not, in my experience, being unduly harsh about these things. On the whole, they are a reasonable lot.

THREE CONCERNS

The following discussion considers three main concerns raised by housing workers and tenants with regard to the way the Tribunal operates and adjudicates. These concerns were taken up with Bruce (a mediator) and Ruth (an adjudicator) in my interviews with them.

Inconsistent Tribunal Rulings

Lucy, one of the tenants I interviewed, had found a house through the services of an accommodation broker. She had paid her registration fee and signed the fixed-term tenancy. A matter of days later there was a change in Lucy's personal circumstances which saw her attempt to end her contract with the accommodation broker. According to Lucy, she informed the agency that she could no longer continue the tenancy and would find replacement tenants which they agreed to. Lucy placed an advertisement with the local paper the following day and received a number of calls from interested tenants. These tenants were referred

back to the agency where, Lucy later found out, they were being charged the $90 registration fee. Other interested tenants had already subscribed to this agency but it took another four working days to sign one of them up because, according to Lucy, the agency was unnecessarily "dithering" around. The end result was that the agency refused to release Lucy's bond, claiming that she owed them $150 as a reletting fee and $55 for four days rent - a total of $205 for a house she hadn't lived in. She decided to give mediation a miss, opting instead for what she thought would be a swift and hopefully successful hearing.

Six weeks later Lucy's case was adjudicated and the Tribunal found in her favour. The bond was to be released and returned to Lucy. The fee of $150 was considered unreasonable and therefore dismissed, but Lucy was ordered to pay an outstanding sum of $28 to the agent for rent that was fairly his - which she paid. The bond was not released. Instead the agency lodged for, and was successful in obtaining, a rehearing which was heard three months later. The Tribunal overturned the original adjudication indicating that the agent had a legal entitlement to the reletting fee and the outstanding sum in rent:

> I just felt as if I had been really ripped off, both by _____ [the agent] and by the Tribunal. The first adjudicator ruled in our favour in every way and the second adjudicator had a totally different view. The second adjudicator made us feel like we had a cheek for actually being there... I had always believed that the system was fair.

And indeed it does seem that the adjudicator believed the case should have been dealt with at the level of mediation. The adjudicator on the second occasion wrote of the ruling "...refusal to enter into mediation was unfortunate but no award for costs will be made on this occasion". The Act states that the Tribunal has power to award costs against any party where the Tribunal believes that party has, without reasonable excuse, refused to have the dispute settled before a Tenancy Mediator. The situation is not without some degree of paradox, given that the first adjudication not only found in favour of the tenant, but indicated that the Tribunal had "major reservations about the practice of fixed-term tenancies".

I asked Bruce if he thought the Tribunal worked effectively. His response was thoughtful and measured:

> One of the difficulties with the Tribunal is that it revolves very much around local practices. There are a lot of inconsistencies between the various areas... In talking to colleagues in other areas, a lot of the practices in Palmerston North are not consistent to what happens elsewhere.

When I asked him if he thought Palmerston North was atypical, he stated, that from his enquiries, it seemed to be that way, contending that until there was a change of personalities, the situation in Palmerston North was likely to stay the way it was.

There are, I believe, two main reasons for inconsistency in the adjudication process. First, section 85 of the Act allows adjudicators to exercise a degree of personal judgment and discretion, which does not tie adjudicators to the strict letter of the law. A second possible reason is that there is a mix of adjudicators who are practising lawyers and lay people. Although they meet on matters of interest, there seems little in the way of alternatives outside the appeal process of the High Court to bring a degree of consistency to the decisions.

Court Room Protocol

Another issued raised by housing workers was that tenants were often intimidated by the court proceedings and sometimes were unnecessarily "ripped into" by the adjudicator. In Lucy's case, she noted that she had seen two different faces to the Tribunal:

> The first adjudicator made you feel immediately comfortable, saying "if you are not sure about what I am saying just say so and I'll explain". The second adjudicator came out with all this legal jargon. When I told _____ [second adjudicator] what the reason for not being able to continue with the tenancy was, I was told that it didn't constitute an emergency. I was told that: "death is an emergency". The adjudicator was really terrible. As soon as I walked into that court room, and heard _____ [second adjudicator] manner, I knew I was fighting a loosing battle.

I asked Ruth whether she thought the Tribunal could operate from outside the court rooms. She stressed the importance of "formality"

and "proper behaviour" to be able to arrive at the truth. For Ruth, the court environment provided the appropriate forum for reaching matters concerned with truth:

> The Tribunal is meant to be informal and it is. I believe that if you take the law seriously, the rule of law, there is a point beyond which informality is a hindrance to everybody. One of these is in the truth. I think it is important to have a degree of formality and a degree of an expectation of proper behaviour to get the truth.

Ruth argued that it was much easier to fudge the truth if you were sitting in an informal gathering around a table, adding that the time for mediation had passed. Her job was quite clear; to hear the facts and make a decision. She maintained that if a person was to live with the result should they loose, they must feel that they have had a proper hearing:

> The person who has to pay a large sum of money, needs to know that it was properly done and with a degree of formality. An expectation of a standard of behaviour is part of accepting that the result has been reached. All these things are much more important than talking about user friendly environments. Informality, if it is over done, can be quite counter-productive to taking the decision and the proceedings seriously.

When I put the same question to Bruce he said he could definitely see the Tribunal working from outside the court house. The relationship between the Ministry of Housing and the Justice Department was a tenuous one. He had heard a lot of murmurings from within the justice system at the local level that they didn't want the Tenancy Tribunal in there. He answered in the affirmative when I asked if he thought there was a degree of snobbery involved, stating that the High Court sees their work as more important. Ruth, too, was aware that the Tribunal was often seen as unimportant by those in the High Court, but she referred back to the people involved, saying that for them it was "extremely personal and extremely important" because it was their homes that were at stake.

Bruce thought that tenants in particular were intimidated by the court and the connotations associated with it:

> I think having the Tribunal at the court house increases the formality... and probably fear for those tenants unfamiliar with the process.

Where tenants are required to attend a hearing, he encourages them to prepare their case by putting in written case notes. He said that at least they could hand them over to the adjudicator if they got tongue tied.

An Instrument of Landlord Discontent

A third claim, heralded by housing workers, was that both Tenancy Services and the Tribunal in effect serve landlords, given that the majority of cases brought to mediation and the Tribunal are brought by landlords. For both Ruth and Bruce the bulk of these landlord claims were made for rent arrears, damages, and evictions. Ruth thought that the landlord/tenant mix as applicants was about even, if these sources of mediation cases were excluded.

Ruth noted that there are two important aspects within the Act that assist her job as adjudicator. The first is the tight wording around the matter of rent arrears. The Act states that if the rent is at least 21 days in arrears at the time the application is filed, then the landlord can file for eviction. The argument that Ruth has adopted is that the tenant could go up to five or six o'clock at night and pay the rent - which according to Ruth is on the 21st day. The Act says that there is no other circumstance where you can refuse to terminate. However, should a person be one day over the 21 days then she says she must terminate the tenancy. But she gives the tenants as long as legally possible to "grab the thing back from the brink".

The other part of the Act which Ruth is "grateful" for is section 85, which has already been mentioned. Ruth said that she did not find herself using this clause very often, adding that in some instances the application of a strict legal interpretation of the law would be unfair.

TENANT AWARENESS OF ACT

For both Bruce and Ruth it was a concern that tenants were not more

aware of their rights and obligations. Landlords, on the other hand, had an investment to protect and usually had a better knowledge of the law because they tended to have better access to information through organisations such as the Property Investors Association and real estate agents. From Ruth's experience, tenants had a lesser knowledge of the Act and were therefore "at a disadvantage":

> Oh yes, but this is the way of the world. People who can benefit from it most and have the capability to understand it, are more likely to be in power.

Ruth also claimed that there were a number of landlords who were ignorant with regard to the law; it was such people who failed to lodge bonds. She thought such ignorance of the law ten years after its implementation was inexcusable. From her viewpoint there was a need for more education of both landlords and tenants, but recognised that the staffing levels of Tenancy Services would not easily facilitate such education programmes:

> It is so clear that starting about now [end of year] it would be very sensible to warn students about getting into fixed-term tenancies. If they have no choice then they must really understand what they are doing.

I raised this issue with Bruce. He was also concerned that there needed to be educative programmes in schools, polytechnics and universities. But he added that education also created an expectation that Tenancy Services and the Tribunal would be able to provide prompt advice, mediation and adjudication of problems. He, like Ruth, thought that there were some serious problems regarding their ability to meet the possible increase in service demand.

THE TENANT/LANDLORD PACT: HOUSING OFFICIAL'S PERSPECTIVES

As in the interviews with housing workers and tenants I asked Bruce and Ruth, what their perceptions of landlord/ tenant relationships were? Their responses were mixed.

Bruce indicated that it was important to realise that his job was specifically to deal with disputes and that anything he was likely to say was biased. When I asked him if he preferred not to comment, he indicated that there were a large number of tenancies out there where tenants are able to work things out with their landlord and vice versa, and that fundamentally this was what was supposed to happen. Tenants and landlords, he stated, both need each other to survive. In an earlier discussion, however, Bruce indicated that the relationship was an unequal one:

> One of the difficulties between landlord and tenant is of a power imbalance. There is a fundamental power imbalance between landlord and tenant. Landlords are in a more powerful position because they have money, knowledge and the ability to manipulate, intimidate or deceive the other party....

Ruth also agreed that the majority of relationships between tenants and landlords were okay. She agreed that landlords and tenants needed each other. If they didn't get on then they were both losers. It was in everyone's interest that, at a minimum, they maintain a state where they are not at loggerheads with each other. Overall, her feeling was that the relationship worked reasonably well.

In a final comment, Ruth revealed that her job sometimes gave her serious concern when she reflected on disputes where the landlord/ tenant relationship had broken down and appeared before her for adjudication"

> The only thing about the Tribunal that I take very seriously, and one that sometimes distresses me, is that I will sit for a whole day ending people's tenancies. And I know that, at the end of that, for some of them, their children have yet another move ahead of them, that they are going to have to move schools - everything. And I know from all my previous work that this is bad for them and that there is nothing I can do about it.
>
> I don't lose any sleep about it, but I know that this is what I am doing and I hope that for the tenants that come, they understand I know that this is in fact a pretty terrible thing that is going to happen to them. I am very grateful to the landlords that have a willingness to try and to help them, even at expense to themselves. The job certainly has its moments.

DISCRIMINATION

I asked both Bruce and Ruth if they saw many cases of discrimination that tenants had brought against landlords. It appeared that both occasionally found themselves dealing with discrimination, particularly against tenants with children. Bruce described one case where the tenant had been evicted because, according to her landlord, she had breached the contract of her tenancy when she gave birth to her first child. The tenancy she had initially signed said only one person could live there. The landlord also said the property was not suitable for children.

Ruth reported that she had several applications in front of her, but applications by tenants generally come to nothing because the tenant often failed to show. She acknowledged that they may well have been scared, but also noted that she thought there was pressure applied (from either tenant agencies or the Tenancy Services) for them to make a complaint when they really did not want to. Discrimination cases that did eventuate, Ruth said, were usually because the landlord had been unguarded with comments or actions:

> The cases that I have had, have been where the landlord has been silly in that they haven't watched what they are saying, and have gone about dealing with the problem in a clumsy or direct way.

One case that Ruth cited was a landlord evicting a tenant because her young children were too noisy and upset other residents in the flats. Ruth seemed to think that the tenant who complained was a bit of a "queen-bee" because she had lived in those flats for a number of years. She also thought that there were racial overtones as well, but that it was very well-disguised. However, the landlord had in fact evicted his tenant illegally:

> The landlord who was an agent, instead of trying to deal with the problem fell over on his face trying to placate this complaining tenant. What the landlord should have done was to have brought an application against the mother [the tenant], that her family was disturbing the peace and quiet enjoyment of the neighbours and left if to the adjudicator to decide whether in fact they were. If children are out of control and disturbing the peace and quiet enjoyment then there are grounds for doing

> something about it. The landlord didn't take one of those steps and I fined him $500, which is very low, for discriminating against her.

The issue of discrimination for Ruth was extraordinarily difficult to deal with. She said that, although they have very few cases, they are a real problem. Bruce acknowledged that explicit discrimination does occur but that it would be very difficult to prove in the Tribunal. When I told Ruth that a tenant I interviewed said she was unlikely to bring a case of discrimination because it was too difficult to prove, Ruth agreed:

> How do you prove it... it has to be proven because it is a serious offence. You simply cannot legislate against people's choices.

Looking at it from the perspective of an adjudicator, Ruth thought that there was very little discrimination:

> Given the sorts of people that appear as tenants it is sad, their lives are just awful. Quite clearly they have no money, they have lost hope, they are dirty, they have got few resources - they haven't got anything and they don't expect to get jobs, yet they have housing. Now if there was a lot of discrimination out there they wouldn't be in front of me for not having paid their rent.

I asked Ruth and Bruce if they thought the Human Rights Commission and Race Relations Office would deal with cases of discrimination differently from the Tenancy Tribunal. Bruce did not think there would be much of a difference. But Ruth thought the Human Rights Commission and the Race Relations Office would treat cases differently, because they administered different laws. Ruth said that they applied the Tenancy Tribunal law as best they could, but she suspected that the Human Rights Commission was likely to make more of a fuss over a case. Her feeling was that a case, if it were to go through the Commission, would be further prolonged, that it was likely to be a lot more expensive and that it would probably be more traumatic for all concerned:

> I think you would have to be very determined to bring a discrimination case in either jurisdiction. I suspect you would have to be a lot more determined and much more supported to do it in the Human Rights arena - but I may be doing them an injustice.

IS THE LAW FAIR?

Bruce believed that the system set up was a good one, indicating that free access to the Tribunal and Tenancy services was one of the better parts of the Act. He was aware that there were points to be brushed up on, but that the structure defined the rules and the administration of those rules. Even though Bruce contended that tenants would probably feel the Act favoured landlords, and that landlords would see things vice versa, he basically thought the the Act was reasonably fair:

> I believe the system that we have here is a good one. I believe it is geared towards getting parties together to resolve their own problems. I think the less intervention in people's lives the better. And finally I believe in the process of mediation.

For Ruth the answer to this question had several considerations. She stated that the Act has a number of inequalities that tend to favour tenants rather than landlords. Ruth argued, that the Act was a product of its time. As an example, she said that the first duty of any tenant was to pay the rent, but indicated that there were no penalties for failing to do so (other than possible eviction if the arrears extend beyond 21 days). Tenants were simply ordered to pay the outstanding sum of rent. She was unable to award costs with regard to interest or compensation, but indicated that a landlord may have to pay a penalty rate on a mortgage if he/she is dependent upon the tenants keeping up with rent payments. Ruth also mentioned that there were a number of unlawful acts named within the Act that were directed at landlords, but there was only one unlawful act that was specific to tenants. She believed that the Act was administered fairly, making particular reference to Section 85, and that on the whole there were very few appeals on the basis of an unfair decision:

> I think the fairness is a matter of question long before it gets to us. Is it fair to live in a place six weeks without paying anything. Is it fair to expect a tenant to live in a place that needs guttering? Fairness is out there and we as adjudicators try to tidy it up.

SUMMARY

The objectives of the interviews, as outlined at the beginning of this chapter, were to gain an insight into the experiences and views of a Tenancy Mediator and a Tenancy Tribunal Adjudicator with regard to: (a) their experience and perspectives in regard to their respective roles; and (b) their perspectives on the relationship between tenants and the laws, and tenants and landlords. Included within these objectives were topics and issues such as fixed-term tenancies and the fee-paying listing agency, and whether they each considered the Residential Tenancies Act to be fair. A final objective was to discuss criticisms made by tenants and housing workers with regard to some of the practices of both Tenancy Services and the Tenancy Tribunal.

Both agreed that the tenants they saw in the course of their duties generally did not display a reasonable awareness or knowledge of tenancy law, unlike most landlords that appeared before them. Cases of discrimination brought by the tenant to the Tenancy Tribunal were more often than not abandoned because the tenant failed to show. The Tenancy Mediator acknowledged that explicit cases of discrimination occurred, and although few in number, were problematic to prove. Both agreed that educative programmes are a key factor in raising tenant awareness and understanding of their rights and responsibilities contained within the Residential Tenancies Act. They both felt, however, that the problem was that Tenancy Services was inadequately resourced for undertaking effective educational programmes.

There was no consistent viewpoint between the two housing officials with regard to tenant/landlord relationships. Although they both agreed that the majority of tenant/landlord relationships were reasonable, the mediator claimed there was a fundamental power imbalance between tenants and landlords. Landlords, he contended, were in a powerful position because they have money and knowledge, and the ability to intimidate tenants.

With regard to fixed-term tenancies, the two housing officials indicated that they were seeing more cases, usually brought by student tenants trying to find a legal way out of their contract. One official confirmed

claims that Palmerston North had the highest concentration of such tenancies and that this had reflected the activity of one particular listing agency. The other made the point that the practice of contracting tenancies out on a fixed-term was perfectly legal.

With respect to the issue of whether or not the Residential Tenancies Act was fair legislation, the two housing officials were not in agreement. While one felt the Act was structurally sound and reasonably fair, the other thought a number of inequalities existed that favoured tenants, but claimed that the Act itself was administered fairly.

The mediator acknowledged that he and his colleagues were concerned with the inconsistency of adjudication rulings passed by local adjudicators, indicating that the difficulties revolved around the practices of individuals in the Tenancy Tribunal. If this is the case, the implication can be drawn that significant differences of interpretation regarding the Residential Tenancies Act also exist between the local offices of Tenancy Services and the Tenancy Tribunal. The issue then becomes one of competency; not whether a case brought by or against tenants would be ruled differently if adjudicated in another area, but whether a case brought to the local Tenancy Services for mediation or to the local Tenancy Tribunal for adjudication would be subject to different interpretations by different officials.

In relation to court room officiousness, the two housing officials again differed in their viewpoints. One stressed the importance of formality and proper behaviour as a means of obtaining the truth, and ensuring that each party felt that they had received due process. The other, however, noted that many tenants were unprepared and ill-at-ease in the court room environment, adding that he could see the process of adjudication working outside of the Court House situation.

As for the claim that Tenancy Services and the Tenancy Tribunal only served the interests of landlords, both officials argued that the bulk of cases were brought by landlords against tenants for rent arrears and property damage. If these cases were taken out of the equation then the number of cases brought by tenants and landlords would even out.

To sum up, these findings reinforce the finding that tenants lack adequate knowledge of tenancy and anti-discrimination law. This feature, combined with inconsistencies in the interpretation of tenancy law by local housing officials, diminishes a tenant's ability: (a) to successfully bring a case to Tenancy Services for mediation or the Tenancy Tribunal for adjudication; and (b) to be adequately prepared to defend themselves, particularly in a Tenancy Tribunal hearing. That said, it appears also that a significant number of tenants who appear before a mediator or adjudicator, although aware of their basic obligations, have damaged property or failed to pay rent.

CHAPTER 7

CONCLUSION

The objectives of this study, as outlined in Chapter 1, were: (a) to explore the extent to which tenants are aware of residential tenancy law and anti-discriminatory legislation as it pertains to rental accommodation; (b) to determine the level of knowledge that tenants actually have of the Residential Tenancies Act 1986; (c) to identify and examine incidents where tenants believed their rights had been infringed; and (d) to document tenants' experiences, attitudes and views regarding the tenant/landlord relationship, renting, and their future housing prospects. A total of ten face-to-face, semi-structured interviews were conducted; five with tenants, three with housing workers from Palmerston North tenant agencies, and two with Palmerston North officials representing the Tenancy Tribunal and Tenancy Services.

FINDINGS IN RELATION TO OBJECTIVES

Overall, the findings of the study indicate that four out of the five tenants interviewed lacked sufficient knowledge about their rights. They generally did not know where to seek assistance, and showed a reluctance to pursue formal means of resolving problems with their landlord, preferring instead to either move or to simply put up with the problem. In essence, these tenants did not want to "rock the boat" for fear of eviction or harassment, claiming that the problem(s) experienced with their landlord would be difficult to prove and might be perceived as being insignificant.

Awareness of Tenancy and Anti-Discrimination Legislation

The responses of the tenants interviewed ranged from one end of the continuum to the other. One tenant could clearly name the appropriate tenancy and anti-discrimination laws, while another was not aware that tenancy and anti-discrimination legislation existed, and was surprised to learn that an administrative body had been established to resolve disputes between tenants and landlords. The situation that prevailed amongst the other three tenants was a firm belief that legislation existed but they were not able to name this legislation. When I asked them if they had heard of the Residential Tenancies Act and/or the Human Rights Act, all three indicated that they had.

Tenants' Knowledge of Tenancy Law

A series of questions were put to the five tenants regarding their knowledge of tenancy law. Although some were not able to name specific tenancy law, I made the assumption that they were likely, after having at least five years rental experience, to have a basic working knowledge of their rights and obligations.

Bonds

With one exception (Mark) the tenants interviewed were unclear about the maximum number of weeks rent that a landlord could legally ask for as bond. Two tenants gave incorrect answers and two answered that they did not know. It is important to note that the latter two lived in rural environments. They indicated that they had rarely been asked by their landlords to make bond payments. One tenant (Jane) commented:

> **In the country areas that I have lived, I didn't have to pay bond or rent in advance. I think that they [landlords] didn't have an idea about their responsibilities as a landlord. They would do things on a whim, they would tenant a farm house on the whim, but could get rid of you on a whim too.**

The three tenants who lived in Palmerston North had, in the main, been required to pay a bond to their landlord whenever they moved into a new flat.

Rents

Three of the five tenants correctly identified two weeks' rent as the maximum that a landlord could ask for rent in advance. Given that most tenancy agreements require that rents be paid a fortnight in advance, a high level of tenant awareness and knowledge of this aspect could reasonably be expected. As for rent increases, three tenants did not know how often their landlord could legally increase the rent, nor that the landlord had to give them two months' written notice of his or her intent to raise the rent.

Right of Entry

Although a tenant has full possession of her/his rental property, there are circumstances under which the landlord may rightfully enter the property. Again it seemed that four of the five tenants interviewed had difficulty identifying the correct circumstances under which their landlord could legally enter the property. All of them knew that their landlord could enter to undertake repairs, but four did not know that their landlord had to give them 48 hours' notice. Similarly, four were unable to say how often a landlord was entitled to inspect the property, even though they had undergone house inspections before. Only one of the five tenants was able to specify the correct notice period a landlord was required to give if he/she wished to inspect the property.

Notification

Only two tenants could correctly state that a tenant was required to give three weeks notice of intent to quit a tenancy. Another tenant didn't know the answer, while the others incorrectly answered two weeks, possibly confusing the timeframe with the fortnightly payment of rents in advance. One tenant indicated that she thought the notice period was 14 days, given her previous experience of agreements with landlords where they both agreed to give each other two weeks notice if one or the other party wished to end the tenancy. In this scenario, however, the landlord would be in breach of the Residential Tenancies Act. Again, three of the five tenants did not know that their landlord had to give them either 42 days' notice (if the house was for sale or a

family member wished to rent the premises) or 90 days notice (if the landlord simply wanted to end the tenancy).

Obligations

Each tenant clearly saw their responsibility to pay the rent on time, to keep the property reasonably clean and tidy, and to immediately notify the landlord of damage or repairs. Overall, it seemed that the tenants had a good idea of what their responsibilities as tenants were, but with one exception were generally deficient in their knowledge regarding bonds, rents, rights of entry, and the notification periods to quit a tenancy. These findings also suggest that the tenants may well have relied upon their landlord or agent for tenancy information, regardless of whether or not this information was correct.

Perceived or Actual Infringement of Tenants' Rights

All five tenants could identify several different cases where they believed their rights had been infringed by either their landlord or an agent. Most had experienced a breach of the right to peace, comfort, privacy and quiet enjoyment, where the landlord would turn up without prior notice to carry out repairs or to inspect the property. Some of the tenants had simply had over-familiar landlords, while others were physically or verbally threatened by aggressive or dominating landlords.

Two tenants thought they had been actively discriminated against. One indicated that she had been discriminated against because she was a lesbian, while the other had experienced problems in obtaining a flat because he was a student.

Four of the five tenants were reluctant to make a formal complaint to resolve the problems they had with their landlords. Some attempted to discuss the problem with their landlord, while the others 'put up' with their landlord's intrusions or left the tenancy to find other accommodation. Most of the tenants indicated that they did not want to "rock the boat" or to be seen to make an issue out of something that might be considered insignificant. Only one felt comfortable taking

formal steps to resolve a problem with a landlord. Another tenant had formally laid a complaint, but was ruled against in the final judgment, which left her angry and disbelieving of the justice of the disputes process. She indicated that she would never take a complaint to the Tribunal again.

Tenant Views, Perceptions and Impressions

All five tenants expressed support for legislation that governed the relationship between tenants and landlords. While they felt that the majority of landlord/tenant relationships were of a reasonable nature, they believed there was a need to have a law that protected their right to affordable and adequate accommodation. Three tenants perceived the relationship between themselves and their landlord as primarily a business arrangement, while two raised the belief that the landlord/tenant relationship was about landlords having power and control over tenants.

Three of the five tenants saw renting as an interim measure and hoped to own their own homes. The other two tenants, because of their financial circumstances, could never see themselves as homeowners. Both contended, however, that renting should be seen as a viable alternative to owning your own home.

UNDERLYING TENSIONS AND PROBLEMS

The research highlights the underlying tensions and problems with regard to tenants and their knowledge of tenancy law, and tenant relationships with landlords, the state and fee-paying letting agencies. The first tension is between two competing paradigms: that is, between housing as a basic social need as opposed to housing as a commercial investment. A second tension relates to the imbalance of power. Landlords have control over the tenanting process, and the law (although extending judicial rights to tenants) does not guarantee tenants full rights in regard to security of tenure. Landlords can legally terminate a tenancy, without reason, upon giving 90 days written notice to their tenants. As noted by Jane (and confirmed by housing workers),

this provision provides the opportunity for landlords to effectively discriminate; in her case, 'evicting' her from her home because they found out she was a lesbian. In this respect, tenants are powerless and vulnerable - as the Act in this instance fully legitimises the landlord's actions. The third tension is an elaboration of the second. Regardless of the personable relationship and dynamics between each party, tenants (consciously or not) operate within a continuum of vulnerability that is defined by their landlord's disposition. A fourth and final tension stems from the belief that landlords are more knowledgeable than tenants about their rights and duties, especially with regard to relevant legislation - a situation that contributes to the imbalance of power between each party.

There were also six main problems that emerged from the overall findings, problems that arguably accentuate the underlying tensions between tenants and landlords. The first of these problems was a concern that rulings made by the local Tenancy Adjudicators were not only inconsistent with those made in other regions, but were based upon interpretations of the Residential Tenancies Act that varied between members of the local office of Tenancy Services. This problem was compounded by two others, namely: that the Court House environment of the Tenancy Tribunal intimidated and belittled some tenants with its exaggerated formality and unnecessary officiousness; and that cases of discrimination, given their difficult nature, were often beyond the scope of the Tenancy Tribunal's abilities to adequately settle.

A fourth problem was the issue of fixed-term tenancies. It was noted in the interviews that Palmerston North had the highest concentration of fixed-term tenancies for the country. The housing workers argued that such tenancies provided landlords with a way around the protective provisions of the Residential Tenancies Act. Student tenants were most affected by this type of contract which tied them to a tenancy (usually for a 12 month duration) well after they had a use for it.

The fifth problem concerned the business practices of a local accommodation broker. Prospective tenants were charged $90 to view a list of vacant properties and were ultimately referred to the business's property management section which required tenants to sign, without

negotiation, a fixed-term tenancy. It appears that this service effectively captured a large percentage of the rental market by promoting the practice of fixed-term tenancies amongst landlords. Members of the Property Investors Association (previously known as the Landlords Association) adopted and employed the use of fixed-term tenancies with rigour.

The sixth and final problem concerned the fairness of the Residential Tenancies Act. Although there was general agreement that tenancy law was necessary, the participants were split with regard to whether or not the law was fair. One argument claimed that any law that presented itself as favouring neither party would obviously never address the needs of those disempowered by an unequal relationship. The other argument, of course, was that while the legislation may not be absolutely fair, it nevertheless attempted to moderate unfair behaviour.

IMPLICATIONS OF FINDINGS

The findings of this study are not new. Hooper (1987) and Freeman (1989) noted nearly ten years ago that tenants' knowledge of their rights and obligations was severely lacking. Recent research (Knight, 1991; Young, 1994; Rivers Buchan Associates, 1993) has directly or indirectly highlighted tenants' lack of awareness, and contributed to knowledge about the discriminatory practices of landlords in the private rental market.

In 1992 the change to an Accommodation Supplement and the devolution of housing assistance to the private market ushered in a climate of disquiet for many poorer families and individuals. At a time, therefore, when there is growing reliance on the private market to meet people's housing needs, the implication of these results is that tenants will be further disadvantaged in their attempt to secure and maintain accommodation. In an unpublished paper, Skidmore (1992:20) reports being told by a real estate agent:

> "The Housing Corporation is a great benefit to us. It keeps undesirable tenants away, therefore I'm not looking forward to the effect of the changes in the rental

> structure." He declared he did not discriminate against women, except single ones and mothers who were not dressed tidily - and therefore would not have neat and clean children.

According to the Universal Declaration of Human Rights, Article 25.1, everyone has the right to a standard of living adequate to their wellbeing, including food, clothing and housing. In Article 11.1 of the same document, the Covenant declares:

> That the states parties [which includes New Zealand] will take appropriate steps to ensure the realisation of this right..

Whether tenants' right to adequate housing is met through current policy is debatable (Lampe, 1993). However, given that government has already made considerable progress in the free market approach to the provision of housing, it would seem that government would need to invest considerable resources to ensure that tenants are aware and knowledgeable of the provisions of the Residential Tenancies Act. To this end, the Ministry of Housing has conducted a number of public education programmes over the past four years using advertisements in the mass media, plus several information leaflets and booklets distributed to community organisations and government agencies. Nevertheless, the findings of this study suggest that the message is missing a large proportion of the tenant target group.

As Doyal and Gough (1984:23) indicated, the process of learning - access to knowledge and the ability to put it into practice - is fundamental for individuals and the weakest groups in society to change their social circumstances. The Residential Tenancies Act, although defining tenants' and landlords' rights and obligations, makes no provision for educating those most vulnerable in the tenant/landlord relationship - namely, tenants. Although housing officials (in the course of their interviews) indicated they had an educative role, the Act fails to clearly identify and delegate the responsibility of proactive educative duties to either Tenancy Mediators or Tenancy Officers in Tenancy Services. Rivers Buchan Associates (1994:2) indicated that the Ministry of Housing's national educative programme:

> ... is not, on its own, adequate because it is not tailored to local or ethnic needs

and is ineffective at tapping into community networks. To varying degrees the national programme is supplemented by educational activities run by some local Tenancy Services offices. The effectiveness of these local initiatives is being inhibited by staff workloads.

Arguably, there exists a tacit, if not moral, responsibility for the administrators of the Act (Tenancy Service and Tenancy Tribunal) to better inform tenants of their rights and obligations.

Arguments reviewed in Chapter 2, indicate that where human needs exist there is an obligation upon government to promote equality in need-satisfaction between different social groups. Given this, there have been strong advocates (Weale, 1983; Plant, 1985) of the view that social needs constitute welfare rights that should be recognised and upheld by government. Both Weale and Plant argue that the status of welfare rights is similar to that of civil and political rights, all of which should be equally enforced by government. Doyal and Gough's (1984) argument, contends that state commitment to the protection of welfare is emancipatory in that the state through its citizens can "respect" others in a way that the market can not.

Such arguments do not necessarily imply state provision of public services. Taylor-Gooby (1991:212) argued that there is a tacit moral case for government involvement to guarantee welfare provision but that this could be met via the state, market or family. However, he claimed that public policy which relies on market mechanisms to meet human social needs must struggle against a market orientated framework that embraces unequal interests. Given this, it would seem that direct state provision of welfare services would be more effective in securing a shift towards greater equality.

RECOMMENDATIONS

This study's findings indicate that a comprehensive educational programme to inform tenants and prospective tenants (school leavers) of their legal rights and obligations needs to be developed and targeted at key institutions such as schools, polytechnics, tenant organisations

and universities. As identified by the Rivers Buchan Associates (1994) investigation, Tenancy Services has at least a tacit legal obligation to ensure that there is an awareness of the Act. The responsibility for undertaking this programme therefore rests with Tenancy Services at a regional level or with some other regionally created body attached to Tenancy Services whose defined legal responsibility is to educate. Given that the nature of the tenant population is transient, a key factor for success is that the programme must be ongoing. The programme therefore requires adequate resourcing.

Another recommendation concerns the need for legislative change. A new provision is required in the Act so that on application to the Tenancy Tribunal, a tenant or landlord can request a reduction in the duration of a fixed-term tenancy agreement, if it can be shown that a significant unforeseen change for example, bereavement, loss of job/income, and divorce has occurred in the circumstances of the tenant and therefore the tenant's ability to meet the conditions of the original agreement.

The issue of inconsistent rulings and the differing interpretations of the Residential Tenancies Act by Tenancy Tribunal staff warrants further investigation. In this regard a full and comprehensive review of Tenancy Tribunal rulings needs to be undertaken which investigates differences in rulings between Palmerston North and other regions. It is important that users of the Tenancy Tribunal have faith in the competencies of the staff.

Finally, in regard to cases of discrimination, if a tenant upon application to the Tenancy Tribunal believes their case has not had due process, they should have the right to make an appeal against the ruling to either the Tenancy Tribunal or the Human Rights Commission. Although doubts have been raised about the Tenancy Tribunal's ability to adequately and consistently adjudicate on such matters, the Tenancy Tribunal (which has offices based regionally) is none-the-less a lot more accessible to tenants than the centrally based offices of the Human Rights Commission. Nevertheless, both options for appeal should be available to the tenant.

The findings of this study reinforce and highlight the need for housing workers and tenant groups to lobby both local and national government for the provision of better targeted and tailored educational resources. Research investigating tenants' awareness and knowledge of their rights and obligations needs to be ongoing, so as to chart progress and provide information on developing tenant issues. The better the understanding that tenants have about their rights, the better off they will be for taking control of where and how they live.

SUGGESTIONS FOR FUTURE RESEARCH

> Knowledge emerges only through invention and reinvention, through restless, impatient, continuing, hopeful inquiry men [sic] pursue in the world, with the world, and with each other. (Freire,1996:55)

This thesis, as an initial investigation, has given rise to a number of possibilities for further research. For example, given the limited scale and scope of this study, it could be viewed as a fairly modest 'pilot' study - the basis on which larger investigations could be developed and implemented to better access: (a) tenants' awareness and knowledge of tenancy law; and (b) tenants' experience of discrimination and breach of rights. Such a study would be timely given the alignment of the Human Rights and Race Relations Acts in 1993 (Chapter 2), and more recent amendments to the Residential Tenancies Act in 1996. [8]

A more detailed examination of rural versus urban tenants' knowledge and experience of tenancy law and discrimination is also warranted. The findings of this study suggest that rural tenants, while as equally uninformed of their rights as urban tenants, maybe more vulnerable to discriminatory practises and harassment by rural landlords. It would appear that rural tenants' circumstances are further compounded by their isolation from regulatory authorities such as Tenancy Services and/or the Police. To obtain a reasonable depth of information, one possible approach to such a study would be to conduct a stratified

8. See "A Guide to the Residential Tenancies Amendments Act 1996" booklet for full details of amendments.

comparative survey of rural and urban participants randomly selected from a central database held by Tenancy Services.

Studies of the views and experiences of: (a) housing workers; (b) Tenancy Service Mediators; and (c) Tenancy Tribunal Adjudicators are also recommended for further investigation. Comparative regional studies, using a combination of interviews and record-based approaches would facilitate the undertaking of a study into: (a) regional differences and similarities with regard to interpretation of tenancy law; and (b) regionally based tenancy issues.

Given that this study has in part focused upon tenants' experiences and perceptions of their relationship with landlords, a final suggestion for future research would be to undertake a similar study of landlords - focusing on their backgrounds, aspirations, legislative awareness and knowledge, and their experiences as property investors. Such research would provide a basis from which to compare and document tenant/ landlord differences and similarities with regard to the business of renting in the private rental market.

Finally, there is a need for both qualitative and quantitative approaches to research on the topics identified above. Each approach has its own set of strengths and weaknesses. As noted by Denzin and Lincoln (1994:4) qualitative research focuses on the socially constructed nature of reality, and attempts to elucidate how social experience is created and given meaning. Quantitative studies, on the other hand, focus on measurement between related variables, rather than processes. As noted in Chapter 3, Jarantyne and Stewart (1991) argue that in the field of social science research, qualitative approaches are more appropriate if the research goal is to describe individuals lives, but that in order to influence policy decisions, quantitative methods of reporting should be used. Other feminist scholars (Opie, 1995) claim that there is a need for qualitative research in guiding policy making, and it is an argument that I subscribe to. I do not believe that I would have gained the same depth or quality of information had I adopted a quantitative approach like that of Hooper (1987), Freeman (1989) and Young (1994). It is highly unlikely that a quantitative approach would have been able to capture faithfully the 'unvarnished' perspectives of tenants, housing workers,

and housing officials. Hooper (1987), Freeman (1989) and Young (1994), however, provide survey information which has been useful to this qualitative study. As Silverman (1985) suggests, the qualitative/ quantitative relationship should not necessarily be viewed as antagonistic, but instead as complementary to the pursuit of knowing and understanding others' realities.

POSTSCRIPT

As I concluded this thesis another set of amendments to the Residential Tenancies Act took effect as of 1 December 1996. Housing workers are as yet unsure as to whether or not these changes will enhance tenants' rights. Of the five tenants I interviewed, only one remains in the same property. Of the four that have moved, only one moved willingly, two moved because their landlord wanted to sell or reoccupy the property and the fourth moved because she simply could no longer put up with her landlord's intrusions. That is part and parcel of living under someone else's roof.

APPENDIX 1

INFORMATION SHEET

UNDER SOMEONE ELSE'S ROOF

Tenants and their Knowledge and Experience of Tenancy Rights.

My name is Caroline Bridgland and I am a graduate student in the Social Policy and Social Work Dept at Massey University. My contact phone number for evening calls is (06) 3582-187, and my research supervisor (Assoc. Prof Andrew Trlin) can be contacted at Massey University on 350-4305.

The focus of my Master's thesis is a study into tenant awareness, knowledge, experiences and attitudes with regard to residential tenancies law and anti-discrimination legislation. I will be conducting 6-10 in-depth interviews, all within the Manawatu, Palmerston North vicinity. Participants in this study will be: (a) tenants who have had at least five years private rental experience and are currently living in rental accommodation; (b) representatives of tenant protection agencies; and (c) a representative from the Tenancies Service.

Tenants participating in this research project will be required to participate in two, two hour interviews. For other participants the two interviews required will not exceed more than two hours in total. Participants will be interviewed individually at a time and place that each feels is convenient. All interviews will be audio taped, and transcribed by myself. You will be given a copy of the interview transcript to check and amend as you consider to be appropriate.

This study will be written up to conform with the requirements for completion of a Master of Arts degree. It is hoped that it will contribute to a growing body of knowledge in the area of tenant rights and protection.

If you take part in this study, you have the right to:

- Refuse to answer any particular question, and to withdraw from the study at any time.

- Ask any further questions about the study that occur to you during your participation.

- Provide information on the understanding that it is completely confidential to the researcher. It will not be possible to identify you in any reports that are prepared from the study.

- Be given access to a summary of the findings from the study when it is concluded.

Yours sincerely,

Caroline Bridgland.

APPENDIX 2

CONSENT FORM

I have read the Information Sheet for this study and have had the details of the study explained to me. My questions about the study have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I also understand that I am free to withdraw from the study at anytime, or decline to answer any particular questions in the study. I agree to provide information to the researcher on the understanding that it is completely confidential.

Confidentiality will be maintained in the following ways;

[a] The interview tapes will only be listened to by the researcher.

[b] The interview tapes will not be released to another person, and will be erased when the study has been completed.

[c] All names will be changed as well as any special identifying characteristics.

I will be provided with a copy of my interview transcript and will be given access to a summary of the findings when the study is completed.

I wish to participate in this study given the conditions set out above and on the Information Sheet.

Signed _____

Name _____

Date _____

APPENDIX 3

INTERVIEW SCHEDULE FOR HOUSING WORKERS

1. Could you give me a bit of historical information starting with why and how your organisation started?

2. What is your organisation's statement of intent and how do you see this relating to the work you do on a day to day basis?

3. Going back to your mission statement - is there any relationship between your work at the Housing Advice Centre and the wider housing policies that relate to tenants?.

4. In your opinion do you think people would prefer to buy or rent a home. Why?

5. How many accommodation seekers would the your organisation see in a year who required assistance?

   - What would these enquiries be about?
   - Could you give examples?

6. With regard to the relationship between tenants and landlords could you describe (a) the nature of the relationship and (b) what your perception of that of the quality of that relationship?

7. With regard to fee-paying Letting Agencies, could you describe (a) the role of "Letting Agencies" in the rental market (b) your perception of that role and (c) your perception of the performance of letting agencies?

8. With regard to Tenancy Services, could you describe (a) the role of Tenancy Services, (b) your perception of their role, and (c) your perception of their performance?

9. What does your agency think the important qualities of the Residential Tenancies Act is regard to tenant rights and obligations?

10. When the Residential Tenancies Act was first introduced into the House of Parliament, the Minister of Housing Phil Goff stated "The Bill gives protection to reasonable landlords and tenants against irresponsible or unreasonable behaviour by the other party.... the law leans in favour of neither side in the tenancy relationship". Would you agree or disagree with this statement? And could you explain why?

11. From your experience as a housing worker do you think tenants have a reasonable understanding of their rights and responsibilities under the Act. Why/Why not?

12. Are you familiar with the Residential Tenancies Bill? If yes, how does your agency see the proposed amendments affecting tenants rights and responsibilities, and in your opinion are there any significant changes?

13. In 1993 Colmar Brunton undertook a study into tenant awareness of anti-discrimination laws. It found that 50% of landlords and 36% of tenants surveyed believed that landlords should have the right to choose whatever tenant they wanted. Would you like to comment on this finding?

14. In general are tenants fully aware of anti discriminatory laws or just aware one or two specific areas?

15. If a rental accommodation seeker claimed they had been declined a property based on a breach of the Human Rights Act, and or the Residential Tenancy Act, which agency do you think would better address their complaint? The Human Rights Office, the Race Relations Office of the Tenancy Tribunal? and why?

16. This almost concludes our interview. Is there anything you

would like to ask me, is there anything else you would like to say?

APPENDIX 4

INTERVIEW SCHEDULE FOR TENANTS

AWARENESS OF TENANCY AND ANTI DISCRIMINATION LAW.

1. Are you aware of any legislation that governs the terms and conditions of renting between landlord and tenant?. If yes, could you name?

   Prompt: Have you heard of the Residential Tenancies Act?

2. Are you aware of any legislation that protects your rights as a prospective tenant?

   Prompt: Have you heard of the Human Rights Act?

3. To the best of your knowledge what is lawful or unlawful to chose a tenant on?

   Prompt: Gender, ethnicity, marital status, children?

4. Do you know if your rights are protected? If so how?

5. Do you believe current tenancy law is fair to both landlord and Tenant?. If so, how .....if not, why not?

KNOWLEDGE OF RESIDENTIAL TENANCY ACT.

6. According to the Residential Tenancies Act how many weeks notice must a tenant at the very minimum give a landlord?

   Prompt: How many weeks notice must you give your landlord?

7. Under the Residential Tenancies Act what is the maximum

number of weeks rent a landlord may charge as bond and rent in advance?

Prompt: How many weeks rent did you pay in bond and how many weeks rent did you pay your landlord as an advance?

8. Under the Residential Tenancies Act is a landlord entitled to inspect or enter a property with or without your knowledge?

Prompt: Has your landlord visited your home to either inspect or do repairs?

- Did your landlord let you know he or she was coming beforehand?

9. Under the Residential Tenancies Act how many days notice must a landlord give to inspect the property or do repairs?

Prompt: How much time in terms of hours, days or weeks notice did your landlord give before coming to your home?

10. Under the Residential Tenancies Act what circumstances can a landlord ask a tenant to vacate the property, and how much notice does landlord need to give?

Prompt: Can a landlord ask you to leave if the rent is not paid?

- Can a landlord ask you to leave if family wants to move in?

11. Under the Residential Tenancies how often can a landlord increase the rent?

12. What are your responsibilities as a tenant?

Prompt: To pay rent on time; give due notice to leave, keep property tidy....

PERCEIVED / ACTUAL INCIDENTS OF INFRINGEMENT OF TENANT RIGHTS

13. Have there been occasions when you have felt your privacy as a tenant has been infringed? Please describe.

- What did you do?
- What was the final outcome?

14. Have there been times when you have been pressured to do certain things or asked to change your behaviour while you were renting a property or flatting with others? Please describe.

- What did you do?
- What was the final outcome?

15. Would you lay a formal complaint if you felt that your rights as a tenant were compromised?

- If no, what would you do and why?
- If, yes, who would you go to and why?

PERCEIVED OR ACTUAL INCIDENTS OF DISCRIMINATION.

16. Have you ever experienced a situation where you believe that you were turned down for a rental house/ flat unfairly or unjustly? Please describe?

- If yes, what did you do on these occasions?
- What was the final outcome?
- Do you believe you were being discriminated against?

17. Have you ever handed in your notice on a property you were

renting? Please describe.

- If yes, what did you do?
- Do you believe you were being discriminated against? (if appropriate)

18. Have you ever been asked to leave a property you were renting? Please describe. What was the final outcome?

- Do you believe you were being discriminated against?

19. Have you ever done a runner? If yes, please describe. What was the final outcome?

BROADER PICTURE.

20. In general what do you think about the relationship between landlords and tenants today?

21. How do you and your landlord get on now?

22. Landlords have the Federated Property Investors Association. Do you know of any organisations that represents your interests?

Prompt: Have you heard of the Tenants Union, Housing Advice?

23. How important do you think it is that the law controls the way in which landlords can let properties and tenants can rent properties? And why?

24. Do you think a landlord has the right to choose whoever he or she wants? And why?

25. Do you think a landlord has the right to discriminate in their choice of tenant irrespective of the law? And why?

26. If you had the choice would you prefer to own your own

home or continue to rent? Why?

27. How would you describe your ideal home?

28. This concludes our interview, is there anything else you would like to add, or is there any questions that you would like me to answer?

APPENDIX 5

INTERVIEW SCHEDULE FOR HOUSING OFFICIALS

1. What effectively is the role of the Tenancy Tribunal and your role as an Adjudicator?

2. Could you describe firstly, the circumstances under which a complaint would be granted a hearing, and secondly the processes involved in a hearing - in general terms?

3. What sort of time frame is involved - from making application to a hearing?

4. Are the cases that are brought before you in the main by landlords or the tenant - why do you think this?

5. What seem to be the Tenants main reasons for taking a case to the Tribunal?

6. What seem to be the reasons that Tenants are taken to the Tribunal?

7. From the cases that appear before you are tenants or landlords more likely to have an understanding of the Residential Tenancy Act? Why?

8. From your experience as a Tenancy Adjudicator do you think tenants have a reasonable understanding of their rights and responsibilities under the Act? Why or why not?

9. When tenants come before you in a Tribunal hearing, do they have a sense of preparedness or are they generally lost in the process? Can the same be said about landlords?

10. In my interview with other fixed-terms tenancies seem a problem - has this been born out in hearings? What do you think the problem might be?

11. What in your opinion is the quality of the relationship between tenants and landlords?

12. Do you think the relationship between landlord and tenant differs from the city and the country?

13. In 1993 Colmar Brunton undertook a study into tenant awareness of anti discrimination laws. If found that 50% of landlords and 36% of tenants surveyed believed that landlords should have the right to choose what ever tenant they wanted. Would you like to comment on this finding?

14. In general terms do you think tenants are aware of anti - discrimination laws?

15. If a tenant felt they had been denied a rental property based on their ethnicity - in your opinion would they be better off taking their complaint to the Tribunal, the Human Rights Commission or the Race Relations Office? Would that person be treated the same regardless of which office he made application too?

16. Is the law fair?

17. This concludes our interview, is there anything that you would like to add, or is there any question that you would like to ask of me?

BIBLIOGRAPHY

Alston, A. (1993) Property, Poverty and Parasites, pp. 1-2, in House Work, New Zealand Housing Network, Palmerston North.

Alston, A., Pigou, P. and Slatter, M. (1993) Residential Tenancies (2nd Edition), Butterworths of New Zealand Ltd, Wellington.

Babbie, E. (1992) The Practice of Social Research (6th Edition), Wadsworth Publishing Company, Belmont.

Barro, R.J. (1996) Getting It Right: Markets and Choices in a free Society, MIT Press, Cambridge.

Benney, M. and Hughes, E. (1956) Of Sociology and the Interview: Editorial Preface, American Journal of Sociology, 62:137-142.

Boston, J. (1991) The Theoretical Underpinnings of Public Sector Restructuring in New Zealand, pp. 1-27, in Boston, J. and Martin, J. et al (eds), Reshaping the State: New Zealand's Bureaucratic Revolution, Oxford University Press, Auckland.

Boston, J. and Dalziel, P. (1992) The Decent Society: Essays in Response to National's Economic and Social Policies, Oxford University Press, Auckland.

Bryson, L. (1979) How Do We Proceed Now That We Know That Science Is Not Value Free? pp. 87-105, in Green, W. (ed.), Focus on Social Responsibility in Science, New Zealand Association of Scientists, Christchurch.

Bulmer, M. (1982) The Uses of Social Research: Social Investigations in Public Policy Making, Allen and Unwin, London.

Centre for Human Rights (1993) The Human Right to Adequate Housing, Centre for Human Rights, United Nations, Geneva.

Chapman, R. B. (1981) To Rent or Buy: Housing Tenure Choice in New Zealand, 1960-1980, with Special Reference to the Private Rental Market, Research Paper 82/1, National Housing Commission, Wellington.

Cheyne, C. (1992) Social Policy Studies, Study Guide, Social Policy and Social Work Department, Massey University, Palmerston North.

Cook, J. A. and Fonow, M. M. (1990) Knowledge and Womens' Interests: Issues of Epistemology and Methodology, pp. 58-68, in Nielsen, J.M. (ed.), Feminist Research Methods: Exemplary Readings in the Social Sciences, Westview Press, Boulder.

Craig, A., Briar, C., Brosnahan, N., and O'Brien, M. (1992) Neither Freedom nor Choice: Report of the People's Select Committee, Easter 1992, People's Select Committee, Palmerston North.

Craig, W. (1983) A Community Work Perspective Massey University, Palmerston North.

Crawshaw, M. (1991) Looking for a Place to Live: An Investigation of Auckland's Private Sector Rental Market for Low Income Households, A Report Commissioned by Te Whakatau Tikanga Whare (Housing Advisory Group for the Auckland Community), Auckland.

Davidson, A. (1994) A Home of One's Own: Housing Policy in Sweden and New Zealand from the 1840s to the 1990s, Almqvist and Wiksell International, Stockholm.

Davis, B. (1987) The Residential Tenancies Act 1986, Victoria University of Wellington Law Review, 17(3):244-252.

Denzin, N.K. and Lincoln, Y.S. (eds.) Introduction: Fielding the Field of Qualitative Research, pp. 1-18, in Handbook of Qualitative Research, Sage Publications, Thousand Oaks.

Department of Statistics (1992) 1991 Census of Population and Dwellings: Taranaki/Wanganui-Manawatu Regional Report, Department of Statistics, Te Tari Tatau, Wellington.

Doyal, L. and Gough, I. (1984) A Theory of Human Needs, Critical Social Policy, 10:33-66.

Eichler, M. (1980) The Double Standard: A Feminist Critique of Feminist Social Science, St Martin Press, New York.

Elliott, M. (1978) The Church's Role in Community Work, Methodist Missions and Social Services, Auckland.

Ferguson, B. (1994) Building the New Zealand Dream, Dunmore Press, Palmerston North.

Finch, J. (1986) Research and Policy: The Uses of Qualitative Methods in Social Educational Research, The Falmer Press, London.

Fontana, A. and Frey, J. H. (1994) Interviewing: The Art of Science, pp.361-376, in Denzin, N. K. and Lincoln, Y. S. (eds.), Handbook of Qualitative Research, Sage Publications, Thousand Oaks.

Foucault, M. (1995) Discipline and Punish: The Birth of the Prison (2nd Edition), Vintage Books, New York.

Freeman, R. (1989) Survey of Palmerston North Tenants' Awareness of Their Legal Rights and Responsibilities in Terms of the Residential Tenancies Act, Massey University, Palmerston North.

Freire, P. (1985) The Politics of Education: Cultural Power and Liberation, MacMillan, London.

Freire, P. (1996) Pedagogy of the Oppressed (Revised edition translated by Myra Bregman), Penguin, London.

Goff, P. (1985) Residential Tenancies Bill, New Zealand Parliamentary Debates, 466:6897-6915.

Goff, P. (1986) Guide to the Residential Tenancies Bill, Government Print, Wellington.

Goff, P. (1988) Address at the Opening of the Housing Corporation in new Wellington office, Press Release, 2nd June, Wellington.

Gordon, L. (1982a) Aspects of the Housing Crisis: Palmerston North City Trends and Policies 1981, Department of Social Anthropology and Maori Studies, Massey University, Palmerston North.

Gordon, L. (1982b) The Housing Market and Housing Policy in New Zealand: Three Essays, Department of Social Anthropology and Maori Studies, Massey University, Palmerston North.

Gray, A. and Davey, J. A. (1981) Student Housing: A National Survey, Research Paper 82/2, National Housing Commission, Wellington.

Green, D. G. (1991) Equalising People: Why Social Justice Threatens Liberty, The Centre of Independent Studies Ltd, St Leonards.

Hakim, C. (1987) Research Design: Strategies and Choices in the Design of Social Research, Contemporary Social Research Series (No 13), Allen and Unwin, London.

Hammersley, M. and Atkinson, P. (1983) Ethnography: Principles and Practice, Tavistock, London.

Harding, S. and Hintikka, M. B. (eds.) (1983) Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology and Philosophy of Science, D. Reidel Publishing Company, Boston.

Harstock, N. C. M. (1983) The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Feminism, pp. 283-310, in Harding, S. and Hintikka, M. B. (eds.), Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology and Philosophy of Science, D. Reidel Publishing Company, Boston.

Harvey, M. (1993) Discrimination in the New Zealand Rental Accommodation Market: A Discussion Paper, New Zealand Ministry of Housing, Wellington.

Hindess, B. (1973) The Use of Official Studies in Sociology: A Critique of Positivism and Ethnomethodology, Macmillan, London.

Hirsh, W. (1988) The Case of the Vanishing Flat and 14 Other Cases from our Files, Offices of the Race Relations Conciliator, Auckland.

Hooper, L. (1987) Investigation of Tenants, Landlords and Real Estate Agents to Determine their Level of Knowledge of the Residential Tenancies Act and the Effectiveness of the Service Provided by the Tenancy Bond Division, Housing Corporation of New Zealand, Hamilton.

Human Rights Commission (1994) A Guide to the Human Rights Act, Human Rights Commission, Auckland.

Jayaratne, T. and Stewart, A. (1991) Quantitative and Qualitative Methods in the Social Sciences, pp. 85-106, in Fonow, M. (ed.), Beyond Methodology: Feminist Scholarship as Lived Research, Indiana Press, Indianapolis.

Johnston, C. (1988) Rental Housing Needs in Palmerston North: A Study of Rental Accommodation Seekers, Housing Advice Centre, Palmerston North.

Kant, I. (1959) Foundations of the Metaphysics of Morals (translated by L.Beck), Liberal Arts Press, New York.

Kemeny, J. (1992) Housing and Social Theory. Routledge, London.

Kitsuse, J. I. and Cicourel, A. V. (1963) A Note on the Use of Official Statistics, Social Problems, 12(2):131-139.

Knight, S. (1991) No Longer Available: A Study of Racial Discrimination and Private Rental Accommodation, Race Relations Office, Auckland.

Lambert, J. (1994) They Can't See What We See: Voices and Standpoint of Twelve Plunket Nurses, Thesis, Massey University, Palmerston North.

Lampe, C. (1993) Review of the Residential Tenancies Act: Report to the Ministry of Housing, Ministry of Housing, Wellington.

Lang, A. G. (1990) Residential Tenancies: Law and Practice, New South Wales (2nd edition), The Law Book Company Ltd, Sydney.

Leckie, S. (1995) When Push Comes to Shove: Forced Evictions and Human Rights, Habitat International Coalition, Mexico.

Loney, M. (ed.) (1987) The State or the Market: Politics and Welfare in Contemporary Britain, Sage Publications, London.

Luxton, J. (1991) Housing and Accommodation: Accommodation Assistance, Government Print, Wellington.

Macdonald, J. (1986) Racism and Rental Accommodation, Social Research and Development Trust, Auckland.

Mackey, I. (1985) A Submission to the Social Services Select Committee on the Residential Tenancies Bill (Numbered IW), Housing Corporation New Zealand, Wellington.

Massey University (1989) Code of Ethical Conduct for Research and Teaching Involving Human Subjects, Massey University, Palmerston North.

McClay, J. (1986) Residential Tenancies Bill New Zealand Parliamentary Debate, 466:6899.

McLeay, E. (1992) Housing Policy, pp. 169-185 in Boston, J. and Dalziel, P. (eds.), The Decent Society, Oxford University Press, Auckland.

McMorland, D. W. (1975) Certainty of Commencement and Duration of Leases: Lease or Licence, pp. 1-30, in Hinde, G.W. (ed), Studies in the Law of Landlord and Tenant: The Adams Memorial Essays, Butterworths of New Zealand Ltd, Wellington.

Mies, M. (1983) Towards a Methodology for Feminist Research, pp. 117-139, in Bowles, G. and Duelli Klein, R. (eds.), Theories of Women's Studies, Routledge and Kegan Paul, Boston.

Ministry of Foreign Affairs and Trade (1996) Elimination of Racial Discrimination: 10th and 11th Report of the Government of New Zealand, Ministry of Foreign Affairs and Trade, Wellington.

New Zealand Housing Network (1988) Save Public Housing, New Zealand Housing Network, Palmerston North.
Nielsen, J. M. (ed) (1990) Feminist Research Methods: Exemplary Readings in the Social Sciences, Westview Press, Boulder.

New Zealand Parliament, New Zealand Parliamentary Debates (Hansard), Vol 466 and 472, Government Print, Wellington.

Oakley, A. (1988) Interviewing Women: A Contradiction in Terms, pp. 30-61, in Roberts, H. (ed.), Doing Feminist Research, Routledge and Kegan Paul, London.

Opie, A. (1995) Beyond Food Intentions: Support Work with Older People, Institute of Policy Studies, Victoria University of Wellington, Wellington.

Pagelow, M. D. (1979) Research on Women Battering, pp. 31-49, in Fleming, J. (ed), Stopping Wife Abuse, Anchor Press, Garden City.

Palmerston North City Council (1993) Housing: The Palmerston North City Council's Response to the Government Reforms, Palmerston North City Council, Palmerston North.

Palmerston North City Council Planning Department (1988) The Palmerston North House File, Palmerston North City Council, Palmerston North.

Parata, N. (1991) "...for the sake of decent shelter..." , Maori Women's Housing Research Project Report, Ministry of Womens' Affairs, Wellington.

Pierson, C. (1991) Beyond the Welfare State? Polity Press, Cambridge.

Plant, R, (1985) The Very Idea of a Welfare State, pp. 3-30, in Bean, P., Ferris, J. and Whynes, D. (eds.), In Defence of Welfare, Tavistock, London.

Property Law and Equity Reform Committee (1985) Report on Residential Tenancies, Property Law and Equity Reform Committee, Wellington.

Property Law and Equity Reform Committee (1986) Final Report on Legislation Relating to Landlord and Tenant, Property Law and Equity Reform Committee, Wellington.

Reinhartz, S. (1983) Experimental Analysis: A Contribution to Feminist Research, pp. 162-191, in Bowles, G. and Klein, R. (eds.), Theories of Women's Studies, Routledge and Kegan Paul, Boston.

Richardson, R. (1990) Economic and Social Initiatives, Statement to the House of Representatives, Government Print, Wellington.

Richardson, R. (1991) 1991 Budget B6, Government Print, Wellington.

Rivers Buchan Associates (1994) Review of Housing Tenancy Services, Ministry of Housing, Wellington.

Roberts, C. (1988) Housing, pp. 119-194, in The April Report: Social Perspectives: Report of The Royal Commission on Social Policy, Vol IV, Daphne Brassell Ass, Wellington.

Roberts, C. (1992) Accommodation Supplement: New Zealand's Experiment with Housing Policy, New Zealand Council of Christian Social Services, Auckland.

Roberts, H. (1986) Women and Their Doctors: Power and Powerlessness in the Research Process, pp. 7-29, in Roberts, H. (ed.), Doing Feminist Research, Routledge and Kegan Paul, London.

Rosaldo, R. (1989) Culture and Truth: The Remaking of Social Analysis, Beacon Press, Boston.

Sachar, R. (1995) The Right to Adequate Housing, United Nations Document (No 12), United Nations, Commission on Human Rights, Geneva.

Schutz, A. (1967) The Phenomenology of the Social World, (Translated by George Walsh and Frederick Lehnert), Northern University Press, Evanston.

Silverman, D. (1985) Qualitative Methodology and Sociology, Routledge and Kegan Paul, London.

Skidmore, M. (1992) Housing Reform, paper written for the completion of a Social Policy course and presented to the Housing Advice Centre.

Smith, B. and Noble-Spurell, C. (1986) An Overview of Feminist Research Perspectives, pp. 134-146, in Marchant, H. and Wearing, B. (eds.), Gender Reclaimed: Women in Social Work, Hall and Iremonger, Sydney.

Stanley, L. and Wise, S. (1983) Breaking Out: Feminist Consciousness and Feminist Research, Routledge and Kegan Paul, London.

Stephenson, D. (1988) The Residential Tenancies Act 1986: A Progress Report, Auckland University Law Review, 6(1)65-81.

Stewart, G. W. (1989) The Residential Tenancy Bond in New Zealand, Thesis, Victoria University of Wellington, Wellington.

Taylor-Gooby, P. (1985) Public Opinion, Ideology and State Welfare, Routledge and Kegan Paul, London.

Taylor-Gooby, P. (1991) Social Change, Social Welfare and Social Science, University of Toronto Press, Toronto.

Thorns, D. C. (1979) Rental Housing: Choices and Constraints, Research Paper 80/3, National Housing Commission, Wellington.

Upton, S. (1987) The Withering of the State, Allen and Unwin, Auckland.

Van Maanen, J. (1983) Reclaiming Qualitative Methods for Organisation Research, pp.9-18, in Van Maanen, J. (ed.), Qualitative Methodology, Sage Publications, Beverly Hills.

Weale, A. (1978) Equality and Social Policy, Routledge and Kegan Paul, London.

Weale, A. (1983) Political Theory and Social Welfare, Macmillan, London.

Westkott, M. (1979) Feminist Criticism of the Social Sciences Harvard Educational Review, 49:422-430.

Whitely, S. (1979) Private Rented Housing in New Zealand, Research Paper 79/2, National Housing Commission, Wellington.

Williams, F. (1989) Social Policy: A Critical Introduction, Blackwell Publishers, Oxford.

Xing, G. and Morris, N. (1989) Student Housing Survey: Massey University, Massey University, Palmerston North.

Yin, R. K. (1994) Case Study Research: Design and Methods (2nd Edition), Sage Publications, Newbury Park.

Young, J. (1994) Discrimination Awareness Study in Housing Research Conference, Ministry of Housing, Wellington.