



19 October 2018

S18.39

Submission to the Ministry of Housing and Urban Development on the Reform of the Residential Tenancies Act 1986

Introduction

- 0.1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing over 200 organisations affiliated at either national level or to one of our 15 branches. In addition, about 450 people are individual members. Collectively our reach is over 450,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right. This submission has been prepared by a former NCWNZ Board member and the Parliamentary Watch Committee in consultation with the membership of NCWNZ.
- 0.2. The Ministry of Business, Innovation & Employment's (MBIE) stated reason for reforming the Residential Tenancy Act (RTA) is that "New Zealand's rental market is expanding. Homeownership rates have declined and more than one third of households now live in rental homes".
- 0.3. NCWNZ welcomes the opportunity to respond to this discussion document which states that "this targeted reform of the RTA is designed to support the Government's goal to make sure everyone in New Zealand has somewhere they can feel at home. The reform has four broad objectives:
 1. to improve security and stability for tenants while maintaining adequate protection of landlords' interests,
 2. ensure the appropriate balancing of the rights and responsibilities of tenants and landlords to promote good faith tenancy relationships and help renters feel more at home,
 3. to modernise the legislation so it can respond to changing trends in the rental market
 4. to improve quality standards of boarding houses and the accountability of boarding house operators."¹

¹ MBIE. 2018. Reform of the Residential Tenancies Act 1986: Discussion Document August 2018 p.7
<https://www.hud.govt.nz/assets/Residential-Tenancies-Act/Reform-of-Residential-Tenancies-Act-1986-discussion-document.pdf>

0.4. This submission deals with only the first three of the above list.

1. General Comment.

1.1. Responses to the questions were very diverse which NCWNZ feels will also be reflected in responses to this document by the wider community. While members differed in attitudes across the specifics of the topics, in two areas there was no conflict:

- a. that a mutually respectful relationship between landlord and tenant is crucial to achieving a satisfactory outcome throughout their rental experience, and
- b. no matter what form the amended document turns out to be, its language and format needs to be easily understandable, with no possibility of differing interpretations.

1.2. Whilst a. cannot be legislated for, b. is certainly possible and desirable to meet the needs of the changing rental demographic.

1.3. Unfortunately, historically renting has been seen in NZ as a temporary and, largely undesirable way of living. Consequentially it has a poor image. Given that renting these days is becoming more of a long-term and more economically sound solution for housing choices, any changes in the RTA need to take into account the security of tenure option for those who do not aspire to home ownership.

2. Tenancy Agreements

2.1. NCWNZ members agree that the situations of both landlord and tenant need to be taken into account: one a business venture, the other being persons needing a home.

2.2. The business has an asset which is made available for others to live in, with the hope of the owner being that the renters will enjoy their asset, will pay regularly for the privilege of using it and enable the equity of the asset to increase over time through the care taken of it by the renters.

2.3. Like-wise the renters are looking for a home, be it for a short, medium or long term; one that allows them security of tenure in a warm safe environment for as long as they need it. And that required tenure will vary according to circumstance.

2.4. Currently rental agreements are either fixed-term or periodic. The definitions of these are:

Fixed-term tenancy - A tenancy that lasts for the set amount of time that is specified in the tenancy agreement.

Periodic tenancy - A tenancy that continues until either the tenant or the landlord gives written notice to end it²

2.5. Different options being suggested in the discussion document include:

² Ibid pp.57-58

Option one: Providing tenants with a right to extend their fixed-term tenancy agreement.

Option two: Specifying a minimum length for fixed-term agreements.

Option three: Making all tenancies open-ended and only able to be terminated by landlords when certain criteria apply.

- 2.6. Given the changes in demographics of persons wishing to rent properties NCWNZ suggests that both Fixed-term and Periodic agreements are needed but that some flexibility around application would be useful. One size doesn't fit all. It is also suggested that the use of the phrase in Option one above '...with the right to extend' should be changed to '...with the opportunity to negotiate an extension' such a change of language would redress the balance in the tenant/landlord relationship.
- 2.7. The opinions of members towards Option three above are divided, but offer the same reason for those opinions both for and against: that this option gives all the power to the tenants.
- 2.8. Short fixed-term agreements, between three to six months or up to a year, are useful for seasonal workers, tertiary students, homeowners who are between sales or builds, workers on secondment and such like. For landlords there is the assurance of tenure between specific dates, with the possibility of tenants treating the residence more like a motel than a home, with few, if any, requests for extensions.
- 2.9. It is suggested that with such a relatively quick turnover of tenants, the landlord is given the opportunity to raise rents with each change. The current shortage of rental properties gives advantages to landlords whose business involves such short-term tenancies. But it is also acknowledged that there are costs inherent in such turnovers as each tenant vacates the property.
- 2.10. Changes to the duration of fixed-term tenancies would provide greater stability to tenants for whom rent is their greatest weekly expense. Tenants in vulnerable employment situations, such as casual work, or fixed-term contracts are more vulnerable when they are also in a fixed tenancy arrangements. Even more so, women, being more likely to be in lower paid employment are even more vulnerable in fixed-term tenancy situations. The ability to negotiate extensions to their agreement would mitigate some of that vulnerability.
- 2.11. There are benefits to landlords if they invest in long term rental opportunities. People looking for security of tenure in the rental market include not only older people but families with children who need stability around educational facilities.
- 2.12. In such cases the minimum time for a fixed-term agreement could be three years. Mark Bennett in his article '*Security of Tenure for Generation Rent: Irish and Scottish Approaches*',³ provides a very useful basis for such an extension drawing as it does from Scottish and Irish experiences. Both Scotland and Ireland have reformed their tenancy law to offer tenants greater security of tenure and

³ Bennett, M. 2016. Security of Tenure for Generation Rent: Irish and Scottish Approaches. Victoria University of Wellington Law Review. 47 pp.363-384. <https://www.victoria.ac.nz/law/research/publications/vuwlr/prev-issues/volume-47,-issue-3/Bennett.pdf>

they have done so off a similar legal system and cultural base to New Zealand. The approach of both countries is essentially as follows:

- the law and practices encourage fixed-terms tenancies of three years or longer more or less as the default option;
- fixed-term tenancies are subject to a probationary period of six months over which time the performance and reliability of the tenant is tested;
- landlords can only seek to have a tenancy terminated before the end of the mandatory term if there has been a serious breach of the tenancy conditions by the tenant or it is required for personal use by the landlord;
- there are rent review rules set down in legislation for the period of the tenancy.

2.13. Such an approach applied to New Zealand's tenancy law it is suggested, would have the advantage of shifting expectations around the permanence of tenancies, potentially encouraging more professional behaviours from landlords and tenants and maintaining landlords' reasonable expectations for alternative uses of their property.

2.14. A variety of rental agreements would be useful but they must be fair to both parties. There will always be some unsatisfactory and unreasonable landlords and tenants no matter what the legislation is. Fairness and reasonableness are two key factors in any rental agreement.

3. Setting and increasing rents

3.1. NCWNZ makes the following observations and suggestions for dealing with this topic:

- The cost to the landlord should determine if the rent is fair. Landlords should be able to realise an 8% return on their investment.
- The rent needs to match the market value of the area at the time.
- The condition of the property needs to be considered.
- Clear averages for rentals in the area could be produced by the Tenancy Tribunal.
- Market forces will address supply and demand, however the overarching part of this legal change is to provide better housing for those who do not have access to ownership and therefore need to rent – so the rules of market economy would make the cost of rent too high.

3.2. The RTA needs to be clear and specify the level of rental set at the outset plus include the time framework for reviewing that rental as set initially. It is suggested that rents do not have to automatically go up so prefer to use the word review rather than increase. Circumstances may well indicate a reason for keeping the level as set or indeed for lowering that level if maybe the tenant has done some extra work around the property that could increase the value of the landlord's asset.

- 3.3. There is a need to have regular three monthly inspections carried out by landlords or their agents, to ensure all is well with the property. Keeping a photographic folio of each inspection would be a useful tool, with the baseline being photographs of the property prior to the tenant moving in. Three months is stated as this timeline complies with insurance companies' expectations.
- 3.4. While only a once a year rental increase/review as mooted in the discussion document may seem to benefit the tenant, if that increase is by a large margin then the payment may become unsustainable for that tenant
- 3.5. It is acknowledged that the landlord under the same time constraints may have to carry increases in rates and insurances until the annual review arrives: plus there will be the obligation to improve insulation and generally improve the live-ability of the premises.
- 3.6. It was suggested that some landlords might charge a higher rental from the start, if there is a chance of increased costs in the intervening period, in the same way that other businesses seek to control costs through hedging. However, this change to annual reviews might help to prevent "churn" in the rental market. If the landlord keeps putting the rent up it causes tenants to have to keep moving.
- 3.7. On the matter of requiring landlords to provide information about how rent is calculated members, merits were noted for both revealing and not revealing such information:
- For:** It could help the tenant understand the out goings and risk the landlord is taking with their asset
- Against:** The landlord is a business person and as such should not be required to reveal such details
- BUT:** With a good landlord/tenant relationship, reasonable discussions may assist understanding the situations of each circumstance. There is a strong feeling that good relationships would remove any potential 'them and us' attitude; that all landlords are not just out to make a dollar at the expense of their tenant. Some have a sense of social responsibility and social justice.
- 3.8. The matter of rental bidding invoked strong negative reactions, stating that the process should be banned but noting that such would be very difficult to manage. Members felt very strongly that deserving families, including solo parents, will always miss out if competing with those who can afford to pay more than the asking amount. There is a lot of power in the hands of one person, the landlord, but it is acknowledged that they have the right to get the best tenant for the home. What is debatable is whether the highest bidder will be the best tenant.

4. Termination provisions

- 4.1. The current RTA states quite clearly how and when landlords can terminate the agreement, with specific conditions that trigger a 42 day's notice and/or a 90 day's notice. Again the tenor of such situations will rest upon the on-going landlord/tenant relationship. Ideally amicable discussions will

be all that are required to elicit the requested response to vacate the property within the timeframe signalled.

- 4.2. Under the current RTA tenants only have to give 21 days' notice to leave the property.
- 4.3. NCWNZ feels that if due process is being followed then evidence to justify the termination is not necessary: the terms of the Tenancy Agreement is sufficient.
- 4.4. Regarding the question of the number of days' notice each party must give, this elicited a mixed reactions:
 - Some felt the current system is adequate in all circumstances.
 - It was also suggested that both parties should be on an equal footing and an equal notice period of 90 days is appropriate.
 - Examples where this 90 days would not work included:
 - 90 days being desirable for tenants but too long for undesirable tenants to be allowed to stay
 - 90 days would be better for the tenant. However landlords also have unexpected situations – so there could be exceptions – bereavement needing sale of rental property for example.
 - For a new worker to a farm, the period of 90 days could stop the worker taking up the new work as it is likely they couldn't wait 90 days to start a new job.
 - If the tenant who receives a 90 day notice, wants to leave earlier, currently there is still the opportunity to give 21 days to vacate. If the 90 days extended to both parties the tenant might miss out on a new property.
- 4.5. Examples were given of incidents where tenants who have breached their agreement and been asked to vacate, have taken umbrage and created mayhem on the property. Of course the Law through the Tenancy Tribunal can then be involved but this experience impacts on the landlord's inclination to accept similar potential tenants.

5. Tenant and Landlord responsibilities

- 5.1. Members were asked if a tenant's responsibilities to keep a property 'reasonably clean and tidy' make it clear what sort of behaviour a landlord can expect. Many felt it was clear while others stated that to be absolutely clear there could be a list of examples in the contract that 'include but are not limited to the following ... e.g. putting out the wheelie bins, not accumulating rubbish, tending the garden, maintaining the interior in a clean state.'
- 5.2. To ensure the property is kept tidy some landlords include in the rent the cost of a contractor to mow the lawns, cut the lawn edges and cut or regularly prune hedges and shrubs.

- 5.3. The respective responsibilities of the landlord and the tenant are listed on the RTA. If at all confused tenants should be advised to contact their local Community Law Centre or Citizens Advice Bureau to seek clarification of their rights and responsibilities as tenants and also learn about those of their landlord.
- 5.4. Tenants should use the opportunity during the regular property inspections to raise issues of concern about the premises. Sometimes tenants are reluctant to mention unsatisfactory living conditions or non-functioning components e.g. electric range, for fear of incurring extra costs, like rent increases.
- 5.5. The regular property inspection is also a time when tenants can ask to see the portfolio of photographs to check changes over time.
- 5.6. Permission for inspections should be at a mutually agreeable time, e.g. not at dinner hour or when trying to get small children to bed or early in the morning.
- 5.7. Members were asked if there are sufficient repercussions for tenants and landlords who don't meet their obligations. Answers were varied including among other things:
- Obviously not when you read the reports that the papers publish and the television networks produce.
 - Repercussions for tenants seem to be much harsher than for landlords. Tenants risk losing their home and having to move multiple times. This is de-stabilising for families and children. In comparison, landlords risk losing extra income.
 - No, the current system is ridiculous. It errs in favour of tenants by default as it is up to the landlord to produce evidence.
 - For 'reasonable' people yes but it has always been a vexed area and will continue to be, hence the need for a regulatory authority.
 - The tenancy tribunal works very well. It sets fair repercussions with support for the implementation of the decisions.
- 5.8. The above anecdotes represent some experiences of our members but do not take into account the thousands of landlords and tenants who are working well together within the parameters of the current RTA.
- 5.9. NCWNZ believes that both parties need to be clear about expectations. Maybe landlords could be registered or given a star rating. Tenants could request a reference, in a specific format developed by central government.
- 5.10. Again there is a call for clear simple wording in whatever language is relevant to the client.
- 5.11. And again mutual respect between the tenant and the landlord is seen as the catalyst to successful outcomes.
- 5.12. Members were asked: If a landlord makes improvements to a property to make it warmer or drier, should tenants be obligated to use those improvements?

- 5.13. The general agreement is: not necessarily, particularly if the 'improvements' potentially increase cost of living e.g. cost of power increases. However if the result of not using the improvements means a deterioration in the condition of the property then some encouragement may be needed to change living styles e.g. opening windows to freshen air and mitigate against mould.
- 5.14. Improvements such as insulation are not the same as a ventilation system or an extra fan in a kitchen. Clear, concise instructions and signage could be developed. Language and education needs to be taken into account. Landlords should be not able to punish tenants for not using ventilation systems. The Healthy Homes legislation will go a long way to improving all NZ houses and making landlords aware of their responsibilities

6. Modifications

- 6.1. Whether a reasonable modification process is working was seen as dependent upon the landlord/tenant relationship and communication between the two. And 'reasonable' may need to be defined.
- 6.2. The word modification does not appear in the current RTA document but it does state, under clause 6 Tenant's responsibilities: 'Not to alter the premises without the landlord's written permission.'
- 6.3. While the two words may be perceived as interchangeable it is believed that there is a subtle difference. 'Alter' could be interpreted as more structural, like putting up shelves, while 'modify' could refer to presentation, like drapes, light fittings. There needs to be a conversation around interpretation of this clause, again with examples cited. For a fixed short term contract modifications or alterations were not perceived to be a high priority. But if the term is periodic, therefore an indication of a more long term security of tenure contract, then a request for some changes being permitted to suit personal décor and establish homeliness, are seen as not unreasonable, again requested and permitted in writing for the record. A caveat always would be that the tenant return the premises to its original state when vacating the tenancy, unless the alteration is approved by the landlord.
- 6.4. The challenge is to understand whether hanging a picture is a modification or alteration. If the process involves making holes in the walls then permission should be sought. Some members have not experienced success using the modern removable hooks for hanging pictures
- 6.5. Negative modification experiences cited include:
- A tenant damaging wall paper, then added non matching wallpaper but didn't put it up with wall paper glue.
 - A hole being put through a wall to put a computer cable through and phone line. Removed when moved but hole was still there.
 - One tenant deciding to paint the toilet walls dark blue and then splashing a variety of coloured paints over the walls in an attempt to give it a mottled look!!

6.6. Positives include:

- being allowed to install a cat door – at the tenant’s expense
- developing a vegetable garden
- being able to change drapes and remove a door on condition they were reinstated when the tenancy ended
- being able to erect some extra fencing to improve safety for a child.

7. Pets

- 7.1. Again the responses were diverse although there was a common theme around the care of the pet and the care of the property.
- 7.2. Suggestions include adding a ‘pet bond’ of say one month’s rent to cover damage caused by any pet and the requirement of the property to be commercially cleaned at the tenant’s cost when the tenancy ends.
- 7.3. Another responder noted that the current RTA is silent on the keeping of pets. A suggested change could be that the Amended RTA have an either/or option where the landlord may choose through a tick box process to allow the keeping of a pet(s) on the property and that there be room on the document to specify (a) the type of pet and (b) any criteria to be met, e.g. including but not limited to having suitable sleeping quarters for the pet, appropriate disposal of pet waste, appropriate measures taken to ensure the well-being of pets over holidays or any other time the owner is absent from the property.
- 7.4. The addition of this suggested clause would enable the landlord and tenant to have a meaningful conversation about the suitability or not, of the property to contain pets, maybe citing small size, closeness of neighbours, noise control, lack of suitable fencing.
- 7.5. References supplied by the potential tenant could indicate their having a good record as a pet owner.
- 7.6. An addendum to the RTA could be a copy of the relevant territorial authority’s by-laws on animals on properties. It was noted that unit titles have their own rules regarding pets on site.
- 7.7. Many said that companion dogs should be allowed but others went further quoting comments about the health benefits of keeping pets. For adults having a pet has been attributed to the lowering of both anxiety issues and cholesterol. Teaching children how to look after pets is also seen as a positive activity, instilling in them a sense of responsibility for others, bringing joy and companionship to all.
- 7.8. It is acknowledged however that the landlord/owner has the right to object to pets being on the property as they consider their potential impact on the integrity of their asset.

8. Other comments

8.1. Other comments raised by members included:

- The current very limited rental housing market is putting stress upon all concerned. Anecdotal evidence is that many are getting out of providing rentals by selling to their tenants.
- In many European countries tenants have a right to occupy for as long as they wish but many of the properties are owned by corporates or the government; very few are privately owned.
- The tenancy agreement should include some basic rights of a person to manage their own living expenses and regulate the powers of property management agencies. Some agencies have insisted that their name be on the power bill meaning the tenant did not have the ability to discuss his costs with the company
- Regarding the approved Warrant of Fitness for rental properties, it is important that current stock is brought up to standard concurrent to new houses being created. With more people renting, this will be imperative. This will be contingent on landlords and their trustworthiness and willingness to comply, and systems need to be put into place for those landlords who do not meet the regulations
- Has any thought been given to changing the name 'landlord' to something that is more gender neutral and isn't so overbearing as 'lord' (or indeed 'lady')?

9. Conclusion

9.1. While members differed in attitudes across the specifics of the topics, on two areas there was no conflict:

- that a mutually respectful relationship between landlord and tenant is crucial to achieving a satisfactory outcome throughout their rental experience, and
- no matter what form the amended document turns out to be, its language and format needs to be easily understandable, with no possibility of differing interpretations.

9.2. To militate against misinterpretation of any amended RTA, the use of simple English is advised. Potential tenants would still be wise to seek advice from the Community Law Centre or the local Citizens Advice Bureau for explanation of this legal document, before embarking on this tenancy road. This would enable them to gain an understanding of the rights and responsibilities of both them as tenants and of their landlords

9.3. In summary of the types of rental agreements proposed, NCWNZ calls for all tenancies to be fixed-term with the qualifiers of short, medium and long term to suit specific circumstances. This variety would be useful but they must be fair to both parties. There will always be some unsatisfactory and unreasonable landlords and tenants no matter what the legislation is. Fairness and reasonableness are two key factors in any rental agreement.

- 9.4. Regarding setting the rent, the RTA needs to be clear and to specify the level of rental set at the outset plus include the time framework for reviewing that rental as set initially. It is suggested that rents do not have to automatically go up so prefer to use the word 'review' rather than 'increase'. Circumstances may well indicate a reason for keeping the level as set or indeed for lowering that level if maybe the tenant has done some extra work around the place that could increase the value of the landlord's asset.
- 9.5. Most members believe that the current policy of landlords having to give 42 or 90 days' notice of termination of the agreement, together with 21 days' notice given by the tenant is still valid. There are some alternative suggestions which are canvassed within section 4 of this submission.
- 9.6. NCWNZ suggests that with good landlord/tenant relationships, terminations of agreements can be worked through to mutual advantage, maybe by giving informal notice that a formal notice will be coming up then using the existing rules to expedite the termination.
- 9.7. Regarding tenants and landlords' rights and responsibilities, members believe that could be more clarity in the wording of expectations within the RTA.
- 9.8. NCWNZ notes that the landlord's business has an asset which is made available for others to live in, with the hope of the owner being that the renters will enjoy their asset, will pay regularly for the privilege of using it and enable the equity of the asset to increase over time through the care taken of it by the renters.
- 9.9. Like-wise the renters are looking for a home, be it for a short, medium or long term: one that allows them security of tenure in a warm safe environment for as long as they need it. And that required tenure will vary according to circumstance.
- 9.10. In section 6, Modifications, NCWNZ notes that that there needs to be clarity around expectations. Whether a reasonable modification process is working is seen as dependent upon the landlord/tenant relationship and communication between the two. And reasonable may need to be defined.
- 9.11. The current RTA is silent on the keeping of pets. NCWNZ agrees this needs to change. Kiwis are very pet orientated. A commentary quoted in section 6 acknowledges the health benefits of keeping pets. The addition of this suggested clause would enable the landlord and tenant to have a meaningful conversation about the suitability or not, of the property to contain pets, maybe citing small size, closeness of neighbours, noise control, lack of suitable fencing.
- 9.12. Again on the keeping of pets NCWNZ suggests that the Amended RTA could have an either/or option where the landlord may choose through a tick box process to allow the keeping of a pet(s) on the property and that there be room on the document to specify (a) the type of pet and (b) any criteria to be met, e.g. including but not limited to having suitable sleeping quarters for the pet, appropriate disposal of pet waste, appropriate measures being taken to ensure the well-being of pets over holidays or any other time the owner is absent from the property.

- 9.13. NCWNZ wrote a submission on the Review of the Residential Tenancies Act 1986 in February 2005,⁴ 13 years ago, which covered many of the same issues and situations. It is hoped that action regarding this discussion document could be effected more quickly this time.

10. Final comment

- 10.1. In deliberating on any amendments to the RTA NCWNZ strongly recommends the article by Mark Bennett '*Security of Tenure for Generation Rent: Irish and Scottish Approaches*',⁵ as it provides a very useful basis for such a conversation. Both Scotland and Ireland have reformed their tenancy law to offer tenants greater security of tenure and they have done so off a similar legal system and cultural base to New Zealand.
- 10.2. The challenge for Government will be to reconstruct the Act in such a way that it meets not only the current rental housing pressures but endures after the other housing activities relieve those current issues.
- 10.3. NCWNZ understands that market forces will normally address supply and demand, however the overarching part of this legal change is to provide better housing for those who do not have access to ownership and therefore need to rent – so the rules of market economy would make the cost of rent too high.
- 10.4. NCWNZ is encouraged by Government's goal to make sure everyone in New Zealand has somewhere they can feel at home. The four broad objectives of this reform are admirable. It is hoped that all deliberations will refer back to them to ensure decisions are soundly based and reflect those objectives.
- 10.5. Extra consideration needs to be made of people who suffer from discrimination. The Human Rights Act makes it unlawful for landlords to discriminate on the grounds of sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation but in practice landlords' conscious and unconscious biases makes it more difficult for some people to find rental accommodation, especially people who belong to multiple groups which are discriminated against (e.g. a disabled solo mother or a Māori trans woman).

⁴ NCWNZ. 2005. S05.11 Review of the Residential Tenancies Act 1986 <http://www.ncwnz.org.nz/wp-content/uploads/2013/06/S05.11-Review-of-the-Residential-Tenancies-Act-1986.pdf>

⁵ Bennett, M. 2016. Security of Tenure for Generation Rent: Irish and Scottish Approaches. Victoria University of Wellington Law Review. 47 pp.363-384

- 10.6. In every sphere of life there are people who push the envelope of fairness and decency; some landlords and tenants are not exempt from this attitude. However, NCWNZ is also encouraged by the call of the Prime Minister to entrench in policy those attributes that New Zealanders value: fairness, decency and kindness.



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