

RESIDENTIAL TENANCIES – WHAT LANDLORDS NEED TO KNOW

Do you own a residential investment property? Are you completely aware of your rights and responsibilities as a landlord? Most residential tenancies are subject to the Residential Tenancies Act 1986 (the "Act") regardless of an agreement to the contrary. The Act sets out the rights and obligations of landlords and tenants and dictates the role of Tenancy Services.

PRIOR TO THE COMMENCEMENT OF THE TENANCY - TENANCY AGREEMENTS, BOND, KEY MONEY AND CONDITION OF THE PREMISES

Every tenancy agreement ("Agreement") must be in writing and signed by both the landlord and the tenant. However, no Agreement is unenforceable on the ground it is not in writing and if there are any inconsistencies between the Agreement and the Act, the Act overrides the Agreement. A copy of the Agreement must be given to the tenant before the tenancy commences.

A standard Agreement is provided by Tenancy Services on their website (www.tenancyservices.govt.nz) and is also available from bookshops.

It is important that the full legal names of the landlord and tenant are on the Agreement. Do not use a trading name or the name of a trust - the registered name of the company or the full names of the trustees must be used to ensure the Agreement is enforceable.

Every variation and renewal of the Agreement must also be in writing signed by the landlord and tenant, and the landlord must provide the tenant with a copy prior to the date when the variation or renewal is to take effect.

A tenancy may be a fixed term tenancy (which lasts for a set amount of time and neither the landlord nor the tenant can give notice to terminate) or a periodic tenancy (which lasts until either the landlord or tenant gives notice to terminate).

We recommend landlords and their tenants do a joint property inspection to inspect the condition of the property at the start of the tenancy. This can be done using the property inspection report that is provided as part of the standard Agreement form available from Tenancy Services. It is also a good idea to take photographs or a video of the property to avoid a dispute with the tenant at the end of the tenancy over whether any damage to the property occurred during the tenancy.

Once the Agreement is signed, the Landlord should ensure that rent and bond are paid up front. Landlords are not permitted to ask for more than four weeks bond or more than two weeks rent in advance. Landlords are also not permitted to ask for the next rent payment until all the paid rent has been used up. The Landlord must lodge the bond along with a bond lodgement form with Tenancy Services within 23 working days of receiving it. Tenancy Services holds the bond until the end of the tenancy when either the tenant or the landlord may apply for its refund.

Landlords may not charge key money without the prior consent of the Tenancy Tribunal. "Key Money" is any sum of money demanded by the landlord by way of fine, premium, foregift, reimbursement of expenses or administration charge for the grant, continuance, variation, extension or renewal of an Agreement or consent to sublet, surrender or dispose of a tenants interest under an Agreement, for example, a \$50 charge for the house key or a \$20 charge for the lawnmower.

Tenants are entitled to vacant possession of the premises and landlords must ensure there is no legal impediment to the occupation of the premises. The premises must be in a reasonable state of cleanliness on occupation by the tenant and locks and other devices must be provided to ensure the premises are reasonably secure.

DURING THE TENANCY - DAMAGE, RENT AND SALE OF THE PREMISES

Tenants have the right to quiet enjoyment of premises without interruption by a landlord. However, after giving 48 hours notice each time, landlords should carry out regular property inspections not more than once every 4 weeks. The premises must be used by the tenant for

mainly residential purposes and not for any unlawful purpose. Tenants must not cause or permit any interference with the reasonable peace, comfort or privacy of the landlord's other tenants or neighbours, or permit anyone else at the premises to do so.

Damage and Repairs - who's responsible?

The Landlord must maintain the premises in a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes. The Landlord must also comply with all requirements in relation to building, health and safety regulations.

In the case of any serious and urgent repairs that are likely to cause injury to people or property, and a tenant has made reasonable attempts to contact the landlord, the tenant may carry out the repairs and is entitled to be reimbursed by the landlord. Where repair work is not urgent, the tenant must contact the landlord as soon as possible and the landlord must complete the repairs in reasonable time. If the tenant damages the premises or neglects to keep them clean and tidy, the landlord may give the tenant notice, giving him or her 10 working days to repair the damage or neglect. If the work is not done within the 10 days, an application may be made to the Tenancy Tribunal for an order to do the repairs. The landlord must give the tenant 24 hours written notice of entry to repair.

Tenants must not intentionally or carelessly damage or permit any other person to damage the premises. A Tenant is responsible for anything done or omitted to be done by any person who is in the premises with the tenant's permission if what was done would have been a breach of the Agreement if done by the tenant.

Tenants must not attach any fixture to the premises or renovate, add or alter the premises unless provided by the Agreement or by landlord's written consent.

Rent and Outgoings- increases, reductions and payments

Rent must be paid by the tenant when due. If the tenant pays by cash or open cheque, the landlord is required to give a receipt. All receipts and bank statements showing rental payments should be kept in a safe place in order for the tenant or Tenancy Tribunal (if necessary) to see the rent due and paid for any particular period.

Landlords must give 60 days written notice to a tenant of any rent increase and cannot increase the rent more than once every six months. In a fixed term tenancy rent can only be increased if it is permitted in the Agreement. Any provision in an Agreement which accelerates the payment of rent, increases the rent or provides for payment of a sum for damages or breach by the tenant of any term of the Agreement is of no effect.

If a tenant feels the rent payable or to become payable for a tenancy exceeds the market rent by a substantial amount, the tenant may make an application to the Tenancy Tribunal for an order reducing the rent to the market rent. However, where the landlord has made substantial improvements to the premises, or provided more or better facilities to the tenant (with the consent of the tenant) or has incurred expenses of a nature or amount that could not have been reasonably foreseen when the rent was last fixed they may make an application to the Tenancy Tribunal for an order increasing the rent.

All outgoing (including rates, insurance premiums and water charges (unless the premises has a separate water meter and the Agreement states water charges are to be paid by the tenant)) in respect of the premises are payable by the landlord.

Sale of the Premises - notice and continuation of the tenancy

Landlords must inform their tenants if the premises are put on the market and again when the premises have been sold. The landlord and the tenant must agree on reasonable access to the premises for the landlord to bring potential buyers through. If the premises are sold when there is a periodic tenancy in place and the new owner requires vacant possession, the landlord must give

the tenants 42 days written notice of termination of the tenancy. If the premises are sold when there is a fixed term tenancy in place, the tenant is entitled to stay on until the end of the term under the same conditions. If the new owner chooses to continue with the tenancy, the same terms and conditions of the original tenancy apply, however a change of landlord form must be lodged with Tenancy Services transferring the bond to the new owner.

ENDING THE TENANCY - ASSIGNMENT AND TERMINATION

Unless prohibited by the Agreement, a tenant may assign or sublet the premises with the prior written consent of the landlord (which must not be unreasonably withheld).

To terminate a tenancy landlords must generally give tenants at least 3 months (90 days) written notice (unless on sale as discussed above). Tenants terminating a tenancy must give the landlord at least 3 weeks (21 days) written notice. A fixed term tenancy cannot be terminated before the term is completed unless the parties agree.

Both the tenant and landlord should go through the premises together using the original property inspection report and check that nothing has been damaged or broken during the tenancy. Any damages or other claims the tenant agrees to have taken out of the bond should be stated on the bond claim form and the bond apportioned accordingly. Any dispute over the bond must be immediately referred to Tenancy Services, who will assign a mediator to help resolve the issue.

When leaving the premises the tenant must leave them clean and tidy, remove his or her goods and any rubbish and return all keys, passcards and security devices to the landlord.

Where the tenant leaves any of his or her goods on the premises the landlord may dispose of foodstuffs and other perishable goods as the landlord thinks fit. In the case of other goods, the landlord must secure the goods in safe storage and apply to the Tenancy Tribunal for an order for the disposal of the goods.

WHAT TO DO WHEN THINGS GO WRONG - THE TENANCY TRIBUNAL

Unfortunately, many tenancies do not run smoothly. Either a landlord or tenant may make an application to Tenancy Services (\$20 cost) to resolve a conflict. Tenancy Services will arrange a mediation meeting between the landlord and tenant. If the landlord and tenant come to an agreement, the mediator can write down the agreement as a legally binding mediated order. If the landlord and tenant don't agree, the problem will be referred to a Tribunal hearing. Tenancy Tribunal hearings are public and are chaired by a tenancy adjudicator whose decision is binding on both parties. Lawyers are not normally allowed at a Tribunal hearing. There are three main types of order that the Tribunal can make - Termination Order (terminating the tenancy), Monetary Order (order to repay rent arrears or money for damages) or a Work Order (order for person to remedy damage or lack of maintenance by work).

The Tenancy Tribunal can make a Termination Order where:

1. The rent is more than 21 days in arrears; or
2. The tenant has caused or has permitted any other person to cause or has threatened to cause substantial damage to the property; or
3. Has assaulted or has threatened to assault the landlord or the landlord's family or agent, other tenants in the building or neighbours; or
4. Has breached the Agreement or Act (where the landlord has given at least 10 working days notice and the issue has not been remedied and the breach is of such a nature it would be inequitable to refuse to make a termination order to remedy the breach).

It is essential that where a rental payment is not made landlords immediately give notice to their tenants specifying the amount owed. Such notice gives the tenant 10 working days to pay the amount owing. An example of a 10 working days notice can be found at www.tenancyservices.govt.nz.

To avoid potential conflicts with your tenants it is vital that you as landlord are aware of the requirements of the Act.

You can feel confident knowing Fortune Manning's Residential Property Team has the experience necessary to help landlords understand their obligations under the Act and deal with tenancy issues.