



Basic Tenancy Rights & Responsibilities

GENERAL POINTS

Keep written records

- ◆ Ensure that all agreements and understandings between you and the landlord are confirmed in writing.
- ◆ If you talk with your landlord over the phone, confirm what was agreed in writing and **keep a copy.**

Take photos to provide evidence.

TENANCY AGREEMENT

A written tenancy agreement is required for all tenancies covered by the Residential Tenancies Act (RTA). Primarily this is where the property is self-contained, and you are responsible for the utility bills. Even if you have not been given a tenancy agreement, you are still covered by the regulations of the RTA.



Key Exceptions

The key exceptions include:

- If you are sharing a house/flat with the owner or their immediate family.
- You are a sub-tenant/flat mate, ie. the head tenant, who is named on the tenancy agreement, has taken on other flat mates.
- You are living in temporary accommodation eg. a caravan park, motel, or equivalent, for less than 28 days. From 1st October 2010 boarding house tenants staying for 28 days or more are covered by the RTA and have to have their own boarding house tenancy agreements.
- If it is connected with your employment.



Joint Tenants

These are jointly and individually responsible for making sure the rent is paid and the property looked after. The landlord can recover any debt occurring from the tenancy against one or all of the tenants. This can cause difficulties if a couple split up, especially if one party stays and causes damage and does not pay the rent. However, any joint tenant can give notice on the agreement, despite one party not agreeing.

PROPERTY INSPECTION REPORT AT BEGINNING OF TENANCY

It is highly advisable to complete this together with the landlord/owner or their agent. You can bring a witness if you want. It is very important that you are allowed the time to properly look at all possible defects and get them marked down. Take photos if you can.

If you notice additional problems after being in the property for a week or two, it is very important that you inform the landlord in writing, and ensure they mark this on the report.

This is very important for dealing with any damage claim at the end of tenancy.

BONDS



A landlord does not have to charge a bond, but if they do, they can charge no more than 4 weeks rent in Bond, and must give you a receipt for any bond given over.

Lodging the Bond

In addition, the bond must be lodged with the Bond Lodgement Centre, at the government's Department of Building and Housing (DBH), within 23 working days of receipt. Both you and the landlord need to complete a 'Bond Lodgement Form' which states the amount of bond that has been paid, by whom and for which property, and the landlord then sends the money and the form through to the DBH.

It is really important that you ensure that the landlord has done this. You will be sent notification from the Bond Lodgement Centre that the bond has been received, together with a Bond Refund Form, ready for using when ending the tenancy. You can also check this by phoning the Bond Lodgement Centre on **0800 737 666**.

Unlawful Act

If a landlord does not give a receipt for the Bond, nor lodge it with the Bond Lodgement Centre, this is considered to be an unlawful act, and s/he can be liable for a fine up to \$1,000 in the Tenancy Tribunal.

What to do to reclaim your Bond

The landlord can claim some, or all, of the bond for any legitimate damage or unpaid rent.

In order for either you or the landlord to retrieve any part, or all of the bond, both you and the landlord need to sign the Bond Refund Form agreeing to the amount to be refunded to either party. Without both signatures the Bond Lodgement Centre will not release the bond without contacting the other party. The only way to sort out any dispute over the bond is to apply to the Tenancy Tribunal for their decision.

The Bond Lodgement Centre releases the bond reasonably quickly into your bank account.



PAYING RENT

The landlord cannot ask you to pay more than 2 weeks rent in advance.

Ensure that you pay your rent on time. If you are 21 days in arrears, and you are not willing, or already making attempts, to catch up with the rent, the Tenancy Tribunal has little option but to grant your landlord the right to immediately terminate your tenancy – often with only 24 hours notice.

If your landlord is not responding to your request to do repairs or other responsibilities, **DO NOT STOP PAYING YOUR RENT**. Instead, apply to the Tenancy Tribunal to force your landlord to carry out these works, or seek free advice and help through Waitakere Community Law Service (see over).

If you have rent arrears of less than 21 days, your landlord can still take you to the Tenancy Tribunal, but the adjudicator will want to see that the landlord has tried to remedy the problem by asking you to repay the arrears, and/or agreeing a repayment plan with you. It would be unlikely that the adjudicator would grant an eviction order in these circumstances unless there were other breaches of the RTA.

Problems paying rent

You can ask that payments be paid directly through to the landlord, either through WINZ, or your own bank account, thus avoiding the risk of arrears when times are difficult.

Rent Increases

Landlords have to give you 60 days notice, in writing, of any proposed increase in rent. The landlord also cannot increase the rent more than once every 6 months, and the new rent should not be more than the current market rent.

GETTING REPAIRS DONE

The landlord is required to keep the property in good order, and you must immediately inform the landlord if there are repair and maintenance issues.

From 1st October 2010 it is an unlawful act for a landlord to rent a property that does not comply with the building, health and safety, and environmental health regulations, and they can be fined up to \$3,000. This includes the landlord not keeping the property in reasonable cleanliness, and not carrying out necessary repairs and maintenance.



PAYING FOR WATER

You are only responsible for water charges if your property has its own metered supply of water. Landlords might otherwise cover the water charges/rates through the rent, which would need to be acceptable to you before accepting the tenancy. Charging for water in any other circumstance is illegal [Residential Tenancies Act Section 39(2)(a)(b)].

LANDLORD'S RIGHT OF ENTRY

The landlord has to give:

- at least 48 hours notice for a property inspection (which can be no more than once every 4 weeks, and between the hours of 8am and 7pm). You can refuse if there are reasonable grounds, and suggest a more suitable time, but it needs to be 'reasonable'.
- at least 24 hours notice for repairs or maintenance work to be carried out. You can refuse if there are reasonable grounds, and suggest a more suitable time, but it needs to be 'reasonable'.
- reasonable notice, and have your consent, to show prospective buyers, tenants, and valuers etc. Again, if there are reasonable grounds, you can suggest another time.
- no notice if it is an emergency.

GIVING NOTICE TO TERMINATE TENANCY

Tenant

Periodic Tenancy - You need to give at least 21 days notice, and this needs to be in writing, and keep a copy.

Fixed Term Tenancy - Your tenancy ends at the end of the stated time on the tenancy agreement, but your landlord still needs to give you at least 21 days notice if s/he is not wanting to renew, otherwise it reverts to a periodic tenancy. You and your landlord cannot end the tenancy prematurely unless by mutual agreement, or if the Tenancy Tribunal orders it (which is very difficult to obtain).



Landlord

Landlords generally have to give 90 days notice, and this also needs to be in writing. No reason has to be given.

Landlords can give 42 days notice ONLY if:

- The landlord and/or his/her immediate family is going to move in;
- The property is being sold, and a buyer, **who has signed a sales agreement**, wants vacant possession ie it is sold. A landlord cannot give 42 days notice just because s/he wants to sell the property.

RETALIATORY ACTION

If it appears that your landlord has given you a termination notice as a result of you asking the landlord to do repairs (for instance), or any other legitimate request, then this can be viewed as a 'retaliatory notice', and can be overturned by the Tenancy Tribunal. You need to file an application to the Tenancy Tribunal within 14 working days of receiving the termination notice.

This may just bide time, as the landlord may issue another 90 day notice shortly after the order. Depending on the circumstances, this may be regarded as another retaliatory notice.

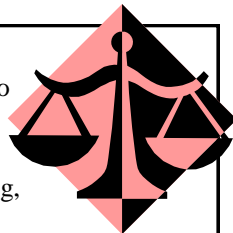
CONTENTS INSURANCE

It is advisable for you to take out contents insurance, which will then cover you if any action that you, your family, or visitors make causes the house to burn down.

TAKING ACTION AGAINST YOUR LANDLORD

Below is a list of actions you can take if you need your landlord to remedy any situation, either to get them to do something, or to stop them doing something:

- Ask them via the phone or in person, and then back this up in writing, and keep a copy.
- If nothing is done, then you can write another letter, or email, stating that things need to be fixed / sorted within a reasonable period, but 14 days is regarded as the minimum time frame (as from 1st October 2010).
- If nothing is done within that time, or if you consider the matter is urgent, you can apply directly to The Tenancy Tribunal for an order compelling the landlord to take action, and possibly compensating you for any inconvenience caused. Your case may be dealt with through their mediation service, or via a hearing with an adjudicator. Both methods can result in an enforceable order.



Tenancy Tribunal applications can be downloaded from the government's web site www.dbh.govt.nz. You can also apply on line. Forms can also be obtained by phoning 0800 83 62 62, or from Waitakere Community Law Service or your local Citizens Advice Bureau. There is a fee of \$20.44 (from 1st October 2010).

Waitakere Community Law Service is able to give tenants free advice and help in completing a Tenancy Tribunal application, including help with putting together the necessary evidence. We can also give you other tenancy advice. Our clinic times are 9.30am – 11am, Mon - Thurs, at 1a Trading Place, Henderson. Ph 835 2130.

