

PROPERTY Management FOCUS

Bringing you news from the world of
New Zealand property management.

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Happy New Year

Welcome, 2023! With everything we experienced in 2022, we know it is likely to be another year full of challenges and change. The team from Harcourts Property Management are excited about the opportunities that 2023 will bring, and we would like to wish you all a happy, healthy, and prosperous year ahead.

The Cost of Filing Tenancy Tribunal Applications

At a recent Tenancy Tribunal hearing, a landlord made a claim against the tenant for rent arrears, costs such as cleaning, and costs associated with **alleged methamphetamine contamination** of the premises.

The landlord claimed that the premises were damaged by methamphetamine contamination during the tenancy to the extent that the premises were not habitable and needed to be decontaminated. However, no methamphetamine test was conducted immediately before the tenancy began and a pre-tenancy test is usually required for the landlord to establish if the premises were contaminated prior to the tenant moving in.

There are other means to prove contamination if a pre-tenancy methamphetamine test was not conducted, however, the evidence must be compelling. For this particular case, there was no evidence provided to suggest that the current tenant was responsible for the methamphetamine contamination of the property.



Due to the seriousness of the allegations, the tenants engaged legal counsel. As the tenant was represented by legal counsel, the Tribunal had the power to award costs.

The tenants, represented by legal counsel, filed a memorandum seeking costs and the Tribunal made an award of \$2,500 to the tenant. This amount was awarded firstly, due to the serious allegations that methamphetamine was used, and possibly manufactured on the premises, and that the landlord made this application without considering what evidence was required to prove it. Secondly,

because the tenant was largely successful against all the allegations claimed by the landlord, the tenant had their name and identifying details suppressed from the Tenancy Tribunal order.

A landlord must consider the validity of any allegation and what evidence they have before making an application to Tenancy Tribunal. Property managers should advise landlords on the possible success of any claims and provide a professional opinion as to whether they should proceed. There may be times when a property manager declines to represent a landlord if the case does not have legitimacy.

When extensive alterations, refurbishment, repairs, or redevelopment are required



Section 51 of the Residential Tenancies Act - Termination by Notice

A landlord may terminate a periodic tenancy, or a fixed term tenancy on or after the end date, by giving at least 90 days notice if:

Extensive alterations, refurbishment, repairs, or redevelopment of the premises are to be carried out by the landlord or owner, and—

(i) it would not be reasonably practicable for the tenant to remain in occupation while the work is undertaken; and

(ii) the work is to begin, or material steps towards it are to be taken, within 90 days after the termination date.

What should be considered before terminating the tenancy using this provision in the Residential Tenancies Act 1986 (RTA)?

When considering extensive renovations to a property and potentially terminating a tenancy, consider first whether the work could be performed with the tenant living in the property, or if the tenant could simply move out for a short period of time.

If the tenant simply needed to vacate the premises for a short period of time, could they leave their belongings at the property or would they need to remove their belongings? In the case of renovating a bathroom, is there another bathroom that they have access to? In some cases, temporary bathrooms can be provided for the occupier to use during a bathroom renovation.

Consult with your tradespeople about whether it is practicable for your tenants and their belongings to stay in the property while the work is being carried out and how long the work will take. If it would be impractical for the tenant to stay, get this in writing, the reasons why, and how long the work is expected to take. You may be required to provide proof that the work was extensive enough to require the property to be vacant and the tenancy to terminate.

If the tenant can stay

If the tenant can stay at the property, consult with them about how long the work will take and what will be involved. Consider offering the tenant a rent reduction to compensate them for any inconvenience the renovation may cause. If they need to vacate for a short period of time and can do

so, then the tenancy can continue. Landlords are not required to provide somewhere else for the tenants to stay, and tenants that move out while work is being performed are not required to pay rent until they are able to move back into the property. Any agreements that are made must be recorded in writing with all parties receiving a copy of the agreement.

Only give notice using this provision IF the notice is legitimate

Landlords and their property managers must not use this provision to terminate a tenancy if the reason is not legitimate, as they would be committing an unlawful act.

Landlords cannot act to terminate a tenancy without grounds

It is an unlawful act for a landlord to give notice to terminate a tenancy or apply to the Tribunal for termination knowing that they are not entitled to do so.

Retaliatory notice

A notice can be deemed 'retaliatory' if the Tribunal considers that the notice to terminate the tenancy is not legitimate and the motivation by the landlord is not for the reason stated. A 'retaliatory notice' is where a landlord gives notice to a tenant to end a tenancy in retaliation for a tenant standing up for their rights. For example, if the tenant made a complaint about the tenancy such as requesting maintenance to be carried out.

It is an unlawful act for a landlord to issue either a termination notice without grounds or to issue a retaliatory notice. The Tenancy Tribunal can award exemplary damages payable to the tenant of up to \$6,500.

Family Violence and Physical Assault Regulations

Provisions relating to family violence and physical assault are in force. Regulations to support these changes were finalised on 1 December 2022 and came into effect on 29 December 2022.

These regulations enable:

- tenants to withdraw from a tenancy by giving at least 2 days' written notice to a landlord where a tenant has been subjected to family violence - while a tenant
- landlords to terminate a tenancy with 14 days' written notice where the tenant physically assaults the landlord, the owner, a member of the landlord's or owners' family, or the landlord's agent.

Family Violence Regulations

If a tenant has been subjected to family violence, they can provide their landlord with at least two days written notice accompanied by qualifying evidence to withdraw from their tenancy.

Qualifying evidence of family violence can be:

- a statutory declaration from the withdrawing tenant
- a copy of the first page of a Protection Order
- a copy of a Police Safety Order
- a copy of a charging document relating to family violence against the withdrawing tenant or
- a written statement (such as a letter or email) or statutory declaration from a person specified as able to provide evidence of family violence.

These documents must have been issued or completed during the withdrawing tenant's current tenancy to be used as evidence. Protection Orders issued earlier than this are also permitted if the withdrawing tenant also provides

a written statement that they have been a victim of family violence while in their current tenancy.

When there are other tenants

If there are remaining tenants, the tenancy continues. The withdrawing tenant must give notice of the withdrawal to the other tenants no later than 2 days after their withdrawal from the tenancy. This does not have to be done in person, and no evidence of family violence or other information needs to be shared. A failure to notify any remaining tenants does not invalidate the withdrawal notice.

The amount of rent for which the remaining tenants are liable is reduced for 14 days following the withdrawal. This is based on the number of tenants at the property. After 14 days, the rent will return to the normal rent payable, as per the tenancy agreement.

Only the tenants, landlord or property manager will receive the statement or declaration, which they must keep confidential and can only disclose in very limited circumstances. A landlord may not challenge whether the family violence did or did not take place. If the documents are not completed properly or are not completed by a prescribed person, the landlord can challenge the notice by filing an application in the Tenancy Tribunal.

Physical Assault Regulations

If a landlord, owner or property manager has been physically assaulted by a tenant, or a member of their family has, they can end the tenancy with at least 14 days written notice accompanied by qualifying evidence.

Evidence can be in the form of a Police charging document in respect of the physical assault or a letter from Police that a charge has been filed in relation to the physical assault by the named tenant.

The landlord does not need to apply to the Tenancy Tribunal to end the tenancy, but they must give written notice that includes certain information and at least one form of evidence of the physical assault. When issuing the notice, the landlord must also advise the tenant in the notice that they have the right to challenge the notice through the Tenancy Tribunal. If a tenant challenges the notice of termination, the tenancy remains in place until the Tenancy Tribunal arrives at a decision.

What is physical assault?

Physical assault is defined as the act of intentionally applying force to the person of another, directly or indirectly.

Other actions a landlord can take

A landlord can apply to the Tenancy Tribunal to end a tenancy if the tenant has caused or threatened to cause substantial damage to the property or assaulted or threatened to assault certain people. These reasons also apply if the tenant causes or permits another person to do the same, for example an associate or family member. This type of application would be treated as an urgent application by the Tenancy Tribunal.

In addition, if a breach of a tenancy is incapable of remedy and is of such an extent that it would be inequitable to refuse to make an order terminating the tenancy, the Tenancy Tribunal may make an order to terminate the tenancy.

Tenancy Start and End Times

Tenancy days start and end at midnight, therefore we cannot demand that tenants leave the premises and return keys before midnight on the last day of a tenancy.

For example, if a tenant gives notice to vacate on the 15th of the month, they have possession of the premises until midnight on the 15th. To collect the keys at midnight is impractical, so we would expect the keys to be returned, or to meet the tenant, collect keys, and do a walk-through, on the morning of the 16th which is the morning after the termination date of the tenancy.

If you are selling your property or planning to move back in, you will need to keep this front of mind.

Always give your property manager several working days after a tenant has vacated to get a property inspected and up to standard before taking possession of the premises.

This ensures that any issues that may arise at the end of a tenancy can be dealt with before settlement or the owner takes back possession of the property.



An advertisement for Harcourts featuring an elderly couple. The woman is smiling and looking at the man, who is leaning in and kissing her on the cheek. The text "YOUR Investment" is written in white, with "OUR UNDERSTANDING" in blue below it. The Harcourts logo is in the bottom right. Two award medals are shown: a gold one for "Reader's Digest Quality Service Award" (2018-2022) and a blue one for "Winner TRUSTED BRAND 2013-2022" (Reader's Digest).



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*Readers Digest Most Trusted Brand Survey 2013-2022.

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