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Understanding the Residential Tenancies Act 1986

Private landlords and professional property managers are bound by the regulations and laws under the Residential Tenancies Act 1986 (RTA) amended by the Residential Tenancies Amendment Act 2020, Residential Tenancies (Healthy Home Standards) Regulations 2019, and the Housing Improvement Regulations 1947.

Due to the constant changes and large number of regulations to abide by, it can be difficult and confusing for owners to interpret the threshold of responsibility required in various instances, especially when it comes to applying the law to real life situations. The following information aims to explain the various thresholds that are often misinterpreted or misunderstood by landlords, providing further clarity on the ways certain aspects of the law are interpreted.

Application for cost for 'Accidental Damage' – Section 49B of the RTA

Under section 49B of the RTA, a tenant is only liable for the full cost of the damage to the premises if they intentionally caused the damage or the damage was the result of an act or omission constituting an imprisonable offence of the tenant or a person whose actions the tenant is responsible for.

However, if the damage caused was 'accidental', that is the damage was caused by a careless act or omission of the tenant, even if the tenant is proved to be held liable, their liability is limited to the lesser of the insurance excess or 4 weeks rent.

The threshold for landlords to prove accidental damage is fact dependent. For a tenant to be fully liable for the damage, the landlord must prove that the damage was not fair wear and tear, the damage was caused intentionally or by an act or omission constituting an imprisonable offence, and that the landlord will not be able to access insurance monies due to the act. The tenant will then have an opportunity to prove that any destruction or damage was not intentionally done nor was the destruction or damage caused by a careless act or omission.

In Guo v Korck [2019] NZHC 1541, it was stated that damage is intentional where a person intends to cause damage and takes the necessary steps to achieve that purpose. Damage is also intentional where a person does something, or allows a situation to continue, knowing that damage is a certainty.

For example: A crack to an internal door caused by a tenant slamming the door is likely to be deemed a careless act and the tenant will likely be liable for the lesser of the insurance excess to fix the door or 4 weeks rent. However, a hole dug out through the middle of an internal door by any instrument is intentional and the tenant will likely be liable for the entire cost of the damages.

Fair Wear and Tear – section 49A(2) RTA

As a general principle, a tenant is not liable for the fair wear and tear of chattels or the premises. 'Fair wear and tear' refers to the gradual deterioration of things that are used regularly in a property when people live in it. Often, it can be difficult to judge the definition of fair wear and tear. If a stove element wears out from normal cooking that is fair wear and tear. However, if the stove was being used to heat up a one-bedroom apartment and was switched on 24-7, that is not considered fair wear and tear.

Further examples of fair wear and tear include the flooring getting worn, taps and washers in the kitchen, bathroom, or laundry wearing out or leaking. While burn marks or drink stains on the carpet and drawing on wallpaper may not be.

Landlords should also keep in mind the age of the premises and chattels in making a fair judgement and request for compensation. A burn mark on a carpet that is 5 years old will not be treated the same as a burn mark on a new carpet, therefore, compensation for damage will also be calculated with the age of the carpet in mind.

Landlords should be prepared that they will not be compensated the value of the carpet when it was new and will need to depreciate the value of any item that is damaged.

The Inland Revenue website has easy-to-use calculators to calculate the general depreciation value of items. Although we note that these are for tax purposes, they will provide a guideline for the value of the items over time.

For example: At a recent tribunal hearing, it was claimed by a landlord that the carpet in a sleepout had been stained by a dog entering the property when the tenancy agreement ruled that no pets were allowed. The tribunal decided that by allowing the dog to enter the sleepout repeatedly, it assessed that this was intentional damage. The landlord claimed $1,063.42+GST for full replacement of the carpet but the Tribunal took into account that the carpet was 6 years old, with a useful lifespan of 10 years, therefore, $489.17 was awarded.

Breach of Quiet Enjoyment – section 38 RTA

Tenants are entitled to have quiet enjoyment of the premises without interruption by the landlord, neighbours, or other tenants. While you must give proper notice before entering the tenanted premises (dwelling) as per section 48 of the Act, to minimise any breaches to a tenant's quiet enjoyment, it is best practice to remember to also give the same notice before entering the land to conduct repairs or maintenance on the exterior of the property. It is important to note that it is not a breach of the tenant's quiet enjoyment if the landlord is simply complying with their obligations under the Residential Tenancies Act 1986. The Act provides when the landlord can enter the premises to carry out work and for other purposes. The tenant must not prevent the landlord from entering in those circumstances.

Tenancy Services, and section 48(7) of the RTA states that landlords do not need to give notice to come onto the property (the land) when the landlord has agreed to do things like mow the lawn for the tenants, or to maintain the outside of the house. Though, while you can access the grounds and exterior without notice, as a landlord this should not be done unreasonably so, as you still need to avoid interfering with the tenant's quiet enjoyment.

To avoid any misunderstandings, please see our above guidelines. Please be aware that from any tenant's perspective, a stranger walking even on the property can cause alarm and distress.

Source REINZ

The largest penalty in the RTA

In the Residential Tenancies Amendment Act 2020, one significant change was to the exemplary damages that can be awarded to a tenant when a landlord does not meet their obligations, and commits an unlawful act:

Section 45(1A) Landlord failing to meet obligations in respect of cleanliness, maintenance, smoke alarms, the healthy homes standards, or buildings, health, and safety requirements. $7,200 per tenancy/offence.

This is an increase from $4,000 to $7,200 and is the highest amount that can be awarded for an unlawful act. This demonstrates the importance that Government has placed on compliance with the healthy homes standards, and it is worth noting that the Government has allocated an additional $80 million over four years to monitor compliance with the regulations.