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RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Perspectives for Property Managers

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RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Key Changes

- Residential Tenancies Amendment Act 2019 (RTAA) became law on 30 July 2019
- Came into force on 27 August 2019
- Created to address real issues that have been the subject of recent court cases and uncertainty in rental market....
- Liability for damage to rental premises caused by a tenant
- Methamphetamine contamination in rental premises
- Rental premises that are unlawful for residential use



RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Tenant Liability for damage – section 49

Key Changes

- If tenants (or their guests) damage a rental property carelessly, tenant liability capped to lower of 4 weeks rent or insurance excess – section 49B(2) and 49(b)(3)
- If tenants (or their guests) damage a rental property intentionally (section 49(B)(1)(a)) or where the damage is caused by an imprisonable offence (section 49(B)(1)(b)) , the tenant is fully liable
- Damage discovered after 27 August 2019 is assumed to be caused after this date unless tenant proves otherwise (section 49(B)(7))
- No right of subrogation so Insurer can't try to collect from tenant directly (section 49(C))



RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Tenant Liability for Damage

Why was change required?

- Holler and Rouse v Osaki – Court of Appeal (2016) 17 NZCPR 335
- Tenant not liable for accidental damage if landlord insured
- Tenant not liable to pay excess
- Application of Property Law Act 2007 (s 268 and 269 – exoneration provisions) to residential tenancies (aligning with commercial tenancies)
- Commercial leases provide for payment of excess – usually capped to agreed amount, eg \$2,000.00 in current ADLS lease
- However in commercial leases premiums are charged to tenants as outgoings. No ability in residential tenancies to pass on premiums
- Investors not happy and lobbied for change



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RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Tenant Liability for Damage

Common Questions

- Not insured? Applicable limit in 49B(3)(b) applies
- Contracting Out? Section 49(D)(b)
- Careless v Accidental damage
- Pre PLA courts required “grossly careless”, PLA threshold is “intentional”
- Intentional damage not defined in RTAA
- Various court cases on what constitutes “intentional”
- Courts have applied high threshold, even where tenants directly breach terms of tenancy
- Linklater v Dickinson [2017] NZHC 2813 – smoking in house
- Tekoa Trust v Stewart [2016] NZDC 25578 – pets in house



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RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Insurance Statements – Section 13A(2)

- From 27 August 2019, landlords must provide an insurance statement in new tenancy agreements
- Must state if property is insured or not - section 13A(2)(a) or (b)
- If insured it must state what the excess is for the policy - section 13A(2)(b)(i)
- Must state the policy will be supplied on request - section 13A(2)(b)(ii)
- Existing tenants can request insurance information and landlord must supply in reasonable time - section 13A(3)
- If information changes, landlord must advise tenant in reasonable timeframe - section 13A(4)



RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Insurance Statements – Practical Tips

- Check with landlord's insurer what policies are in place and the relevant excess
- Make sure you understand your insurer's procedures for making claims
- Some insurers require proof that tenant checks were undertaken
- Determine if the landlord should insure any furniture or items included in the tenancy agreement as damage will not be covered by tenants' contents insurance
- Consider supplying insurance statement to existing tenants
- Varied or renewed agreements? Compare 13A(1CB)
- Example statements:
<https://www.tenancy.govt.nz/assets/Uploads/files/insurance-statement.pdf>
- \$500 penalty for failure to supply or update insurance information



RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Unlawful Residential Tenancies – section 78A(2)

- Unlawful tenancies within jurisdiction of RTA and Tenancy Tribunal (TT) amends definition of “residential premises” – irrespective of whether can be legally lived in - are residential premises if lived in
- Tenants protected by minimum requirements of RTA
- TT can order that:
 - Landlord must repay all or some rent – section 78A(4)(a)
 - A tenant is not liable for rent arrears, compensation or damages unless it would be unjust - section 78A(3)(a)
 - Landlord to make premises lawful - section 78A(4)(b)
 - Exemplary damages of up to \$4000.00 section 78A(5)(c)
 - Tenancy is terminated
 - Tenant can give 2 day’s notice to cancel if unlawful at beginning of tenancy



RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Unlawful Residential Tenancies

Why was change required?

- Anderson v FM Custodians [2013] NZHC 2423
- Flood of applications to TT for rent refunds
- Section 137, Prohibited Transactions – “All money paid...for the tenancy...shall be recoverable..”
- Inglis v Parry - NZTT decision then DC, [2018] DCR 333 – “NZTT did not consider factual basis”
- Edwards, Bethani v Wongeoon Vast Limited – NZTT decision 4091009, section 137(4), money paid “for the tenancy” = premium for tenancy not rent
- Parbu v Want [2018] NZHC 2079 – “NZTT had jurisdiction...regardless of Court’s decision in Anderson v FM Custodians..”
- Inconsistent High Court decisions



RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Unlawful Residential Tenancies

Practical Tips

- Understand when properties may be unlawful
- Difficult! Wide definition in section 78A(2), “cannot be lawfully occupied for residential purposes” or landlord’s failure to comply with:
- Section 36 – “no legal impediment to occupation..for residential purposes.”
- Section 45(1)(c) – “comply... with requirements in respect of buildings health and safety under any enactment.”
- Property does not have required building or resource consent
- Unconsented building work
- Deemed unsafe or insanitary by a local authority
- Landlords should be asked to check existing properties (LIM, Property file, title etc)
- Landlord should be asked to provide disclose and warrant information accurate



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RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Contamination of Premises

Key Changes

- Landlord can test for contaminants, including methamphetamine (meth) while tenant living in property – section 48(2)(ba)
- 48hr notice (but not more than 14 days notice) to be provided before entering for testing
- Landlord must advise tenant they are testing for meth and share results with 7 days of receiving
- Regulations to be made to prescribe acceptable level for meth contamination, processes for testing and decontamination – section 138C



RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Contamination of Premises

Key Changes – Section 59B, Termination when contaminated

- After regulations come into force:
- 7 day notice from landlord to end tenancy if testing confirms above uninhabitable levels (if contamination not caused by landlord) – section 59B(6)
- 2 day notice from tenant to end tenancy if testing confirms above uninhabitable levels and can stop rent (if contamination not caused by tenant) – section 59B(7)



RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Contamination of Premises

Key Changes

- Section 59B(4) - NZTT may terminate the tenancy on application where the whole premises are not over uninhabitable levels but:
 - Part of premises are contaminated above uninhabitable levels; and
 - Contamination not caused by landlord or tenant
 - Contaminated portion of premises is separate from rest of premises
- Landlord won't be able to knowingly rent contaminated premises – section 45(1)(1AAB)
- \$4000 penalty for breach



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RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Administration matters....

- Regulations to be made that address contamination of premises
- RTA itself does not state what level of contamination is acceptable
- Conflicting reports – New Zealand Standard v Report from Chief Science Advisor
- Combination of the insulation statement and healthy homes standards (HHS) into one separately signed statement instead of two – section 13A(1DA)
- From 1 July 2016, insulation statements must be provided in new, renewed or varied tenancy agreements and state what insulation the home has, where it is, type and condition
- From 1 July 2019, for HHS landlords must have a statement in new, renewed or varied tenancy agreements that they comply with HHS or intend to





ANY QUESTIONS?



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