

NZPIF Education Program for Self-Managing Landlords Resource Book

Residential Tenancies Act & Amendments

Residential renting in New Zealand is governed and controlled by the Residential Tenancies Act 1986 and its subsequent amendments.

The Residential Tenancies Act ("the RTA") applies to landlords and residential tenants and provides a basic set of laws intended to protect both parties. It also applies to Boarding Houses but not to flatmates.

If an occupant has signed a tenancy agreement with a landlord they are a tenant.

If someone else has signed the tenancy agreement but lets the occupant share the flat, they are a flatmate. Flatmates live in the property but are not part of the tenancy agreement.

Under the RTA there is no such person as a Head Tenant – they are either a tenant or they are not.

The RTA is amended from time to time. As a landlord you need to keep up-to-date with these constant changes and revisions. To say that you did not know about or understand what is required by the RTA is no defence if you are found to be in breach.

The RTA has the force of law. Any agreement between landlord and tenant that attempts to evade or avoid the terms of the RTA is invalid and cannot be enforced.

There are also penalties that can be inflicted on anyone who is found to have ignored or infringed the restrictions and regulations embodied within the Act

A landlord can choose to waive / give away their rights but cannot make a tenant waive theirs.

Notice periods for deemed service

When you 'serve' or give notice to another person, it can be hand-delivered to the other person. This can be done in person, by placing it in the letterbox or by attaching it clearly to the door of the property or sent to the address for service listed on the tenancy agreement. You can also send the notice to a PO Box, email address or fax number if it is listed on the tenancy agreement as an additional address for service.

The other person hasn't been legally notified until they receive the notice, so you must allow extra time for the notice to be delivered. This period is sometimes called 'service time'.

These times depend on how the notice was delivered.

If the notice is:

- Handed over in person, it's classed as received immediately.
- Left in the premises' letter box or clearly attached to the door, it's classed as received 2 working days after the delivery date.
- Posted to the address or Post Office Box, it's classed as received on the 4th working day after the date it was posted.
- Sent to the email or fax number before 5pm, it's classed as received on that same day.
- Sent to the email address or fax number after 5pm, it's classed as received on the next working day.

These timeframes apply unless the person being served notice can show they don't. For example, if the person receiving the notice has received it earlier, or can prove that the post was delayed or not received.

Finance & Control

There are always costs involved in owning property.

Even if no mortgage is involved, you will need to budget for and pay for many other costs.

There will probably also be expenses involved in renovating the property between tenancies and funding mandatory upgrade work

All rental property related expenses and income should be kept quite separate from your own personal family finances for tax and accounting purposes

Achieving market rents and handling rent reviews

To make your property investment work for you, you need to set the correct rent at the start of the tenancy and ensure that any increases in your costs and changes in market rentals are passed on during the term of the tenancy

The level of rent you can charge is not controlled by legislation. You can charge any rent you wish, but that rent must not be significantly more than the normal market rent for a property of similar size and condition in that area.

Calculating the correct rent depends on knowledge of the rental market in your area. MBIE and the NZ Property Investors Federation websites both provide advice on current rents in specific areas on their websites. Some Property Management firms also produce monthly newsletters which include rent level data from within their specific area.

Searching through current rental listings on advertising sites such as TradeMe and realestate.co.nz can also be informative

During the tenancy you are normally able to increase the rent (with some exceptions).

The rent must not be increased within 12 months after the date of the commencement of the tenancy and the rent must not be increased within 12 months after the date on which the last increase took effect.

You must give written notice of any rent increase and must give that notice at least 60 days (plus service time) before the increase will apply.

Documenting decisions & actions

It is very important that all your decisions, notices, agreements, rent records and messages relating to your rental property are documented in writing for compliance purposes. Any photographs of the condition of the property should also be retained. Verbal discussions with your tenant or with tradespeople should be followed up by a written confirmation on who said what and what was decided.

All these records should be kept and filed in a manner that allows you to quickly find the correct

document when you need it. If you keep these records in electronic form on a computer, ensure that they are filed by date, by tenant, by property, or by some other logical sequence so you can access what you need when you need it. Also, ensure you keep backup copies of these records, preferably offsite.

Keep taxable expenditure and tax-deductible expenses separate from your private money and easily identifiable. Under tax law you must retain all financial records for your rental property activities for at least seven years.

Legal requirements – IRD & MBIE

As residential renting is a business you are required to create, maintain and store proper business records.

The following list isn't exhaustive and is subject to change.

- All your business bank statements.
- A record of income e.g. rent payment summaries
- Any electronic records.
- Any tax invoices you have received for your business expenses.
- Any statements from the bank or finance companies setting out the interest paid during the year.
- A list of all your business's liabilities and assets.
- Details of all property purchases and disposals
- Any dividend payments you have received or interest received on your business savings.
- Any log books for motor vehicles where you claim running expenses in the business.
- Any other necessary documents to confirm entries in your accounts e.g. your mortgage statements, rates, water charges, home telephone if you are claiming any of these as part of your home office claim.

In addition, MBIE require you to keep comprehensive details of your tenancies.

Landlords must keep rent and bond records for seven years after the tax year to which they relate. Landlords must keep copies of all documentation relating to the rental property during the tenancy and for 12 months after the tenancy ends.

Under the Healthy Homes Standards rental property owners are now required to keep records that demonstrate their compliance with the standards. Examples of the types of documents Landlords need to show compliance include receipts for building work, photographs of the installation of the materials and products, product manuals and warranties.

Your renting business cannot be registered for GST. You cannot claim any refund on the GST costs you have paid on any of your rental property expenses.

Tenancy Documents

The seven documents you will need when you establish a new tenancy:

- The tenancy application
- The Tenancy Agreement
- The insulation statement

- The Healthy Homes Standards statement
- The ingoing property inspection report
- The bond lodgement form
- The Insurance Statement

Tenancy applications

Requested information should include rigorous identification of the applicant, their employment or WINZ details, previous rental history, reference checks, next of kin details and background checks.

Every adult 18 years of age or older who will live in your property should provide their details. If there will be a guarantor, or someone else responsible for the rent (parents, for example), they should also fill out an application. Run a credit and background check on all parties who will be living and/or paying rent for your property.

If you are collecting personal information about a prospective tenant, it is important that you respect the Privacy Act 1993. Requirements of the Privacy Act include:

- you can only use the information for the purposes for which it was collected
- the information you collect must be reasonably required and used for no other purpose
- you must keep the information secure and you must give the tenant access to or a copy of the information if they request it
- the applicant should sign that they have freely given the information that you have requested, and that they consent to you checking their references and accessing their credit records
- any information collected and then no longer required (e.g. an unsuccessful applicant) should be securely destroyed

Therefore, if you are collecting information for tenancy checks, it is highly advisable you collect this information through a formal written declaration. This gives protection to and understanding for both the tenant and landlord.

The Tenancy Agreement must state:

- The address of the tenancy
- The name of the landlord, their address for service and their other contact details
- The name, service address (generally the tenancy address), and other contact details of each tenant who will live in the property
- The amount of rent payable and whether that will be paid weekly or fortnightly
- The bond amount
- The method of rent payment (e.g. the bank account details where it is to be deposited)
- The date the tenancy will commence
- Whether the tenancy is to be periodic or fixed term, and if fixed term the termination date.

There are a number of other clauses that are legally allowed and are desirable to include:

- The tenant must not assign or sublet the property
- The tenant must not host AirBnB or similar short term rental guests in the property

- The maximum number of people that may reside in the property
- Whether pets are allowed to be kept, and if so their identities
- If smoking is allowed inside the property
- Restrictions on the number of vehicles and their roadworthiness
- Clarification on who pays for water supplied and the associated wastewater charges
- Setting out the responsibilities for the maintenance of any lawns and gardens
- A clause assigning to the tenants jointly and severally the liability for any debt collection costs and expenses that may arise from the landlord's enforcement of any Tenancy Tribunal order.

Some clauses have been held to be illegal and unenforceable. These include a requirement to have carpets professionally cleaned at the end of the tenancy, or to make tenants liable for rectification of fair-wear-and-tear.

In all residential tenancies the landlord is required to provide the tenant with the written tenancy agreement before the tenancy starts.

Insulation Statement, Healthy Homes Compliance Statement & Insurance details

Since July 2016, Landlords are also required to disclose and meet standards for insulation within the property. An Insulation Statement to that effect signed by the landlord must be included with the Tenancy Agreement.

Similarly, since July 2019, a Healthy Homes Standards compliance statement must also be included. This statement indicates that the rental either already complies with the Healthy Homes standards or that the landlord intends to comply by the required date.

Landlords must keep records that demonstrate compliance with any healthy homes standards that apply or will apply during the tenancy.

Landlords are required to provide all new tenants, and existing tenants where they request it, details of their property insurance and state the amount of the excess under the policy. Any relevant changes made to your insurance, also need to be notified to your tenants.

You can provide the tenant with a standard certificate of insurance but this will have more information on it than you are required to disclose (such as the Bank that has a mortgage over your property). Some insurers have produced a specific Tenant Certificate for you to provide.

Property inspection report

An ingoing property inspection report is used to record the condition of the property at the start of the tenancy. This sets a benchmark on the condition of the property at that time, and is used to determine if any damage beyond fair wear and tear occurs during the tenancy.

This is the way to establish any later claim for damages from the tenants at the termination of the tenancy. It also gives tenants protection against landlord claiming damage that was already present at the time they moved in.

The landlord and all joint tenants together need to inspect the property, identify and record any existing damage, and then both sign the inspection report. It is also highly advisable to take photos and videos of all rooms in the property, especially the ceilings, floors, carpets, and any fixtures or fittings to accurately record their condition at the beginning of the tenancy. Ensure that any smoke alarms fitted also appear in the relevant photographs. A tip is to write the expiry date on the outside so you can see it without taking the smoke alarm down. If videoing press the test button on the alarm to record it working. If an evidential drug contamination test is carried out at this time, the results should also be photographed and recorded as part of this report.

It is good practice for all parties to initial each page of the report to avoid any later allegations of malpractice.

Bond lodgement forms

A bond is money collected and paid by the tenant as security against damage to the property or non-payment of rent. This money belongs to the tenant until the landlord makes a successful claim against it for unpaid rent or for damage to the property.

The bond money must be forwarded to the Bond Office at Tenancy Services within 23 days.

The maximum bond a landlord is allowed to charge is four weeks rent. It is illegal to charge any extra as a 'pet bond'.

There is no obligation for the landlord to require a bond, and if they do they may elect to request a bond of less than the four week maximum. There is every reason to collect the maximum amount allowable.

To collect and record the bond:

- Establish the amount of bond you require, and make this clear to all applicants for the tenancy
- When you make the offer of the tenancy to the selected applicant, establish that the bond must be paid to you in full on or before the start of the tenancy. Make no exceptions to this – no bond, no tenancy
- Download a copy of the Bond Lodgement form from the Tenancy Services website and print off a copy. The landlord and all joint tenants must complete and sign the form. The form also requests details about the size and other details about the property, these are used to provide statistical information about rent levels
- Issue a receipt to the tenants immediately you receive the bond from them, or sign as receipted on the Tenancy Agreement
- Forward the completed bond form and the bond money to the Bond Office within the legally required time frame.
- After receiving the Bond deposit, the Bond Office will issue a receipt to both the landlord and the tenant. This will include a bond number, and this number must be used in any future dealings about this bond.

Note that if the tenancy is for one week or less (e.g. in a boarding house) then there is not the requirement to lodge the bond with Tenancy Services.

It is very important to keep Tenancy Services up-to-date with any changes in tenants, landlord or tenants contact details otherwise there could be difficulties when the Bond is eventually paid out.

It is good practice to keep a copy of the bond deposit form along with the Bond Office receipt in your records.

Subsequent Tenancy Records

As the tenancy moves through its life, there will be other forms and documents required. These may include:

- Record of rent due and paid
- Record of any water charges due and paid
- Regular property inspection reports
- Written notice of rent increases
- Requests made to the tenants
- 14 day notices issued to the tenants by the landlord
- Requests made by the tenants
- 14 day notices issued by the tenants to the landlord
- Records of any Mediation or Tenancy Tribunal hearings
- Any changes, amendments extensions or variations made to the Tenancy Agreement
- The tenants written notice of intention to terminate the tenancy (or a digital copy)
- The move-out checklist
- The final inspection report
- The bond refund form.

Accommodation Supplement

The Accommodation Supplement is a non-taxable WINZ weekly benefit payment which helps people with their rent, board or the cost of owning a home. Any payment of the accommodation supplement is settled between the tenant and WINZ, and any payment is made directly to the tenant. The landlord is not party to these discussions and generally has no knowledge about the tenant's eligibility for the supplement and does not know how much, if any, that the tenant is receiving.

WINZ Bonds – conditional offers

Low income applicants may be able to get some help to pay Bond costs from Work and Income, Senior Services or StudyLink. They may have to pay the money back to WINZ but if so they can do it in instalments.

If you choose an applicant for a tenancy who needs to utilise this funding then you need to make your offer of the tenancy conditional on the applicant being approved and the money arriving in your bank account. Approval is not necessarily automatic or given in every case, so write a "Letter of Offer" addressed to Whom it may Concern for a prospective tenant rather than a prepared tenancy agreement. Never give a tenancy agreement for WINZ purposes until you have the WINZ money

Periodic and Fixed-term Tenancies

There are two types of tenancy defined under the Residential Tenancies Act, the periodic tenancy and the fixed-term tenancy.

Periodic tenancy

A periodic tenancy agreement has no end date. It continues until either the tenant or the landlord gives written notice to end it.

A landlord or tenant must give notice to end a periodic tenancy.

Every notice to end a tenancy must:

- be in writing
- give the address of the tenancy
- give the date when the tenancy is to end
- be signed by the person giving the notice.
- A **tenant** must give at least 21 days' written notice to end the tenancy, unless the landlord agrees to a shorter time. This agreement should be in writing.
- A **landlord** must give at least 90 days' written notice to end the tenancy. Landlords can give less time (at least 42 days' notice) in some cases.
- If a landlord gives the tenant notice to end the tenancy and the tenant wants to move out sooner, the tenant must still give the landlord 21 days' written notice.

A landlord can give at least 42 days' written notice to end the tenancy if one of the following apply:

- the property has been sold and the new buyer doesn't want tenants (i.e. the buyer wants 'vacant possession')
- the owner or a member of the owner's family is going to live in the property
- the property is normally used as employee accommodation and its needed for this purpose. The fact that this might happen must be included in the tenancy agreement.

The landlord's notice must also state which of the above reasons applies.

If there are multiple tenants named on the tenancy agreement, and one of the tenants gives the landlord notice, this ends the tenancy for all the tenants.

Fixed-term tenancy

A fixed-term tenancy agreement lasts for a set amount of time – e.g., one year. You must include the length on the tenancy agreement. It can be renewed or extended if the landlord and tenant agree.

The rent set at the start of a fixed term tenancy cannot be changed during the term of that tenancy unless there is a specific clause in the Tenancy Agreement permitting this. If this is permitted, the usual rules around notification of rent increases apply.

Once the fixed term ends without any action by either party, the tenancy will automatically become periodic. If you don't want this to happen, you'll need to give notice in writing at least 21 days before the term ends. If both landlord and tenant agree, they can renew or extend the tenancy for a further fixed term. This agreement has to be in writing. A landlord does not have to renew or extend a fixed-term tenancy.

Fixed-term tenancies can be changed if the landlord and all the tenants agree. Any agreement should be in writing and should include all details on what's been agreed between the parties.

Both the landlord and tenants should keep a copy of this agreement.

The landlord may charge a fee for ending the fixed-term early. These fees should only be their actual and reasonable costs

If the fixed-term is 90 days or less, it is a short fixed-term tenancy. It does not become periodic when the term ends. A short fixed-term tenancy can't be used as a trial period.

Renting out a property

First impressions count. The property should look as welcoming as possible.

Ensure that the property complies with the currently applicable Residential Tenancies Act laws and regulations and the current Healthy Homes legislation requirements.

The property should not present a hazard to either the occupants who live there or those who visit.

Research current rental prices for the location and size of the property on TradeMe, the NZPIF website, and any other reliable sources. You should be seeking a tenant who has their life together, holds down steady employment and is in control of their own finances. Work on the basis that such a person is well able to afford a market price for their home, whereas those who seek a cheap rent are possibly financially unstable.

When you are advertising your property, you can

- engage a real estate management firm to find your next tenant
- advertise through an agglomeration service e.g. MyRent
- advertise directly yourself.

When advertising, always state the amount of weekly rent, advise that four weeks' bond will also be required, and then state the full ingoing amount required.

Make sure to include the date the property will be available for move-in.

Discrimination is unlawful under the tenancy law when it breaches the Human Rights Act.

It is against the law to choose tenants based on:

- Marital status, gender, or sexuality
- Religious beliefs, ethical beliefs, race, or skin colour
- Where a person comes from, such as their nationality or citizenship status
- Age, political opinion, or employment status
- Having or not having children

Reference and Credit Checks

Good reference checking and credit checking are vital steps in your tenant selection process.

The following steps are recommended:

- ID Verification. You need to make sure you are actually dealing with who you think you are dealing. Checking out the applicant's photo ID is an essential step in this process.
- Background Checks. Find out if your applicant has used other names or aliases in the past
- Credit Check. Has your applicant defaulted in the past and are they still burdened by large loans?
- Credit File Activity. This lays out all reported credit applications, and can be a good indicator of their financial capability
- Court Fines and Judgements. Is there any conviction history, and are there unpaid court fines?

- Insolvency history. Has the application been judged insolvent or entered bankruptcy?
- Tenancy Tribunal Check. Any tenancy issues in the applicant's past will show up here. Tenancy Tribunal orders are on-line, so any decisions may be read in full for your assessment.
- Employer Check. Confirm job title, length of employment and stability
- Previous Landlord Check. Probably the most valuable reference. Did they pay the rent on time and not damage the property? Did they leave the tenancy voluntarily or were they pushed? A vital question you should always ask: "Would you rent to these people again?"
- Character Reference Check. Personal references from those who know them well.
- Facebook and Google searches are sometimes the key to finding out more about a person

As a member of a Property Investors Association your subscription includes membership of illion Tenancy so you can access a number of these checks through illion for just \$20.44 per individual.

Do not give anyone a reason why their application was unsuccessful or why you did not chose them. To do so may leave you open to accusations of discrimination.

Make a conditional offer to your preferred applicant.

Your offer must be subject to payment of the full bond, payment of the initial rent, and the written Tenancy Agreement and other necessary paperwork being signed.

Prior to the start of the tenancy, you will need to prepare and complete the bond receipt, the bond lodgement form, the Tenancy Agreement, the Insulation Statement, Insurance details and the Healthy Homes Compliance statement.

Where required, these need to be signed by all parties involved.

On the day the tenancy starts, the landlord should meet all the tenants named in the Tenancy Agreement, carry out a full property inspection, and sign off the written inspection report.

Explain in detail; how and when the rent is to be paid, and what steps you will take if this is not paid on time and in full.

This is also a good time to show the tenants the location of both the power and the water meters (if any) and explain how the heating and (if fitted) any burglar alarms operate.

Property Inspections

Under S.48 of the Act the landlord has the right of entry into the tenanted property to carry out a property inspection provided a number of conditions are met.

Under the RTA

- When to do –
 - at start of tenancy: to establish the condition of the property at that time
 - during the tenancy, to identify and rectify any problems that may arise with the condition of the property
 - final inspection: establishes condition at termination, prepares for any TT claims, and indicates any work required before property can be relet
- Your rights -
 - tenant has right of occupation, so they control right of entry to the premises
 - landlord has right of entry to inspect the premises subject to statutory limitations
 - tenant cannot refuse inspection if proper notice has been given
 - inspections cannot be done more frequently than once every four weeks. The actual frequency is often set by insurance requirements. Many insurance policies require inspections to be carried out and recorded within specific time periods, often three, four or six-monthly intervals, in order to maintain your insurance cover.
- Notices to give the tenants -
 - give notice at least 48 hours prior to the inspection, plus the allowance for service time. Inspection must be done between the hours of 8am and 7pm, and must be conducted within 14 days of issue of notice
 - the tenant does not need to be present at the inspection, and their inability to be present is not a valid reason for them to refuse access.

What to look for -

- have a standard inspection form used in each and every inspection so nothing is missed
 - check for damage against previous inspection report
 - check for signs of developing problems (dampness, mould etc.)
 - check for evidence of breaches of TA (e.g. overcrowding)
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- Notifying tenants when there is a problem -
 - supply a copy of your findings to the tenants
 - note any problems, what action they need to take to remedy, what work the owner/landlord intends to carry out as a result of the inspection
 - consider an informal request vs issue of 14 day notice
 - compliment the tenant if no problems are evident. Always thank them for taking good care of your property.
 - it is not mandatory for the tenant to receive a copy of the inspection report.

- Enforcing remedies to problems
 - if 14 day notice has been issued as a result of the inspection, then a 48 hour notice can be issued to check remedial has been done (the four week limitation between inspections does not apply in these circumstances)
 - access for any required repairs and maintenance needs 24 hours' notice to the tenant, and must be for necessary work.

Record keeping

Keep easily available copies of ingoing inspection report and at least the last regular inspection. This allows a comparison at next inspection, and also proof of recent inspection should an insurance claim be lodged.

There is also a legal obligation for the landlord to retain any reports of inspections of the premises carried out by or for the landlord during the tenancy and for twelve months after the termination of the tenancy, and also records of any maintenance or repair work carried out at the premises by or for the landlord during the tenancy.

Testing for Methamphetamine and other Contamination

Landlords can test for methamphetamine in rental premises while tenants are living there. They must provide 48 hours' notice to tenants before entering the property, and have to tell the tenant what contaminant they are testing for, and share the test results in writing with the tenant within seven days of receiving them.

In order to successfully claim that the tenant has contaminated the property during their tenancy you will need to show the results of a methamphetamine test carried out on the day the tenant moved in.

Tenancy Issues

The number one thing to remember when you become a landlord is to be firm and consistent. The easy part about being a landlord is to set our rules and policies at the outset. The hard part is enforcing these rules and policies when things go wrong. Stick to your policies and avoid making any exceptions. Firm – Fair – Fast is the good landlord's creed.

The Tenancy Tribunal is a specialist court that can award compensation or order repairs up to a value of \$50,000. Serious cases of substantial damage, threats and assault, or failing to pay rent for more than three weeks can also see tenants evicted.

You should check that your rent has been paid into your bank account the day after it is due. If no payment has been made, or the full amount has not been paid, contact the tenant immediately by text or email to find out why. If there is no immediate satisfactory response, you should immediately issue a 14 day notice.

There are two sections in the RTA that apply to rent arrears- section 55 and 56. Section 55 is when the rent is more than 21 days in arrears at the time of application. Under section 56 a 14 day notice can be issued as soon as the rent is in arrears. Remember to allow for the statutory service time. Keep a copy and note the method of delivery.

Once the 14 day notice has been served you can make an application to the tenancy tribunal forthwith - you don't have to wait until the 14 day notice period has expired. Tenancy Services will schedule mediation just after the expiry of the notice period. However the tenant will receive notification of the appointment before the 14 day notice period is up, reinforcing the 14 day notice. If the tenant pays up in full prior to the scheduled mediation you can withdraw the application. At mediation, if an agreement is reached to pay off the arrears by instalments, have it specified how the tenant is going to do this and ask the mediator for a "consequence" clause to be included. Monitor payments closely and if the tenant defaults issue the written termination notice under the terms of the mediator's order.

If the rent is more than 21 days in arrears at the time the application is lodged, no notice needs to be given to the tenant. The landlord makes the application directly to Tenancy Services for an order for rental arrears (including the bond) to be paid to the landlord to offset arrears and termination. All the landlord needs to do is prove the rent arrears.

The difference under the act is that under section 55, if the rental arrears are proved to be in arrears by more than 21 days at the time Tenancy Services receives the application, the act states the tribunal adjudicator *will* terminate the tenancy, while under section 56 the adjudicator *may* terminate the tenancy.

For claims of damage or breaches of the Tenancy Agreement, again a 14 day notice should be issued followed up by an application for mediation or a Tenancy Tribunal hearing as appropriate.

It is important to note that under the RTA the tenant can also serve a 14 day notice on the landlord if they feel that the landlord has not kept up their obligations.

Termination of the Tenancy

Every notice to end a periodic tenancy must:

- be in writing
- give the address of the tenancy
- give the date when the tenancy is to end
- be signed by the person(s) giving the notice

Notice to end a tenancy can be given on any day of any week, to end the tenancy on any day of any week.

The day of the week that the tenancy ends on doesn't have to match the day of the week the tenancy began on. It also doesn't need to match the day of the week the rent is normally paid on.

A **tenant** must give at least 21 days' written notice to end the tenancy, unless the landlord agrees to a shorter time. This agreement should be in writing.

A **landlord** must give at least 90 days' written notice to end the tenancy. Landlords can give less time (at least 42 days' notice) in some cases.

If a landlord gives the tenants notice to end the tenancy and the tenant wants to move out sooner, the tenant must still give the landlord 21 days' written notice.

If there are multiple tenants named on the tenancy agreement, and one of the tenants gives the landlord notice, for a periodic tenancy this can end the tenancy for all the tenants.

Retaliation

It is an unlawful act for a landlord to end a tenancy in retaliation for a tenant exercising a right under the tenancy agreement, the relevant law, or by making a complaint relating to the tenancy. This is called a 'retaliatory notice' under the Residential Tenancies Act.

Handling departure

If the landlord receives written notice from the tenant that they are terminating the tenancy, this should be immediately acknowledged in writing with confirmation of the departure date and details of the rent payments required up to and including that date.

Once the final date of the tenancy has been agreed it is good practice to schedule a property inspection a week or two prior to that date. This will allow the landlord to identify any work that will need to be done before reletting the property and to discuss any outstanding issues with the departing tenants. It is useful at that stage to provide them with a written Cleaning Guide for Departing Tenants, so they are aware of the standard of cleaning expected.

On the day the tenancy ends you will need to meet all of the departing tenants at the property to carry out the final inspection, discuss the final rent payment, arrange any apportionment of the bond, reclaim keys and access cards, and complete and sign the bond refund form. A landlord shouldn't ask a tenant to sign a blank refund form.

The final inspection should not be carried out until all the tenant's possessions have been removed – it is very annoying to later find unexpected wall or floor damage that was previously hidden behind or under a piece of furniture. Ensure that you comprehensively photograph each room and the exterior of the property on that day to provide evidence in any later disputes about the tenancy.

Tenants should leave the property clean and tidy and take away all their rubbish. A tenant only has to leave the premises in a reasonably clean and tidy condition – your cleaning guide should help here with forgettable items like light fixtures and shower recesses. Tenants do not have to leave the carpets in a professionally cleaned state and the landlord cannot claim for reasonable and fair wear-and-tear.

Ensure that you obtain a forwarding address for the tenants. You may get this off the bond refund form, and it is useful for sending on any mail you get for them.

Bond refunds

Legally, the bond money being held by Tenancy Services is the tenant's money..

If there are any changes of either tenants or landlord during the tenancy, the Bond Office must be notified so that they can update their records. The same people who signed the bond lodgement form need to sign the bond refund form at the end of the tenancy. If the signatures on these forms don't match there will be delays in refunding the bond.

Three ways the Landlord can claim on the bond:

- by lodging a bond refund form with the Bond Office, signed jointly by all tenants and the landlord
- by lodging a one-party claim with the Bond Office signed by the landlord only
- by obtaining a Tenancy Tribunal order.

On the day the tenant moves out the tenants and landlord should inspect the property together and:

make sure the final property inspection report is signed by both parties

Complete the bond form in full, making sure the signatures match those on the bond lodgment form
Agree on splitting the bond if there's any unpaid rent, damage or other costs, like cleaning or gardening fees. If you can't agree on the refund amount, you will need to apply to the Tenancy Tribunal.

If you're a landlord you should make sure the tenant has paid everything they owe you before releasing the bond.

Either the landlord or the tenant can send the completed and signed form to Tenancy Services. Generally, if the landlord is making any claim on the bond they should submit it to the Bond Office. If the bond is being refunded in full to the tenants then there is no risk to the landlord in giving the completed form to the tenants for them to submit.

Either the landlord or the tenants can submit a bond refund form signed without the other parties' signature seeking the refund of the bond. This is known as a One-Party claim. A landlord can only submit a refund form on this basis within two months of the tenancy ending. After that they will need to apply to the Tenancy Tribunal to claim part of the bond or they will need to get the ex-tenant to sign the refund form.

When such a form is received the Bond Office will attempt to contact the other party seeking their approval to pay out the bond. If they receive no response within 14 days of the other party being notified of the application, they will refund the bond in accordance with the bond refund application received. If the other party responds and disputes the amounts claimed, the bond will be placed into dispute and will only be refunded on receipt of a fully completed bond refund form as noted above or by order of the Tenancy Tribunal.

Be aware that tenants can also submit a one-party claim.

Mediation & Tenancy Tribunal Hearings

Following the Good Landlord's Creed of "Firm – Fair – Fast" you should take action over a problem or a dispute as rapidly as possible.

Your sequence should be:

- Contact the other party to discuss the problem. This may solve the issue quickly without any further action being required.
- Apply for FastTrack Resolution to formalise the agreement you have reached
- If you don't reach an agreement serve a 14-day notice
- As soon as the notice is served you can apply for Mediation or a Tribunal hearing
- If they consider it appropriate Tenancy Services will schedule a mediation session at a mutually convenient time for both landlord and tenant
- If mediation is unsuccessful, or if Tenancy Services decides that mediation would not be helpful in your case, then the dispute can move to a Tribunal hearing.

Preparation

When you're setting up a meeting, make sure the time and place suit both of you and that neither of you feel rushed. Prepare what you want to say and how you're going to say it. At the meeting, keep calm and don't get personal with your comments.

Do not allow family or friends to participate in that meeting or offer advice. Only those listed on the Tenancy Agreement should be involved in the discussion, everyone else should be out of the room. Write down what you've agreed, and then sign and date it. This avoids future confusion about what you agreed. You might also arrange to meet up again to check how things are going.

If you reach an agreement that you would like formalised by way of a Mediators order you can apply for FastTrack Resolution. This is a service provided by Tenancy Services to help landlords and tenants formalise an agreement that's been reached after a dispute.

A Mediator's Order is a formal record of an agreement made between a tenant and a landlord after a tenancy problem has been sorted out. It will become a legally binding court order once it is sealed (stamped) by the Tenancy Tribunal. A sealed mediated order is legally binding and can be enforced as if it is an order made by the Tenancy Tribunal. Always ask for a consequence clause for not complying to be included within the order – normally termination and possession.

The Tenancy Tribunal can help you if you have an issue with a tenant or landlord that you can't solve yourself. The Tribunal will hear both sides of the argument and can then issue an Order that is legally binding. This means that mutual agreement between the applicant and the defendant is not required. The Order may include a possession order that terminates the tenancy and gives possession back to the landlord and/or a money order that requires the tenant or landlord to pay compensation or satisfy outstanding debts.

How to apply

All applications for Mediation or a Tribunal hearing must be lodged online through the Tenancy Services portal.

Application process:

- register to apply if this is your first application
- log in to the Tenancy Tribunal Application online tool

- fill out the application form
- pay the application fee (\$20.44) online and submit the application.

Mediated Order

After a mediation has been successfully concluded, the Mediator gives each person a written copy of the mediated order. If you had telephone mediation, they will send you a copy.

In most cases, the order needs to be made legal and binding. The mediator will send the order to the Tenancy Tribunal for an adjudicator to sign and seal it.

Sealed Mediated Order

A mediator's order is binding. If one person in the Agreement hasn't done what is in the order, the other person can have it enforced.

To enforce a mediator's order, it must be sealed by the Tenancy Tribunal. Mediator's orders are sent to the Tribunal for sealing.

Wherever possible, you should ask for the Order to be Sealed for that reason.

An adjudicator will confirm if the order can be enforced and if it can, they will seal it with the Tribunal's authority.

Tribunal Hearings & Etiquette

You need to bring any evidence that supports your claim, or your side of the dispute.

Have three copies of all evidence ready, one for yourself one the adjudicator and one for the other person.

All evidence should be presented on paper. Evidence on a cellphone or in digital format is not acceptable as a copy needs to be kept for filing away in the Tribunal's records.

If you're the applicant, you should have submitted copies of relevant documents with your application. For example, the tenancy agreement, rent summary, and any 14-day notices or other correspondence. Take your original documents and any supporting evidence to the hearing. Photographs should be printed out.

People normally represent themselves. You may only have a lawyer or a representative appear on your behalf in special cases. The hearing is public and either party can take support people with them. If you want to bring any witnesses, call Tenancy Services in advance so they can let the court know in time. Note that some witnesses may require a summons, e.g. the Police. A summons can be easily arranged through the local District court. Any witnesses will need to wait outside the courtroom itself until they're called to give their evidence.

The Tribunal will only talk about issues in the application. Other issues are not normally considered.

No Shows

For a mediation, if the tenants are not present or not contactable at the time of the mediation the Mediator cannot proceed.

At that time the Mediator will then normally ask if you wish to either reschedule the mediation or proceed to a Tribunal hearing.

At a Tribunal hearing, if the applicant does not attend the case will be dismissed.

If the applicant is present but the defendant is not, the hearing will proceed. You will need to present your evidence as normal, and the Adjudicator will question you about various points. If your evidence is sound the Adjudicator will find in your favour and issue an Order. If they are not satisfied that you

have proved your claim they will schedule a rehearing at a later date and advise both parties of that date and time.

Acting appropriately

It is advantageous to appear suitably dressed and well organised. Your evidence should be complete, accurate, succinct and presented in a calm and logical manner.

Do not launch into a personal attack on the other party or react emotionally if they attack you. Be very clear what you are trying to get out of this hearing and concentrate on that. Anything else is irrelevant on the day.

In most cases that get as far as the Tribunal you will be trying to achieve two things:

- termination of the tenancy and the return of the rented property to you
- an Order for payment of rent arrears and/or damages plus the filing fee.

The most important issue here for you as a Landlord is to regain possession of the property as soon as possible.

An Order for payment of money, either from the bond or from the departing tenant is actually of secondary importance.

At the conclusion of the hearing remain calm. Win or lose, you have done your best. Remember it is a business and not a personal issue.

Debt Recovery and Enforcing Orders

It is important to understand that an Order just means that tenant cannot deny that they do not have to leave the property or that they owe you money.

It is up to you to enforce the decision if the other person isn't doing what the Order requires them to do.

Orders to regain possession of a property

If you have a possession order and the tenant has not vacated the property, you need an eviction warrant. If you're not sure whether the tenant has vacated the property or not, you should apply for enforcement through the Ministry of Justice.

Once you file to enforce a possession order, it becomes an eviction warrant.

An eviction warrant allows a bailiff to evict anyone from the property and return possession to the landlord. You, or a person representing you (such as a property manager or solicitor), must be at the eviction.

You must file an application for an Eviction Warrant within 90 days from either the date the order is first breached or the date the tenancy ended. Attached to your application must be a sealed copy of the Tenancy Tribunal/Mediator's Order. Also if the eviction is conditional on the tenant breaching a payment arrangement, a copy of the rent schedule showing the breach.

The landlord may arrange for a locksmith to be at the eviction. The locksmith can change the locks so that the house is secure. If you choose to do this, you must pay for it.

Arrest Warrant

If a person will not leave your property or returns to your property after you have possession you can warn them that they are trespassing and that you will call the Police if they don't leave. If they don't leave after your verbal warning, then you can call the Police.

Orders to recover money

Monetary Orders

The Tribunal can order a landlord or tenant to pay money to the other person. These are called monetary orders.

In cases of termination the tenants bond may cover all or part of the debt owing under the Order. In this situation the Adjudicator will probably insert a clause in the Order that the Bond Office pay all or part of the bond directly to the Landlord. You should receive this payment within two weeks of the hearing without any further action on your part. If not, contact the Bond Office directly.

However, there may still be a debt outstanding after the bond has been paid out.

In this situation you can enforce the order through the court system. This is called civil enforcement. The applicant for any enforcement action has to pay filing fees, and the fees can be added to the debt for recovery.

Discovery

The Ministry of Justice can assess the debtor's ability to pay the money they owe (their financial means). If the debtor has the financial means to pay, then the registrar can make an order. It is worthwhile contacting the Ministry at 00800 434 637 to discuss your situation.

A warrant to seize property lets you have the debtor's belongings seized and sold to pay you. This is only useful if the debtor has belongings with a reasonable resale value.

Request for Release of Address

When you're trying to enforce a Tenancy Tribunal order, the Ministry of Justice needs a current address for the debtor named on the order.

If you don't have a current address for the debtor, there is a service that may be able to help you find one.

The service is offered by the Ministry of Business, Innovation and Employment (MBIE), who then works with the Ministry of Justice (MoJ) and Work and Income (WINZ) (part of the Ministry of Social Development).

You submit the form on the Tenancy Services website and attach a copy of the Tenancy Tribunal order or sealed Mediator's order.

When they receive the form, they search their databases for a current address as well as asking MoJ and WINZ on your behalf. They try to find a current address for the person by comparing their signature on the bond you lodged with their signature on a current bond. They can also make a match by comparing their signature in other places, such as a mediator's order, tenancy agreement, driver licence or passport.

If they find an address they will provide it to the MoJ so they can help you enforce the order. By law, they cannot release the information to you, however they will send you a letter letting you know what steps you can take next.

Order of Examination

This is an application to have the debtor brought before the court and examined as to their financial

means, i.e. to see how much money they have to pay the debt. If the debtor has the means to pay, a court order will be made to determine how that money will be paid.

There is a filing fee for an Order for Examination per defendant for a Tenancy Tribunal or Notice of Proceedings matter, and must be paid before the Order is enforced. A letter will be sent out to the debtor instructing them to come into the District Court at a certain date. If the debtor does not attend the hearing it may result in a Warrant to Arrest which will be carried out by a bailiff.

Attachment Orders

An attachment order is a court order made at an Order for Examination hearing. It involves payments to be made directly from the debtor's wages, salary or benefit. Again, there is a filing fee for an attachment order. An attachment order directs an employer or Ministry of Social Development to deduct money from the debtor's wages or benefit and to transfer those deductions to the creditor. You need to provide information relating to the debtor's source of income and their date of birth and/or benefit number.

Distress Warrant

This Warrant enables a Collection Officer to make a demand for the outstanding amount or seize goods indemnified by you. Indemnify means that you sign something to say that the goods being seized belong to you. Details of items that may not be seized can be obtained from the Collections Office at the District Court nearest you. If there is a payment in a Disputes case the court will take the first \$55 to cover costs. The balance is forwarded to you.

Debt Collectors

If your debtor refuses to repay your debt voluntarily you will probably need to pass the debt on to a professional debt collection agency.

As well as supplying the agency with a copy of the Sealed Order your chances of debt recovery will improve if you are able to give them more than one means of contacting the ex-tenant.

Payment arrangements vary but a combination of upfront fee plus commission on actual collections (as high as 30 percent of the total debt) is common.

Only if your tenancy agreement contained a debt collection clause where the tenant agreed to be responsible for debt enforcement charges relating to the tenancy can these costs be added to the debt owing.

Credit Agencies and Tenancy Databases

If you are a subscriber to a credit reporting agency (e.g. illion Tenancy) you will be able to list your debtors payment default with them. These records are then held for several years and can be accessed by lending companies and others who extend credit.

Landlords also log on to the tenant database where they can view ratings and photos of would-be renters as well as getting alerts if they are looking to move, view ratings left on its website, along with a long list of credit and character checks, fines, and Tenancy Tribunal cases.

A bad credit history which results in your debtor being unable to access credit from elsewhere or secure another tenancy may prompt your debtor to repay their debt to you in order to clear their history.

Property Maintenance

Legally landlords are required to provide and maintain their rental properties in a reasonable state of repair. The landlord must provide and maintain the premises in a reasonably secure condition. This means that the locks (and other security devices) at the premises must be operational and reasonably sound.

Also, the property must comply with all legal requirements in relation to insulation, smoke alarms, heating, ventilation and moisture ingress.

Keep the contact details of your tradespeople on your mobile phone. When you are at the property discussing a maintenance issue with your tenant, you can then call the appropriate tradesperson while you are there onsite, discuss the issue with them, and immediately let them arrange access directly with the tenant. This ensures that the tenant knows you have taken prompt action on the issue, and also avoids you becoming the middleman in the access arrangements.

Be prepared for occasional large maintenance costs - replacing the roof or repainting the exterior. Many experienced landlords have a standby revolving credit facility available to allow for any substantial and costly maintenance items.

If you wish to use this option, make the arrangements with your bank well before you need the facility, when times are good.

Health & Safety Requirements – PCBU

Legislation means landlords have a responsibility to ensure the health and safety of contractors they engage to carry out work on their property.

Under the Health and Safety at Work Act a landlord is classified as a person conducting a business or undertaking (PCBU) and the property will be classified as a “workplace” if a person is undertaking work there.

As with any other workplace, the PCBU is tasked with protecting the health and safety of their workers and anyone else influenced by the work being carried out.

However, when no work is being carried out at the property and the tenant is enjoying quiet occupation the property is not a workplace.

Contamination tests

Landlords must provide a clean and habitable property, and must not knowingly rent out premises that are contaminated above any prescribed level.

Tenants must not use the rental property for an unlawful purpose. This includes smoking or manufacturing methamphetamine.

If landlords rent out contaminated properties, they may be breaching their obligations under the Residential Tenancies Act 1986. They may also be breaching other legislation such as the Building Act 2004 and the Health Act 1956.

Asbestos

As a landlord you may not have to remove asbestos from your property but you will need to manage any related risks. If the asbestos contaminated material is undisturbed and in good condition, or the work taking place is routine maintenance or other minor work, it is perfectly safe to leave it undisturbed.

When a landlord plans to do work such as refurbishment or demolition, they need to ensure that asbestos relating to the work’s location is identified and removed, where reasonably practicable. This must happen before any work starts.

The duty only applies:

- when you are planning and carrying out the work
- to the area relevant to the work creating a risk of exposure to respirable asbestos fibres.

Urgent work

Repairs are classified as 'urgent' when the damage or disrepair is likely to cause injury to people or property. Landlords must normally give tenants at least 24 hours' notice before entering the property to do any necessary repairs or maintenance work, and the work should be done between 8am and 7pm. However, the landlord can also come inside without notice if there's an emergency, like a fire, a flood, or a tree collapsing on to the residence.

If there is repair work that is your responsibility and it is an urgent problem or likely to cause injury to people or property then the tenant can organise for urgent repairs to be conducted without the consent of the landlord if they have made reasonable attempts to contact the landlord but have received no response. The tenant can then ask the landlord to pay for any costs associated with those urgent repairs. This may mean either paying for the maintenance directly or reimbursing the tenant.

Cosmetic work

Cosmetic renovations are designed to attract new tenants and to create a good impression if you are having your investment property revalued for mortgage purposes or for resale. Most landlords will renovate a property when they initially buy it and also when the property is vacant between tenancies.

Usually a newly-purchased property will require some work before it can be offered as a rental. The way your property is presented will help determine the rent a tenant is prepared to pay and the type of tenant who is willing to rent your property. With careful planning and key targeted improvements, you can not only gain a higher rental return but also attract more promising tenants to view and potentially apply for the property.

Conclusion

A successful landlord:

- knows how to prepare the property so it is attractive to the tenants and safe to occupy
- knows what the property needs to be legally compliant
- knows how to attract and select a tenant who is the right occupant for the property
- knows the correct paper trail that needs to be created by the time the tenancy starts
- know the difference between ownership of the property and the rights of the occupants
- knows how to monitor the condition of the property throughout the duration of the tenancy
- knows how to handle the issues and problems that may arise during the tenancy
- knows how to terminate the tenancy when initiated either by the tenant or by the landlord
- knows his duties in relation to the bond and other matters outstanding at the end of tenancy
- knows what records needs to be kept after the tenancy has concluded.

With a range of new rules ranging from the Healthy Homes legislation and amendments to the Residential Tenancies Act, landlords need to be aware what is required to remain legal and compliant. Penalties are becoming more severe and the authorities are taking more action.

You need to ensure you keep up to date with both the rental market and with the latest changes in laws and regulations affecting your responsibilities. The best way to do this is via membership of a Property Investors Association.

Useful Links:

NZ Property Investors Federation:

<https://www.nzpif.org.nz/>

Tenancy Services (Government Department):

<https://www.tenancy.govt.nz/>

Residential Tenancies Act 1986 Amended:

<http://www.legislation.govt.nz/act/public/1986/0120/latest/DLM94278.html>

As with any general course of this type, there is much more detail than can be covered here. The laws around rental property can also change with remarkable rapidity. This course should not be taken as a substitute for professional legal or financial advice and neither the authors nor the Federation make any warranty or representation of accuracy of the information provided and do not accept any liability for claims or losses arising directly or indirectly from reliance on the information provided

