



pukeko
RENTAL MANAGERS



WHAT LANDLORDS NEED TO KNOW

**LANDLORDS RESPONSIBILITIES UNDER LEGISLATION
AFFECTING RENTAL PROPERTIES IN NEW ZEALAND.**

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FOREWORD



It has continued to astonish me with the lack of knowledge and understanding I have encountered amongst landlords as to what their responsibilities are.

To me, it is like playing any game such as Rugby. If one side does not know the rules they are operating under then they should not be surprised if they are penalized for breaking the rules. Out of frustration they blame and criticize the referee when they should be looking at themselves.

It is the same with legislation relating to residential properties. The difference is that the Landlord is expected to know the rules and ignorance is not an excuse. If you are going to play the game, then get familiar with the rules, and stop playing the referee.

I would not want to be a Tenancy Tribunal Adjudicator as the tenants say they favour the landlord, and the landlords say they favour the tenants. The fact is that while all Adjudicators are not perfect, they should be ruling on the rules and the evidence given to them.

We are in an unprecedented period of time when the rules are being changed and added to at an amazing rate, and with the changes come huge penalties for breaking the rules.

The purpose of this E-Book is to make sure that landlords know what they need to know and avoid finding themselves facing huge fines or penalties. Everyone taking on the responsibilities of the landlord need to know what those responsibilities are.

David Pearse

FAIR TRADING ACT 1986

Prohibits landlords from misleading or deceptive conduct and false representations. This is particularly applicable what a landlord says or does not say about a property in relation to compliance with the Building Act. Under the Fair Trading Act 1986, silence is not a defence.

HUMAN RIGHTS ACT 1993

It is illegal for a landlord to discriminate against any person because of their age (if they are over 18 - RTA), colour, disability, employment status, ethical beliefs, ethnic or national origins, family status, political opinions, race, religious beliefs, sex and sexual orientation.

Landlords cannot discriminate against prospective tenants or instruct someone to discriminate.

PRIVACY ACT 1986

Landlords must comply with the Privacy Act. In short, landlords must;

- Get the consent of the tenant to collect information about them;
- Collect information which is necessary for their purpose;
- Store the information securely;
- Give access to tenant if requested;
- Seek permission from tenant to disclose to another person;
- Dispose of when there is no longer a lawful purpose to hold it.

Landlords refuse tenants with assistance dogs and mental health issues



118 tenants alleged they were discriminated against in their search for a home, or were subjected to discrimination in the home.



BUILDING ACT 2004

The Building Act 2004 and The Building Code encompass the requirements for a property to be healthy and safe and sanitary.

The Building Act 2004 aims to ensure that building work is carried out so that buildings are safe and don't harm the health of the people who use them. Landlords must comply with all building and health and safety requirements (RTA 1986).

A property owner needs consent from the local authority to change a building's specified use. Under Section 14B of the Building Act, an owner is responsible for ensuring that building work carried out by them complies with the building consent or, if there is no building consent, with the building code. The owner is responsible for obtaining any necessary consents, approvals, and certificates. Landlords have to ensure compliance with any notices to fix.

RESIDENTIAL TENANCIES ACT 1986 & RESIDENTIAL TENANCIES ACT AMENDMENT 2010

The Residential Tenancies Act (RTA) defines the rights and responsibilities of landlords and tenants of residential properties. From the time of the original legislation in 1986, New Zealand had changed significantly. People were renting for longer, and the demographics of tenants had changed over time. This led to a review in 2010 to ensure it continued to work well then and into the future.

The review made some important changes including updating and clarifying the rights and responsibilities of landlords and tenants. A significant change was the introduction of Unlawful Acts which set out exemplary damages to punish and deter landlords and tenants for not fulfilling their responsibilities.

Even today seven years later there are many landlords that are unaware of the changes made. I will now touch on a few rules that landlords need to be aware of.



GUARANTORS

A guarantor is a person who guarantees the performance of the tenants' obligations. They now should be a party to a dispute in the Tenancy Tribunal.



CHANGE OF LANDLORD OR LANDLORDS ADDRESS

The tenant must be notified of a change of landlord or change of landlords address within 10 working days.



DISCRIMINATION

The landlord cannot discriminate against anybody. From the wording of the advert to termination of the tenancy, anything considered to be discrimination could be a contravention of The Human Rights Act 1993. It is wise not to give a reason why an applicant was not successful.



LANDLORD HOLIDAYS

A landlord firstly must reside in New Zealand. I have come across many that do not and are managing their properties from Australia. A landlord who leaves New Zealand for more than 21 consecutive days must appoint an agent in New Zealand. On appointment, the agent holds all the rights and obligations of the landlord. Both the tenant and Tenancy Services must be notified.



BODY CORPORATE RULES AND NOTICE OF CHANGES

Rules made under S.37 of the Unit Titles Act 2010 that affect a tenant are taken to be terms of the Tenancy Agreement. The landlord must supply at least a summary of the Body Corp Rules with the new Tenancy Agreement. A landlord must notify a tenant in writing if any rule changes.



BONDS

The Landlord cannot ask for more than 4 weeks rent as bond. They cannot seek any other form of security. This includes any further sum for pets. The landlord has 23 working days to forward the bond to Tenancy Services.

Invercargill landlord fined \$38,000 over unlodged bonds



Tenancy compliance and investigations national manager Steve Watson said there was “no excuse” for landlords to not comply with tenancy law.

LANDLORD TO KEEP RECORDS

The landlord must keep proper business records showing all payments of rent and bond paid. I have helped many owners to create rent statements once they realised the tenant was not paying their rent and they needed a rent statement in the correct format to present to Tenancy Tribunal.

LANDLORDS RESPONSIBILITIES CLEARLY DEFINED:

- To provide premises in a reasonable state of cleanliness;
- Provide and maintain the premises in a reasonable state of repair;
- Comply with ALL requirements with respect to buildings, health, and safety under any enactment;
- Provide means of collection and storage of water if not on town supply;
- Compensate tenant for any reasonable expenses incurred in repairing the premises;
- Take all reasonable steps to ensure that no other tenant causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises;

LANDLORD TO GIVE NOTICE OF INTENTION TO SELL

If at any time the property is going to be marketed for sale, the landlord shall notify the tenant in writing before being approached by the landlord’s real estate agent or any sign is placed on the property.

RESPONSIBILITY FOR OUTGOINGS

The landlord is responsible for any expenses incurred whether or not the premises are occupied and common facilities. In Auckland where the water is metered, the landlord is responsible for paying clearly defined Fixed Line Charges.

- Not to interfere with the supply of any services except to avoid danger or enable maintenance.

The major issue is the compliance with all requirements with respect to buildings, health, and safety under any enactment. Shortly I will raise the landlord’s responsibilities under the following:

- Health & Safety at Work Act 2016
- Residential Tenancies Amendment Bill (No2)
- Healthy Home Guarantee Bill



HEALTH & SAFETY AT WORK ACT 2015

The Act gave the Ministry of Business, Innovation and Employment new powers to investigate and prosecute landlords for breaking tenancy laws, particularly where there is a risk to the health and safety of tenants.

Under the Act, Landlords are responsible for Health & Safety as it encompasses residential properties that are tenanted. The fines for a serious offence go up to 5 years imprisonment and/or \$600,000 fine.

HEALTH & SAFETY AT WORK (ASBESTOS) REGULATIONS 2016 (AS OF 4 APRIL 2018)

MAKE SURE YOU AND YOUR TENANTS ARE COVERED.

HEALTH AND SAFETY LEGISLATION AROUND ASBESTOS REQUIREMENTS MUST BE IMPLEMENTED BY APRIL 2018.

New health and safety legislation that came into effect in 2015 has a requirement that needs to be implemented by April 2018; that PCBU's understand and document all asbestos within their buildings. A PCBU under this legislation is the person or entity that owns a commercial building, or a landlord of a commercial or residential building. Potentially, a home buyer looking to turn a property into a rental can ask to see this report from the current owner, or any contractor who might do building works on your family home can also ask to see a report.

By April 2018, every PCBU must have completed for each of their buildings:

- Assessed their property(ies) for the presence or absence of asbestos;
- If asbestos is found to be present, determined whether the asbestos is friable;
- Recommended actions for the ongoing management of any asbestos found.

While this sounds daunting and expensive, it doesn't need to be and a simple Asbestos Register can be all you need to meet compliance.

The report must be made available to any tenants and must be made known to any contractor that comes onto site, particularly if they are going to undertake any works that will cut into any building materials.

The report recommendations will specify the risk of the asbestos in and outside the building, and if there is a significant risk of people being exposed to friable asbestos, will recommend actions to get it safely removed.

SAFETY

Landlords have a "duty of care" to prospective tenants, tenants, and any contractor who visits the property.

PROSPECTIVE TENANTS

Ensure that there are no hazards when the prospective tenant visits the property.

TENANTS

Ensure any hazard identified during an inspection is eliminated, isolated or minimized as a matter of priority.

CONTRACTOR

Landlords must Engage competent contractors to do any work on the property. Ensure the contractor is aware of their responsibility under the Act, that they only complete work that they are qualified to undertake, and they have appropriate insurance.



LANDLORD FINED FOR RENTAL PROPERTY SAFETY FAILINGS



A Timaru landlord was fined \$55,000 and required to pay \$12,500 reparation for failing to take all practicable steps to ensure the safety of gas appliances and fittings when leasing out a property and for engaging a person who was not authorised to do gas-fitting. The Handyman franchisee was sentenced to 200 hours community work and required to pay \$2000 reparation for doing the unauthorised work. Both the landlord and handyman pleaded guilty to breaches of the Gas Act 1992 and the Plumbers, Gasfitters and Drainlayers Act 2006 and were sentenced in the Timaru District Court.

In early June 2014 the landlord engaged the handyman to remove a gas heater from a property they managed. He was not authorised to do this work and the gas supply was left uncapped. A new tenant moved into the property and arranged for new gas cylinders to be delivered and connected.

The next day the tenant noted a strong smell of gas. Following an investigation by WorkSafe's Energy Safety, it was estimated that 35kgs of gas had leaked into the house. This follows a similar incident in Ruakaka which resulted in the death of a 19-year-old woman who suffered horrific burns when the leaked gas was ignited, exploding and destroying the rental property she had moved into a few days before.

"Always use an appropriately qualified person to do gas and electrical work on any property. All landlords, including property managers, have a duty to ensure the safety of gas and electrical installations, appliances and fittings in properties they lease," says Richard Lamb, Energy Safety's Compliance Officer.



METHAMPHETAMINE

The Act also addresses the issue of Methamphetamine. It became the responsibility of the landlord to test for methamphetamine if they have any suspicion that the tenant is smoking or manufacturing in or on the property.

SMOKE ALARMS

Smoke alarms were required in all tenanted properties from July 2016. Minimum standards were outlined with the landlord's obligation to install smoke alarms to or above minimum standards, and ensuring all alarms are operational at the start of the tenancy. There is also a responsibility for the landlord to test during and inspections and ensure they are operational.

INSULATION

The Act made a new requirement that from 1 July 2016 all landlords are to disclose to tenants in the tenancy statement the level of insulation provided in the property.

It provided the minimum standards for insulation and that from 1 July 2019 all tenanted residential properties must meet the standard.

RESIDENTIAL TENANCIES ACT AMENDMENT No2

The main amendments relate to methamphetamine contamination, tenant damage, and unlawful residential properties. With this law change, there are circumstances where the landlord's property is deemed to be an Unlawful residential premise.

If the tenant takes a case to the Tenancy Tribunal for renting an Unlawful premise the possible remedies are:

- Full or partial refund of rent
- Exemplary damages and work orders
- The Tribunal will not be able to order the tenant to pay rent arrears, damage, or compensation to the landlord

SO, UNDER THE AMENDMENT, WHAT CAUSES A PROPERTY TO BE UNLAWFUL?



Unlawful Residential Premises

Unlawful residential premises are premises occupied for residential use but where the premises cannot be occupied by that person and where the landlord's failure to comply with certain obligations under the Residential Tenancies Act has caused or contributed to the occupation by that person being unlawful.

The Tenancy Tribunal has come across a range of properties which are unlawful for residential use, because they did not have the required consents under the Building Act 2004 or the Resource Management Act 1991, there was unconsented building work or they were deemed unsafe and unsanitary by the relevant local authority.

Examples include:

- A sleep out converted into a separate independent dwelling;
- Premises that were originally built for commercial/industrial purposes;
- Converted garage semi-attached to a house;
- A flat beneath a house that has been converted into a 'granny flat';
- A small cabin next to the landlord's house.

The Tribunal can order that the landlord pay the tenant a full or partial rent repayment, having regard to the special circumstances of the matter. The Tribunal would also not be able to order a tenant to pay rent arrears, damages, or compensation to the landlord.

Methamphetamine Contamination

The Bill includes amendments to protect tenants and landlords from the harmful effects of methamphetamine contamination by providing a right of entry for landlords to test for methamphetamine (48 hours' notice).

Where methamphetamine contamination is established the landlord may give the tenant seven days' notice to vacate.

It becomes an Unlawful Act for a landlord to knowingly provide premises at the commencement of a tenancy that is contaminated without decontaminating to the standard in the regulations. The onus is on the landlord to provide proof. Ignorance is not a defence as the landlord must provide the tenant with a safe and sanitary place to live.

Cases such as *Visagie v Harper Property Management Ltd* (March 2016), and *Barfoot v Charman* (2017) have resulted in the landlord refunding the rent and buying the tenant new furniture.

TENANT LIABILITY

The Bill also covers the issue of Tenant Liability. Prior to April 2016, residential tenants were liable for the full costs of careless damage to rental premises they intentionally or carelessly caused beyond fair wear and tear.

In April 2016, the Court of Appeal ruled (in the Holler and Ruse v Osaki and Anor) that tenants are immune from a claim for damage caused negligently or carelessly to the extent provided by certain provisions in the Property Law Act 2007. In making its decision, the Court referred to section 142(2) of the Residential Tenancies Act 1986, which states that the Tenancy Tribunal may look to Part Four of the Property Act “as a source of the general principles of law”.

The Bill restores the situation where the tenant must not intentionally or carelessly damage the rental premises. Careless damage is expressed as “Was the tenant exercising the degree of care and attention that a reasonable and prudent tenant would exercise in the circumstance?”

The Bill is proposing to make tenants liable for careless damage up to the value of the landlord’s insurance excess but not more than four week’s rents for each incident of damage.

Tenants will be able to request to see their landlord’s insurance, whether they have it and the insurance excess. A landlord who does not provide this information within 14 days will be liable for a fine.



HEALTHY HOMES GUARANTEE BILL (NO 2)

The Bill will amend the Residential Tenancies Act 1986 with the purpose of ensuring that every rental home in New Zealand meets the minimum standard of heating and insulation. It requires Ministry of Business, Innovation, and Employment to set minimum standards within 6 months, and will apply to all tenancy agreements made within a year of the Act coming in force. Failure for landlords to comply will be an Unlawful Act.



LANDLORD COMPLIANCE CHECKLIST

The Ministry of Business, Innovation, and Employment (MBIE) have provided The Landlord Compliance Checklist for landlords to complete so they can see if they are compliant.

The Landlord Compliance Checklist covers:

- Residential Tenancy Agreement
- Records
- Maintenance
- General Compliance



The Government taskforce want to “crackdown on poor landlord behaviour across New Zealand.”

Link: <https://www.tenancy.govt.nz/starting-a-tenancy/ready-to-rent/landlord-compliance-checklist/>

WHAT'S NEXT?



The Labour Coalition Government has been lobbied by Renters United and Philippa Howden-Chapman. In their document "The People's Review of Renting" they propose 5 goals with recommendations.

1. All rental housing is warm, healthy and safe. The recommendation is to introduce a mandatory rental Warrant of Fitness.
2. Everyone has affordable housing. They recommend the limiting of rent rises, abolish letting fees, and the Government take a hands-on approach to increasing supply.
3. People who rent are secure. They can create homes and report problems without fear of eviction. Their recommendation is to abolish no-fault evictions.
4. People can successfully challenge illegal behavior by landlords and property managers. Their recommendations are to reform the Tenancy Tribunal to lower the barriers to access; to fund tenant's education and advocacy services; and to require all landlords and property managers to be licensed.
5. The ongoing situation for renters improves. The Tenancy Tribunal effectively upholds renter's rights, regulations are enforced and periodically reviewed. The recommendation is to establish a Commissioner of Housing.

We have seen urgency given the introduction of the Healthy Homes Guarantee Bill and we will shortly see a complete review of the Residential Tenancies Act so it is fit for purpose according to the Housing Minister with attention given to "The People's Review of Renting".

- In this review, we can expect the following issues to be considered:
- Abolishment of 90-day notices
- Require Landlords & Property Managers to be licensed.
- Abolishment of Letting Fees
- Establishment of a Commissioner for Housing

INSURANCE WARNING



house
insurance
success
opportunity
rent

The only way landlords can prove that they have provided the tenant with a healthy methamphetamine free property is to have it tested. With the increased level of testing a large number of houses have been found to be contaminated and in many cases, this could have happened many years before as testing was not being done. The decontamination costs paid out by the insurance companies has meant many are now finding ways of reducing their exposure.

Most insurance companies are altering their policies and cover to limit their risk. It is important you are aware of what your insurance provider covers, or more importantly know what they no longer cover. You also need to ensure that you have met your obligations under the policy so that you are protected.

We are hearing of cases of the following:

- Insurance providers not covering Methamphetamine contamination; or
- Changing the policy so that it is regarded as gradual contamination. Unless it is proved it had a 'Meth Lab' they will not cover the cost of decontamination.
- They require a minimum of three-monthly inspections and evidence that they have been done as a requirement for a claim to proceed.

Please ensure you have recorded three monthly inspections of your rental property, and find out what information they require in the inspection reports. You need to do Meth testing at the start of a new tenancy and at the final inspection of that tenancy to prove the following:

1. It was not contaminated at the start of the tenancy; and
2. That any contamination at the end of the tenancy was therefore caused by the tenant; and
3. Provides evidence for a compensation claim against the tenant by yourself or the insurance company.

ABOUT DAVID PEARSE



David Pearse started investing in property and becoming a landlord in the early 1990's. He oversaw a real estate property management department while running two real estate offices with Tremain Real Estate.

In 2004, as managing director of Twin City Properties Ltd, David launched the Quinovic franchise in Hawkes Bay winning several awards and growing the operation to 360 properties. In 2008 he sold the business as Napier and Hastings offices.

In 2010 David pioneered Pukeko Rental Managers as a new and innovative way of providing residential property management services to owners and investors. Pukeko is growing quickly throughout New Zealand as he recruits, trains and mentors boutique operators who want to provide the "best" property management service.

David is a committee member of the Independent Property Management Association (IPMA).