



OXYGEN
LIFTING PROPERTY PERFORMANCE

LANDLORD OBLIGATION OVERVIEW



OVERVIEW OF LEGISLATION RELATING TO LANDLORD OBLIGATIONS

This book focuses specifically on the legislation obligations of landlords.

Tenants have various obligations under some legislation however only the responsibilities of landlords have been explained here.



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OVERVIEW OF LEGISLATION RELATING TO LANDLORD OBLIGATIONS

5

As a landlord, you are not required to hold a license – anyone can do it.

The most important skill you should possess as an ethical and professional landlord is being aware of your legal responsibilities under the Residential Tenancies Act 1986 and other obligations and compliance. You should also have a great knowledge of your property. A landlord should take the time to study the tenancy laws, keep up to date with legislation changes, ensure that they maintain their properties safely and in a reasonable state of repair, comply with various building regulations, and ensure they engage appropriately qualified trade and service people.

The purpose of this booklet is to highlight some of the obligations you may not be aware of as a landlord (it is not intended as a comprehensive list).



RESIDENTIAL TENANCIES ACT 1986
RESIDENTIAL TENANCIES AMENDMENT ACT 2010
RESIDENTIAL TENANCIES AMENDMENT ACT 2016

This law relates to residential tenancy agreements and excludes commercial leases.

A landlord must provide a property in a reasonable state of cleanliness.

For example, renting out a property which has been contaminated by use as a methamphetamine laboratory or providing a premises infested with vermin is a clear breach. Ask yourself if you would feel comfortable living in the property.

A landlord must provide and maintain premises in a reasonable state of repair.

Once the landlord becomes aware of the need for repairs (such as faulty wiring or a defective stove) he/she must carry out the repairs within a reasonable time frame. The assessment of a reasonable state of repair is qualified by the age and character of the property.

A landlord has the obligation to compensate a tenant for repairs paid by the tenant not only when the tenant has actually notified the landlord of the disrepair but also where he/she has made a reasonable attempt to notify the landlord.

A landlord must comply with all requirements imposed by the Act in respect of smoke alarms and insulation. Failure to comply with the Act can result in significant penalties and fines.

RESIDENTIAL TENANCIES (SMOKE ALARMS) REGULATIONS 2016

This regulation requires a landlord to have smoke alarms installed in certain locations in all rental premises.

Location

The new smoke alarm standards require a minimum of one working smoke alarm in the hall or similar and within 3 metres of each bedroom door. In a self-contained sleepout, caravan or similar, a minimum of one working smoke alarm will be required as per New Zealand Fire Service recommendations.

Batteries

The landlord must ensure the alarm is operational at the beginning of a tenancy and the tenant will be responsible for replacing batteries during the tenancy. To be sure you may wish to replace these batteries yourself while completing an annual property check.

However, on another note, all new or replacement smoke alarms must be long-life photoelectric smoke alarms that meet the required product standards with a battery life of at least 8 years, or a hard-wired smoke alarm system.

INSULATION

Statement on Tenancy Agreement

Landlords are required to provide a statement on the tenancy agreement for any new tenancy commencing from 1 July 2016 about the location, type and condition of insulation in the rental home.

Compulsory

Ceiling and underfloor insulation must be installed in rental homes, where it is reasonably practicable since 1 July 2019.

Any replacement or installation of insulation in a rental property must meet the required standard. The installation of electrically conductive insulation products (such as reflective foil products) is banned by the regulations.



THE PROPERTY LAW ACT 2007

This act does not generally apply to residential tenancies. However in some instances the Property Law Act (PLA) is taken into account (for example, making an insurance claim).



Court case example where the PLA has been taken into account – Osaki Ruling

Many landlords are aware of the infamous ruling where the Osakis (tenant) left a pot unattended which started a fire and led to extensive damage and repairs costing the landlord close to \$217,000.

The landlord's insurer, AML, claimed the fire repair costs from the Osakis but the Osakis protested claiming that the Tenancy Tribunal had exclusive jurisdiction and that the claim made was barred by sections in the PLA. Ultimately the Court of Appeal found in the tenants' favour in April 2016. The Court decided the insurance provisions in the PLA applied to residential tenancies. Previously the PLA's prohibition on landlords pursuing tenants for reparation from tenant-caused accidental damage was thought to be restricted to commercial tenancies.

Prior to the decision landlords would claim the cost of repair of unintentional damage from the tenant under the Residential Tenancies Act 1986. The court decided the insurance provisions in the PLA applied to residential tenancies. This means that if the landlord's insurance covers the damage caused then the tenant does not have to pay.

Note: *Fortunately the question of careless or unintentional damage is being addressed to a degree through provisions within the Residential Tenancies Amendment Bill.*

Broadly speaking under the proposals a tenant will be liable for damage that is caused by a careless act or omission by them or their guest but this is limited to either the landlord's excess or 4 weeks rent whichever is the lower.

THE HEALTH ACT 1956

This Act applies to both commercial and residential landlords.

WATER

A landlord is required to provide an adequate and convenient supply of water that is fit for drinking.



PROPERTY CLEAN-UP TO PREVENT DANGER TO HEALTH & SAFETY

A landlord is sometimes required to clean the property if a local authority is of the opinion that this is necessary to prevent danger to health and safety (for example, a meth-contaminated property). If compliance is not undertaken the local authority is able to clean the premises and forward the associated costs to the landlord. The general penalty for offences under this Act is a fine.



HOUSING IMPROVEMENT REGULATIONS 1947

The purpose of these regulations is to ensure Kiwi houses are warm, dry, safe and sanitary and are worthwhile for landlords to be aware of. These regulations are minimum requirements but the bylaws of a local authority will also apply. Overall every house and its appliances shall be kept in a state of good repair.

THE REGULATIONS INCLUDE PROVISIONS FOR:

Room size, function and safety

Each property must have:

- A room that can be used as a kitchen or kitchenette with a sink and tap connected to usable water
- A bathroom with a shower or bath and running hot water
- A toilet (inside or outside the property) for the exclusive use of those that live in the property

The exterior of the house must be weatherproof. The landlord is responsible for maintaining it in that condition.

The walls and floors need to be lined, and the floors need to be washable and durable.

The rental property must be maintained in a reasonable state of repair. Where the property shares common facilities with another property, like a shared laundry, the owner must keep it in a reasonable state of repair.

Where there are staircases between floors, they must allow safe access from one level to another and have a handrail.



Overcrowding

- A landlord must ensure that there are the required facilities (bathroom/toilet) for the number of people occupying the house.
- Generally a bedroom must be at least 6 square metres. If there is more than one person sleeping in the room it will need to be bigger.

Sewage and sanitation

Bathrooms and kitchens should be provided with an adequate supply of wholesome water. For example, a landlord is in breach by supplying a hot water cylinder which does not have the capacity to ensure a steady supply of hot water to the premises.

HEALTHY HOMES STANDARDS



New minimum healthy homes standards for rental properties in New Zealand will become law from 1 July 2019. The healthy homes standards incorporate five aspects of a property, which all contribute to a warm and dry home. The standards are heating, insulation, ventilation, moisture ingress, drainage and draughts.

1. Heating

All rental properties must have one or more fixed heaters, which can directly heat the main living room to at least 18°C and can maintain this temperature all year round. The regulations clarify the requirements for heating devices – some will not meet the requirements under the heating standard as they are inefficient, unaffordable or unhealthy.

A heating assessment tool will be provided in July 2019 at tenancy.govt.nz, which will help determine the heating capacity required for the main living room in rental properties, including boarding houses. When used correctly this tool will help calculate the minimum heating capacity required and what heating options will meet the heating standard if installed. Landlords can use this information to check if existing heating devices are sufficient and will be encouraged to seek professional assistance when required.

2. Insulation

The minimum level of ceiling and underfloor insulation must either meet the 2008 Building Code (see over), or (for existing ceiling insulation) have a minimum thickness of 120mm and be in reasonable condition with no dampness, damage or displacement. The regulations also specify where insulation exemptions apply.



3. Ventilation

Ventilation must include openable windows or doors in each habitable space. The windows or doors must comprise at least 5% of the floor area of that space. An appropriately sized extraction fan or range hood must be installed in kitchens and bathrooms.

4. Moisture and drainage

If a rental property has an enclosed subfloor space, it must have an on-ground moisture barrier, which will stop moisture rising into the home. The standards also reinforce existing law that says landlords must have adequate drainage and guttering.

6. Draught stopping

Any gaps or holes in walls, ceilings, windows, floors and doors that cause unreasonable draughts must be blocked. Landlords will have to block the fireplace or chimney of an open fireplace unless the tenant and landlord agree otherwise.



LANDLORDS SHOULD MAKE THEMSELVES AWARE OF THESE KEY DATES:

From 1 July 2019

- Ceiling and underfloor insulation will be compulsory in all rental homes where it is reasonably practicable to install.
- Landlords must sign a statement of intent to comply with the healthy homes standards in any new, varied or renewed tenancy agreement.
- This statement is in addition to the existing requirement to include a signed insulation statement with all tenancy agreements that covers what insulation the property has, where it is, and what type.
- Landlords must keep records that demonstrate compliance with any healthy homes standards that apply or will apply during the tenancy.

From 1 July 2020

- Landlords must include a statement of their current level of compliance with the healthy homes standards in any new, varied or renewed tenancy agreement.

From 1 July 2021

- Private landlords must ensure their rental properties comply with the healthy homes standards within 90 days of any new, or renewed, tenancy.
- All boarding houses (except Housing New Zealand and Community Housing Provider boarding house tenancies) must comply with the healthy homes standards.

From 1 July 2023

- All Housing New Zealand houses and registered Community Housing Provider houses must comply with the healthy homes standards.

From 1 July 2024

- All rental homes must comply with the healthy homes standards.



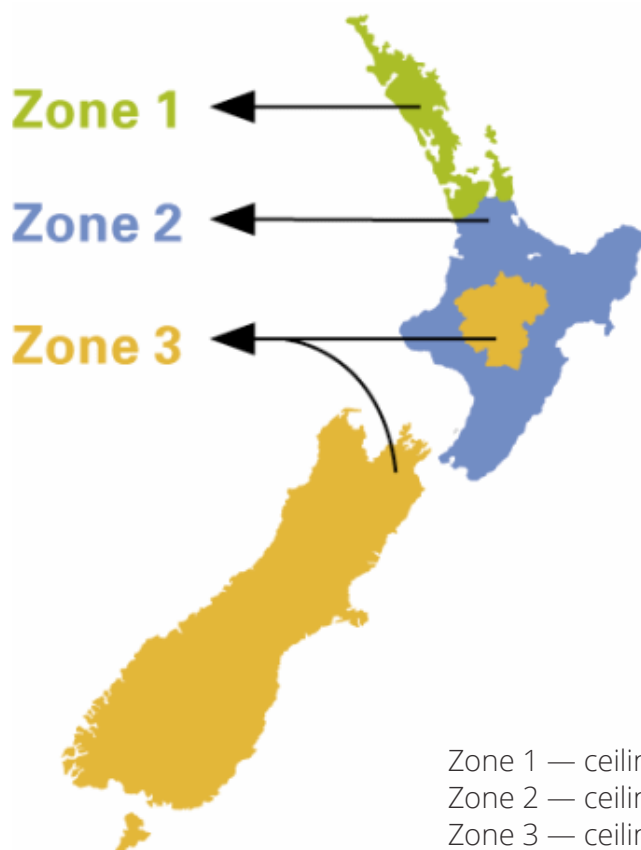
What is the 2008 Building Code standard for insulation?

Insulation requirements under the 2008 Building Code are measured by R-value. 'R' stands for resistance — how well insulation resists heat flow. The higher the R-value, the better the insulation.

Landlords can check the R-value of new insulation by checking the product packaging. For existing insulation, you can check the thickness yourself (existing ceiling insulation must be at least 120mm thick) or consult a professional insulation installer to tell you if it meets the regulations.

The Insulation Association of New Zealand (iaonz.co.nz) and the Energy Efficiency Conservation Authority (energywise.govt.nz) can help.

Minimum R-values vary across New Zealand's three climate zones.



THE BUILDING ACT 2004 AND CODE

Both residential and commercial landlords are responsible for obtaining any necessary consents and ensuring building work complies with the Building Code (which applies to new building work and does not affect existing buildings unless they're renovated/altered).

The Code does not set out construction methods. It describes how a building must perform rather than how it must be designed and constructed. For example, one objective is to "safeguard people from illness or injury which could result from external moisture entering the building" – that is, buildings must be weathertight.

Buildings are considered dangerous if they are likely to cause injury or damage to other properties.

Buildings are considered unsanitary if they are offensive or likely to be harmful to health, don't have enough protection against moisture and don't have an adequate supply of drinkable water.

A breach under the Act can result in a significant financial penalty.

Court case example – breaching the Building Act 2004

A dispute arose in court when a tenant found out his power supply was driving a bore pump that provided water to other houses on the rural property where he rented a "cottage". The landlord re-routed the power to the bore pump to another property but sought to increase the rent. The tenant became concerned the extra rent was "designed to make him pay for a landlord cost". This prompted the tenant to serve notice on the landlord to rectify other issues with the property.

He also asked the council to investigate whether the cottage had appropriate consents and was safe to live in. The council inspected and told the landlord it would be classed as an "insanitary building" under Section 123 of the Building Act 2004. It turned out the building was also not fully consented which came as a "shock" to the landlord as it was not noted on the LIM. The tribunal found the unconsented property could not be used lawfully as a residence and ordered the landlord to pay the tenant back \$12,600 in rent.

HEALTH AND SAFETY AT WORK ACT 2015



The Act applies to residential property but only while it is a place of work (for example, where tradesmen are engaged and enter the premises to carry out repair work).

A landlord owes a duty of care to ensure the health and safety of everyone involved with or affected by work undertaken on the property.

Equally this responsibility falls upon a property manager as your agent if they are managing the work on the landlord's behalf.

A landlord only has a responsibility in respect of things he/she can reasonably influence and control. This could mean discussing the scope of work with contractors, checking whether they are properly qualified, that they use safe work practices, and intend to use correct equipment and materials for the job.

Where there are overlapping duties in relation to a property landlords, their property managers and contractors must communicate with one another to ensure work is undertaken in a safe and healthy way.

A landlord who recklessly exposes individuals to serious risk of injury, illness or death may be liable for 5 years imprisonment and a fine of up to \$600,000 for individuals and \$3 million for companies.

For example, if a landlord arranged for a contractor to install insulation knowing there were exposed wires in the ceiling and the contractor was electrocuted the landlord would be fined. At the other end of the scale simply failing to comply with a duty could result in a fine of up to \$100,000 for individuals and \$500,000 for companies.

Why this Act was put in place

The legislation has changed because annually workplace accidents cost New Zealand \$3.5 billion per year. In addition 1 in 10 people are harmed at work. Last year 35 people died at work and 3,385 suffered serious injuries. The aim of updating this legislation is to cut those numbers by at least 25% by 2020. Prosecutions are in place for serious breaches or repeat offenders.

LANDLORD AND THEIR AGENT'S DUTIES

Person Conducting a Business or Undertaking (PCBU)

You are not expected to become an expert in all trades or manage everything for that worker on your property however when identifying or managing risks you might need to inform the tradesperson that there is a dog on the premises and arrange to keep it contained while work is carried out. This is to protect the tradesperson's safety and is your responsibility.



GAS ACT 1992, PLUMBERS, GASFITTERS AND DRAINLAYERS ACT 2006

A landlord must take all practicable steps to ensure the safety of gas appliances and fittings when renting out a property.

A landlord must use an appropriately qualified person to carry out gas and electrical work on any property.

For example, if an unregistered gasfitter installed an appliance incorrectly resulting in a gas leak and explosion the landlord could face a large fine since he/she did not use an accredited/registered gasfitter.

Various breaches can attract a fine or a term of imprisonment depending on the damage and risk to life.



OCCUPIERS LIABILITY ACT

A landlord owes a duty of care to all persons who or whose goods may from time to time be lawfully on the premises.

Obligations are attached to the “occupier” of a property, and impose a duty of care to see that tenants and visitors to the property are reasonably safe.

Complication and liability arises under the Occupiers Liability Act (OLA) when the landlord retains control of common parts of the building. For example, the entrance hall, staircases, lifts and roof in a block of flats or similar shared living arrangements.

The landlord then will be an “occupier” in the terms of the Act and will be under the common duty of care set out in the Act. Landlords in these situations have incurred liability for injury resulting from broken steps or missing handrails.

Under the OLA the tenant and their family or friends become “visitors” to these common parts of the building and the landlord will owe them a duty of care under the Act.

For example, if someone was visiting friends and fell down the stairs which had no handrail and he/she suffered an injury the landlord would be heavily fined because the landlord should have ensured that the stairs were safe with a handrail put in place.

THE LEASE OR TENANCY AGREEMENT

A landlord's responsibilities are also subject to the type of agreement between the parties. These agreements vary from commercial leases to residential tenancies.

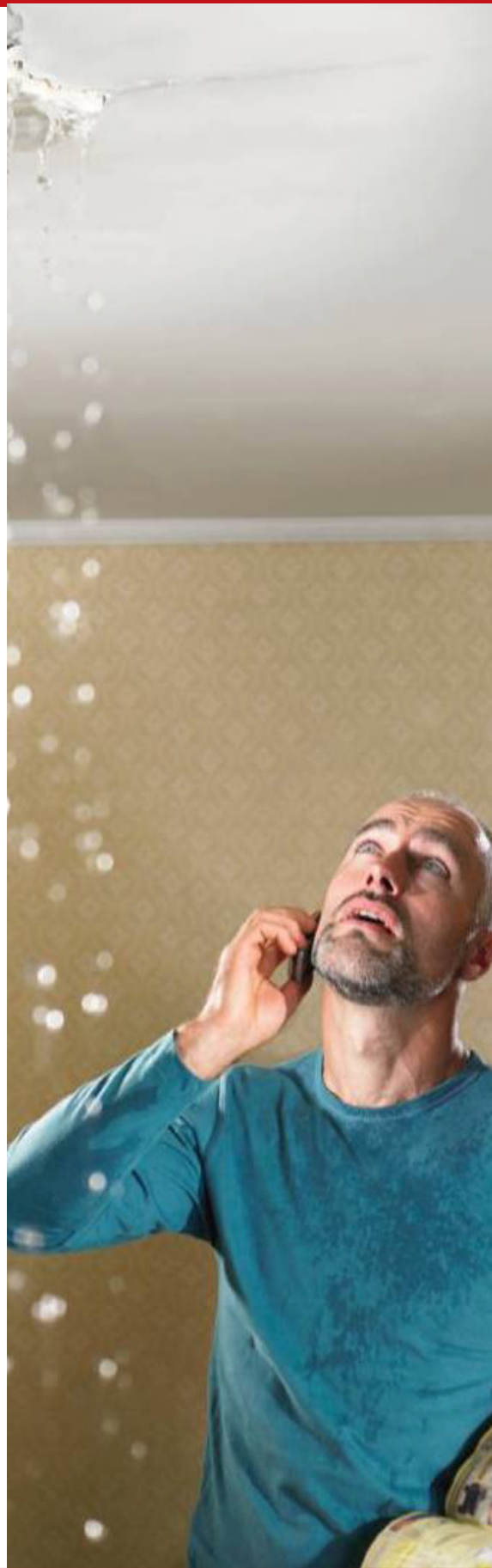
Maintenance on appliances

If an appliance is provided as part of the terms of a residential tenancy the landlord has an obligation to ensure it is maintained.

For example, if you are thinking of installing a heat pump into your rental property you will need to ensure that the pump is serviced from time to time. This would be news to a lot of people who think that a heat pump can just be installed and used day after day without any maintenance. In some situations other forms of portable heating might actually suit a property better depending on its size, output and use.

Water damage and tenant possessions

If during a period of bad weather water penetrated the roof causing damage to the tenant's equipment a landlord is generally responsible for repairing the roof (although a landlord must remedy structural damage, not minor repairs). However unless the tenant had already notified the landlord in writing of the need to repair the roof and the landlord had not carried out such repairs within a reasonable time the landlord will not be required to reimburse the tenant for the damage to the tenant's possessions.



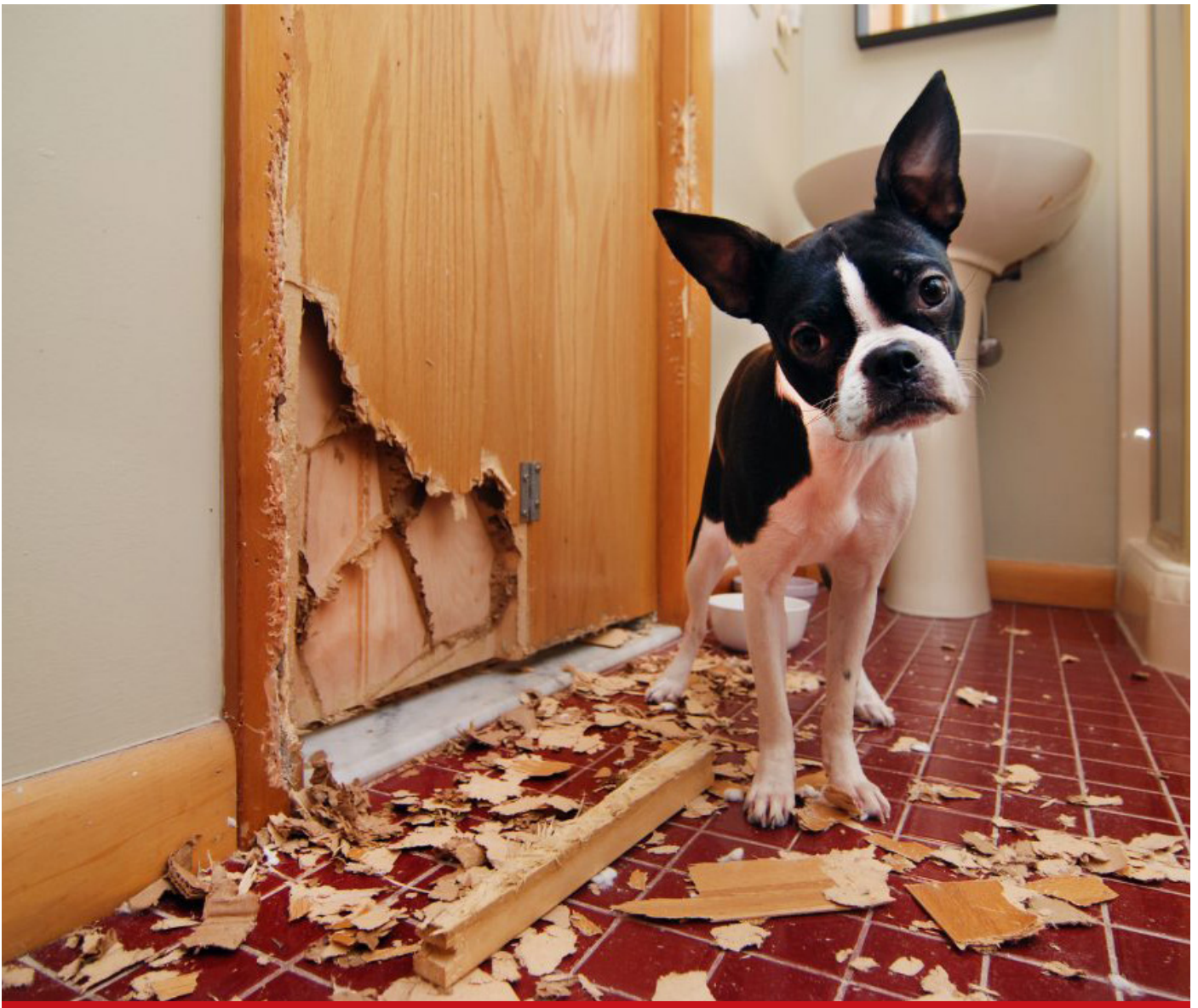
Damage – who is liable for what?

Except in certain circumstances under a residential tenancy a landlord cannot recover losses for careless or accidental damage from a tenant where a landlord is required under the lease to insure against such risks or a landlord's insurance cover does extend to such risks .

An example of this was when the Osaki decision, in April 2016, ruled that tenants are not liable for careless damage to rental premises. The decision created problems because landlords are left to bear the cost of their tenant's careless damage and tenants have little financial incentive to take care of rental premises.

Note: *Fortunately the question of careless or unintentional damage is being addressed to a degree through provisions within the Residential Tenancies Amendment Bill.*

Broadly speaking under the proposals a tenant will be liable for damage that is caused by a careless act or omission by them or their guest but this is limited to either the landlord's excess or 4 weeks rent whichever is the lower.



CONTRACT AND TORT

The obligation to repair arises when a landlord has notice of the need for repair and a landlord must take “reasonable steps” to repair (an ethical approach).

If a landlord fails to carry out repairs in this context and within a reasonable time then the tenant may:

- Carry out repairs and set-off cost against rent.
- Seek an order from the Tenancy Tribunal for specific performance.
- Possibly cancel the lease or claim damages.

The parties are under a duty to act reasonably.

Where a landlord retains control of a fixture, such as the guttering and it is leaking, then he/she will have an obligation to repair.



TORT

A tort is a wrongful act or an infringement of a right (other than under contract) leading to liability. Tortious remedies are available to tenants independently of what is stated in the lease agreement including possible liability for property damage.

EXAMPLE 1

A landlord was liable to the tenant because he did not disclose the presence of chemicals to the tenant.

EXAMPLE 2

Landlords are liable for nuisances of tenants if they have authorised them or enabled them.

For example, the landlord allowed students to tenant a unit in a quiet cul-de-sac and disregarded the neighbouring premises.

Loud parties created a nuisance particularly for the elderly couple living in the unit next door.

The landlord was held liable for the neighbours' nuisance because he should have selected appropriate tenants for this property and he also had the power to stop the nuisance by warning the students to be quiet.

SUMMARY

This content does not seek to address every instance of landlord responsibilities however it does highlight the fact that landlords should take the time to:

- Study the tenancy laws.
- Keep up-to-date with legislation changes around health and safety.
- Keep in regular communication with their property manager.
- Ensure that they maintain their properties safely and in a reasonable state of repair.
- Comply with various building regulations and ensure they engage appropriately qualified trades and services people.

Landlord obligations do vary in accordance with numerous circumstances which include (but are not limited to) the following;

- The agreement between the parties.
- Whether a tenant has notified the landlord of the need to repair a fault.
- The tenant's cooperation with a landlord attempting to remedy an issue.
- Whether a property manager has been engaged.
- The age, character and locality of the property.



HOW CAN A PROPERTY MANAGEMENT COMPANY HELP?

If you're a property owner or investor looking for experienced property managers in Wellington and Hawke's Bay, Oxygen offer a professional and friendly service. We can find the ideal tenant for your investment property and maximise your return on investment.

Our Oxygen offices are located in Wellington, Lower Hutt, Upper Hutt, Napier and Hastings. We offer free rental appraisals and have an outstanding team of experienced property managers ready to help.

We are committed to taking care of your rental property and will provide you a property management service to keep your investment profitable and hassle-free so that you can get on with enjoying life. Our team will:

- Conduct inspections, and report on the condition of your property before, during and post tenancy.
- Arrange for repairs and maintenance to be done to the property.
- Engage with Oxygen's accredited contractors only.
- Use integrated software systems for customer management, tenant services and maintenance.
- Receive rents and receipt the owner's rent into an internally audited account.
- Issue owners with a monthly report electronically detailing income and expenditure.
- Process any insurance claims where authorised to do so in consultation with the owner.
- Review weekly rent returns.
- Re-let the property at the end of each tenancy on the event of a vacancy.
- Do all such lawful things as may be directed by the owner in writing.
- Exercise the owner/tenants' rights to terminate leases and tenancies.
- Keep the owner up-to-date with legislation changes that could potentially impact their property.

RENTAL APPRAISALS

Our Business Development Managers provide free, no obligation rent appraisals. This will tell how much your property could be rented for in today's market. Our Business Development Team consists of five consultants specialising in different locations across Wellington and Hawke's Bay.

Request a rental appraisal today. Fill out the form online at:
oxygen.co.nz/appraisal

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