



Department of  
Building and Housing

*Te Tari Kaupapa Whare*

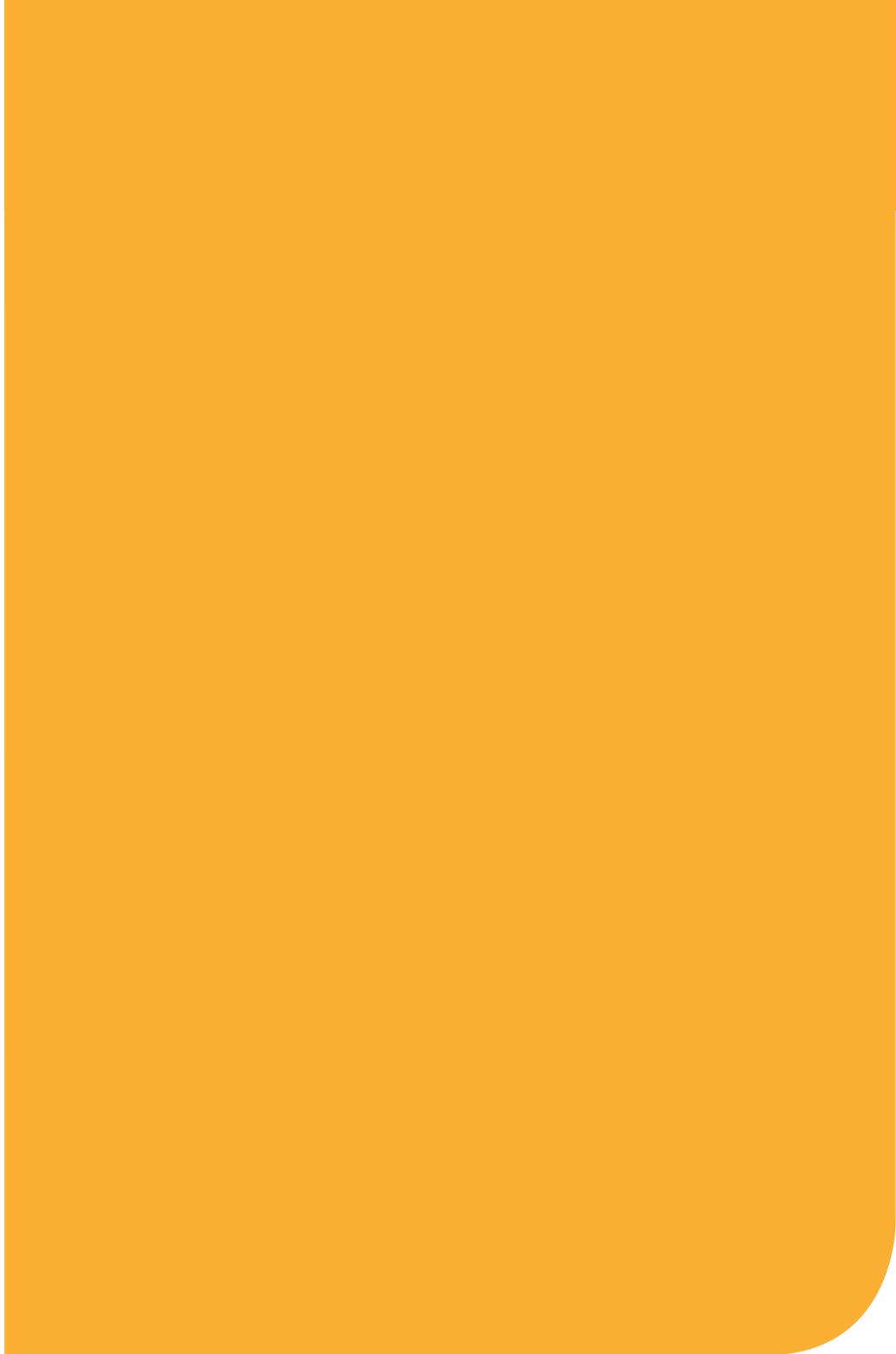


# Renting and you – a guide to the law about renting

0800 TENANCY (0800 83 62 62)

[www.dbh.govt.nz](http://www.dbh.govt.nz)





# About this guide

This guide tells you about the law that covers *renting* and *letting* – the Residential Tenancies Act.

So if you're a tenant or a landlord who needs to know about the law, this guide is for you.

It tells you about the main parts of the law, from signing a *tenancy agreement* to ending a *tenancy*. It tells you what the Act says landlords and tenants must and must not do (these are your '*rights and obligations*').

The guide also tells you about us. We are the Department of Building and Housing. We give information and advice, and we can help you sort out problems through our *mediation* service. If that doesn't work, we can tell you how the *Tenancy Tribunal* can help you. The Tenancy Tribunal is part of the Ministry of Justice.

If you want to know more about us, go to our website [www.dbh.govt.nz](http://www.dbh.govt.nz) or ring us on 0800 TENANCY (0800 83 62 62).

If you want to read the Residential Tenancies Act, you can buy a copy from some major bookshops. You can also read it at [www.dbh.govt.nz](http://www.dbh.govt.nz) or [www.legislation.govt.nz](http://www.legislation.govt.nz)

The best way to sort out most problems is for the tenant and landlord to talk about them politely and calmly. Sometimes a written letter helps as well. It gives you both a written record of what you have agreed to. Sometimes the law says you have to send a written letter. We want to make this easy for you, so we have some sample forms and letters that you can use.

You can get these from our website ([www.dbh.govt.nz](http://www.dbh.govt.nz)) or by calling us on 0800 TENANCY (0800 83 62 62).

## Definitions of words and terms

If you see a word in *italics* and you're not sure what it means, look at the glossary on page 25.

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# Your rights and obligations: a quick guide

Landlords and tenants have rights and obligations when they agree to a tenancy. Some of these are listed below.

When you read them, remember the word 'reasonable' which means being fair and helpful to each other.

In this guide, the word 'landlord' also refers to a 'landlord's agent' if they are responsible for managing the property on behalf of the landlord.

## What must the landlord do?

The landlord must:

- sign a tenancy agreement with their tenant, and give the tenant a copy before the tenancy starts
- send any bond money the tenant gives them to the Department of Building and Housing within 23 *working days* (see page 11 for information about bonds)
- give the tenant a receipt for any bond that is paid
- make sure the property is clean and tidy before the tenant moves in
- make sure the property meets all building health and safety requirements
- maintain the property in a reasonable state of repair
- get all necessary repairs done and give the tenant 24 hours' notice when someone is coming to fix something
- pay the tenant back for any urgent work the tenant has paid for (as long as the tenant can prove they tried to tell the landlord about the problem before getting it fixed and the tenant didn't cause it on purpose or by being careless)
- pay property costs such as rates and insurance (if they have it)
- make sure all the locks work and the property is reasonably secure
- give the tenant receipts for rent payment except if it is paid directly into their bank account or by non-negotiable cheque
- give the tenant a written statement saying what period they have paid rent for, if the tenant asks for this in writing
- write and tell the tenant at least 60 days before they put the rent up
- tell the tenant 48 hours before they come to inspect the inside of the property (the landlord can come onto the section without giving notice, but must respect your privacy)
- try to make sure tenants don't disturb the landlord's other tenants
- write and tell the tenant if they decide to put the property on the market.

### What can't the landlord do?

The landlord can't:

- ask for more than 4 weeks' bond
- ask for more than 2 weeks' *rent in advance*, or ask for rent to be paid before it is due
- go inside the property except in an emergency, unless they have given the right amount of notice or the tenant agrees
- inspect the property more than once in 4 weeks, except to check on work they've asked the tenant to do
- interfere with the tenant's peace, comfort and privacy, or let others do this
- do anything that stops the gas, water, electricity or telephone unless it's damaged and they are repairing it
- be unreasonable if a tenant wants to put up fixtures such as shelves
- change the locks unless the tenant agrees
- discriminate against a tenant in any way that breaks the Human Rights Act (see page 24)
- unreasonably stop a tenant who wants to *sublet* or *assign* the tenancy to someone else, unless they have stated that the tenant can't do this in the tenancy agreement.

### What must the tenant do?

The tenant must:

- pay the rent on time
- pay all charges for the telephone, electricity and gas
- pay for *metered water* if this is in the tenancy agreement, there is a separate water meter and the water supplier charges on the basis of metered usage
- keep the place reasonably clean and tidy
- tell the landlord as soon as possible about any damage or anything that needs to be fixed
- fix any damage they or their visitors cause on purpose or by being careless, or pay for someone to fix it
- make sure there are no more people living in the place than the tenancy agreement says (but this does not mean relatives or friends who are visiting for a short time)
- make sure the property is used mainly for living in
- let the landlord show prospective tenants, buyers or valuers through the property at times and in a way that suits the landlord and tenant

- leave at the end of the tenancy and:
  - take away all their things
  - take away their rubbish
  - leave the property reasonably clean and tidy
  - give back all keys, access cards, garage door openers and other ways of getting in
  - leave everything the landlord owns.

### What can't the tenant do?

The tenant can't:

- stop the landlord coming into the property when the law says they can
- damage the property or let anyone else damage it on purpose (but the tenant is not responsible if a *trespasser* damages the property, as long as they did everything they reasonably could to stop this happening)
- do anything illegal at the property or let anyone else do anything illegal
- change the locks without asking the landlord first
- stop other tenants and neighbours enjoying peace, comfort or privacy or let anyone else at the property do this
- renovate the building, change it or attach anything to it unless this is in the tenancy agreement or the landlord writes and says they can do this
- transfer the tenancy to someone else, unless the landlord writes and says they can.

# What to do at the start of a tenancy

## Tenancy agreements

### Do we have to sign anything?

Yes, you do. The landlord must always give the tenant a written tenancy agreement. This shows what the tenant and the landlord have agreed to. Both of you must sign it and the landlord must give the tenant a copy before the tenancy begins.

You must both be careful about what you say. A spoken agreement can be *legally binding*, which means you might have to do what you have agreed, even if you haven't yet signed anything. For example, a landlord might not be able to change their mind if they tell a prospective tenant they can have the place. In the same way, if a tenant says they will take the place or if they pay some money, they might have to go ahead with it.

### Who signs the agreement?

If there's more than one tenant, it's up to the landlord and tenants to decide whether everyone should sign.

If one tenant signs, the law says that person is responsible for the property.

If everyone signs, they are usually **all** responsible. This means that if one tenant doesn't pay their share of the rent, the others may have to pay it. If one tenant damages the property and doesn't pay for it, the others might have to.

### What should be in the tenancy agreement?

A written tenancy agreement and a good *property inspection report* (see page 10) can be very useful if you have problems later on. They will make it easier for a *mediator* or the *Tenancy Tribunal* to sort things out too.

A basic tenancy agreement must include:

- the names and contact addresses of the landlord and tenant
- the address of the property
- the date you both sign the tenancy agreement
- the date the tenancy begins
- both the landlord's and the tenant's *address for service* (see page 7)
- whether the tenant is under 18
- how much bond the tenant is paying
- how much rent will be paid and how often
- where the rent will be paid (the place or bank account number)
- any real estate agent's or solicitor's fees that must be paid
- a list of any *chattels* (like curtains, furniture or a washing machine) that the landlord is providing
- the date the tenancy will end if it is for a fixed term.

The landlord can put in other things such as:

- how many people can live in the house
- whether the tenant must pay for metered water
- whether the tenant can transfer the tenancy to someone else (but this doesn't mean the tenant can't have flatmates or boarders)
- where the tenant can park their car
- if the tenant can't have a cat or a dog.

Tenants can't give away any of their rights. For example, the landlord must give the tenant 90 days' notice (or sometimes 42 days' notice – see page 15), even if the tenancy agreement says 30 days.

You can write your own tenancy agreement, or you can use ours.

## Address for service

### What is an 'address for service'?

This is a street address (not a private bag or PO box) where you decide mail about the tenancy can be sent for the landlord or tenant. Make sure you use an address where you will get information even after the tenancy ends. It is especially important when the Tenancy Tribunal has been asked to solve a problem.

The landlord and tenant must both write their address for service on the tenancy agreement. The law says the address for service must be written down and it must be called the address for service. That's why our tenancy agreement form has special places for you both to write your address for service.

### What addresses should we give?

The tenancy address isn't always a useful address for service for the tenant to give. Tenants often give a friend or relative's permanent home address. Landlords usually give their home or work address.

You can't give a post office box number as an address for service because the Tenancy Tribunal can't *serve* legal documents on a post office box.

### What happens if the address for service changes?

It is very important to tell the other party (that is, the landlord or the tenant) if this address changes. If the tenant has paid a bond, they must give the new address to the Department of Building and Housing as well. Landlords must also tell us if their address for service changes.

## Tenancies

### How many types of tenancy are there?

There are two main types of tenancy. They are called a *periodic tenancy* and a *fixed-term tenancy*.

Whether you are a landlord or a tenant you should know what you have to do in each kind of tenancy so you can choose the one that suits you best.

### Periodic tenancy

A *periodic tenancy* lasts until either the tenant gives the required notice that they want to leave or the landlord asks them to leave. A periodic tenancy is good if you're not sure of your plans.

### Fixed-term tenancy

A fixed-term tenancy finishes on a date that is written in the tenancy agreement. The landlord can't give the tenant *notice to quit* before then. The tenant can't give notice to leave before that date either. A fixed-term tenancy is good if you are sure that nothing will change.

### What happens in a fixed-term tenancy if something changes?

Sometimes a landlord plans to go overseas for a year and arranges a fixed-term tenancy, but has to come home early. If this happens, the tenancy agreement means they can't move back into their home until the fixed term ends.

Sometimes tenants get new jobs or need to move out for other reasons. If this happens, they may have to keep paying the rent until the tenancy ends or new tenants are found.

A fixed-term tenancy can be ended if both the landlord and tenant agree.

However, a landlord or tenant can ask the Tenancy Tribunal to end the tenancy early if there is an unexpected change in their circumstances that results in severe hardship if the tenancy continues. This must be more than the hardship that the other party would suffer if the tenancy ends. If the Tenancy Tribunal thinks it would be unfair to make the tenancy continue, it may agree to end the tenancy. The Tribunal can also order the landlord or the tenant to pay *compensation*.

### Are there any exceptions to the rules about fixed-term tenancies?

Yes, there are exceptions to the rules. Very short and very long fixed-term tenancies are a little bit different.

- If you sign a fixed-term tenancy agreement for less than 120 days, the rules about *market rent* (see page 13) and *notice to quit* do not apply, but only if you agree in writing that the tenancy will not be renewed or extended beyond 120 days. If you then sign a new fixed-term agreement, you will have to follow all the normal rules.
- If you sign a fixed-term tenancy agreement for 5 years or more, the agreement can say that the tenancy is not covered by the Residential Tenancies Act.

There are also special rules for service tenancies. These are covered on page 23.

## Property inspections

### How do we make sure we agree about what the property is like?

Do a property inspection. The *chattels* are listed on the tenancy agreement, but it is a very good idea to do a *property inspection report* as well.

The landlord and tenant should do this together before the tenant moves in. If you do this, you won't have so many arguments when it's time to leave.

Both the landlord and the tenant sign, date and keep a copy of this form with the tenancy agreement.

The report shows what the property is like when the tenant moves in. Then you use the form again when the tenant moves out to see whether the property has been damaged. If damage is written down when a tenancy starts, a tenant can't be blamed for it when they move out. It is also easy to see if there is any new damage.

If you use our standard tenancy form you will get a property inspection report with it.

# All about money

## Bonds and key money

### What is a bond?

A bond is money the tenant pays at the start of the tenancy to cover anything they owe at the end. The law says the landlord can ask for a bond that is equal to 4 weeks' rent.

The landlord can't ask for more than this. A landlord doesn't have to ask for a bond, but most landlords think it's a good idea. They can claim from the bond for any money you owe, for example unpaid rent or property damage. If you pay a bond to your landlord they must give you a receipt.

### What happens to the bond while the tenant is living in the place?

We (the Department of Building and Housing) look after the bond. The landlord is not allowed to keep it. The tenant and landlord both fill in and sign the '*Bond lodgement form*', and the tenant pays the bond. The landlord must send the form and the bond to us within 23 *working days*. The tenant can send the bond directly to the Department of Building and Housing if the landlord agrees.

When we get the bond, we write to both the landlord and tenant to confirm that we've got it. We also send you both a '*Bond refund form*'. You will need this form when the tenant leaves.

### What happens to the bond money when the tenancy ends?

The landlord can claim some or all of the bond money if any money is owed to them by the tenant. Otherwise, the bond should be returned to the tenant. If the landlord or tenant can't locate the other person, they should contact us on 0800 737 666.

For more information on bonds, look at 'Getting the bond back' on page 21.

Call us free on 0800 737 666 if you need to know anything else about bonds.

### Can landlords charge 'key money'?

Key money is money that a landlord may ask for before giving a tenant the key to the property.

Landlords cannot usually charge 'key money'. The law says they can't do this unless the Tenancy Tribunal says they can. The Tribunal only lets landlords charge key money in very special cases.

## Paying rent

### What are the rules about rent payments?

A landlord can ask for 1 or 2 weeks' *rent in advance*. This is the rent for the first week or 2 weeks. If rent is to be paid every week, the landlord can only ask for 1 week in advance. A landlord can't ask for more rent until the end of the period for which the rent has been paid.

For example: A tenancy agreement is signed to begin on 1 February. The tenant pays 2 weeks' rent as bond and 2 weeks' rent. The 2 weeks' rent pays for the period from 1 to 14 February. The tenant does not have to pay rent again until 15 February, when they pay another 2 weeks' rent for the period from 15 to 28 February.

### How does the tenant pay the rent?

The tenant and the landlord must agree on how the rent will be paid and write this into the tenancy agreement. Rent is usually paid in one of the following ways.

- Cash
- A cash cheque
- A *non-negotiable personal cheque*
- An *automatic payment*

The landlord must give receipts for payment except if you pay the rent directly into their bank account or by non-negotiable cheque. This is because the tenant's bank statement will show the rent was paid. However, we think it's a good idea to have receipts anyway.

The landlord must keep rent records. The tenant, a *mediator* and the Tenancy Tribunal must all be able to see the rent due and the rent paid. You can get a sample rent summary form from us. It's called 'Rent summary from start of tenancy'.

Both of you should keep all your receipts and bank statements showing rent payments.

### **Can the landlord put the rent up?**

Yes, but they must write and tell the tenant 60 days before they put the rent up. The landlord can't put the rent up more than once every 6 months. In a fixed-term tenancy, the rent can go up only if this is written in the tenancy agreement.

### **What is market rent?**

The Residential Tenancies Act says that market rent is what a willing landlord might reasonably expect to receive and a willing tenant might reasonably expect to pay for the tenancy. It must take into account the general level of rents for similar tenancies of similar properties in the same area or in similar areas. This means that if there are two 30-year-old, brick, three-bedroomed houses in good condition in the same street, the rent should be about the same for them both.

Our website will give you an idea of the rents people are charging in your area. We change this information every month so it's always up to date.

If a tenant feels that a landlord is asking for substantially more than the market rent, they can ask the Tenancy Tribunal to assess it. If the landlord wants substantially more than the market rent, the Tribunal can then set the rent.



# When something needs to be fixed

## **What does the tenant do if they want the landlord to fix something?**

The tenant should talk to the landlord and then write a letter telling them about the problem.

## **What can the tenant do if the problem is serious or urgent?**

If the problem is likely to hurt people or damage anything, the tenant must tell the landlord about it. If the tenant tries to get in touch with the landlord but can't, they can get the problem fixed themselves. They can then ask the landlord to pay them for the repairs.

## **What happens if the landlord doesn't fix a problem?**

Sometimes a tenant asks the landlord to do repairs the tenant thinks are necessary, but the landlord doesn't fix the problem quickly enough. If this happens the tenant should talk to us. We will tell them what they should do next. We might suggest that they send the landlord a '10-working-day letter', which tells the landlord clearly what the law says they must do. Tenants can get a sample letter from us or from our website.

If the landlord still doesn't do the repairs, the tenant can ask the Tenancy Tribunal for help. A tenant can ask for an order that the landlord must do the work, for money to get the work done, or for the tenancy to end (see page 18).

## **Can the landlord make the tenant clean the place up or fix something they've damaged?**

If a landlord thinks the tenant can fix the problem, they can write and tell them they have 10 *working days* to do it. The landlord can get a sample letter from us or from our website. It's called 'Landlord to tenant – not rent arrears'. If the tenant doesn't fix the problem, the landlord can ask the Tenancy Tribunal for an order to make them do the work. If the problem is very serious, the Tribunal can order the tenancy to end.

# When a rental property is sold

## Does the landlord have to tell tenants they're selling the property?

Yes, they must tell tenants or anyone who wants to rent the property in writing if they are trying to sell it.

Landlords have the right to show buyers through the property with the consent of the tenants. Tenants and landlords should talk to each other to agree what works for both of them.

When a property is sold the old landlord must tell the tenants who the new owner is and when they take over. The new owner must tell the tenant their name, how to get in touch with them and how the tenant must pay the rent.

If the tenant is staying in the property and the old landlord wants to claim some of the bond, the landlord must make an application before the property settlement date or they will be unable to make a claim.

## Does the tenant have to move out?

- If the property has a *fixed-term tenancy*, nothing changes. The new landlord can't change the tenancy agreement, and the tenants can stay on until their tenancy ends. If the tenants want to move, they should talk about this with the new owner. If the new owner agrees that the tenant can move out, this agreement should be written down.

- If the property is sold when there is a *periodic tenancy* in place and the new owner requires vacant possession, the landlord may write and give the tenant 42 days' notice instead of the usual 90 days.

## What does the Department of Building and Housing need to know?

If the Department of Building and Housing holds a bond, we need to know when there is a new landlord. Both the new and the old landlords must fill in and sign the 'Change of landlord/agent' form. We will then put the new landlord's name on our bond records.

## Are there special rules for mortgage sales?

If the landlord doesn't pay their mortgage, the mortgagee (such as the bank) may take over the property or sell it by *mortgagee sale*. The mortgagee or the new owner then takes over the tenancy and will have the same rights as a landlord under the Residential Tenancies Act, with one exception. If there is a fixed-term tenancy in place, the bank or mortgagee can give notice as if it was a *periodic tenancy* with some exceptions. The tenant's and new landlord's other rights all stay the same.

# Sorting things out

## How can the Department help us sort out our arguments?

Tenancies don't always run smoothly. That's why we give advice and information, and help you go as far as you need to get your problem sorted.

The first thing you should always do is talk to each other about the problem. Often there has been a simple misunderstanding or mistake. But if this doesn't work, talk it over with us. We can help you decide what to do next. You might try talking to each other again, or you might write a letter.

If you've still got a problem, you can apply to the Tenancy Tribunal to get the matter sorted out. The application fee is \$20.

When we get your application we arrange a *mediation* between the landlord and tenant. This is where most things are sorted out.

### How does mediation work?

*Mediation* is a process where you and the other person have the opportunity to discuss the problem, and agree on your own solution by talking together with a *mediator*. The mediator will help you identify the issues, and reach a workable solution.

Mediators know a lot about tenancy issues, and they will guide you through the process, but they don't decide anything for you. This is different from a Tenancy Tribunal hearing where the adjudicator will make a decision, and tell you both what will happen.

### If you agree on a solution

The *mediator* will write down your agreement and make a *mediated order*. You both have to stick to what you've agreed, and the order will usually say what will happen if you don't.

### If you don't agree on a solution

You can ask the Tenancy Tribunal for a *hearing*. This is more formal than *mediation*. The Tribunal will listen to you both and make a decision. You might not like the Tribunal's decision, but you will have to stick to it.

### What is the Tenancy Tribunal?

The Tribunal is part of the Ministry of Justice. It uses the Residential Tenancies Act to decide about problems that landlords and tenants can't solve themselves. A *tenancy adjudicator* listens to each person, hears any witnesses, looks at any evidence the landlord or tenant brings, and then makes a decision.

The adjudicator writes down their decision as a *Tribunal order*. Both the landlord and the tenant get a copy. The adjudicator's decision is like a court order and both sides have to obey it.

The Tenancy Tribunal works in public. Both the landlord and the tenant can take support people with them, but in most cases you can't use a lawyer to present your case. However, you can use a lawyer in some situations including if:

- the dispute is for more than \$3,000
- the other side says it's OK
- a solicitor has been managing your affairs because you can't do it yourself, or because you live somewhere else.

The Tribunal might also let you use a lawyer in some situations including if:

- the other side is using a lawyer
- your problem is quite complicated
- the other side has a lot of advantages, such as being a big company.

In some cases, someone who is not a lawyer can represent you. If you think you may need this you should talk it over with us before you go to the Tribunal.

### **What kinds of order can be agreed to in mediation or made at the Tenancy Tribunal?**

There are different kinds of order but the most common are *possession*, *monetary* and *work orders*. They can all be made either in *mediation* or by the Tribunal.

#### **Possession order**

If the tenant doesn't do what the law says they must do and the situation is serious enough, the landlord can ask for them to be evicted. This means they must leave. This can happen if the tenant is:

- more than 21 days behind with the rent
- seriously damaging the property or threatening to damage it
- assaulting the landlord or the landlord's family or agent, other tenants or neighbours, or threatening to assault them
- breaking the tenancy agreement in some other way (for example, when the landlord has given at least 10 *working days'* notice to put things right and the tenant hasn't done this) and the Tribunal believes it would be unfair to let the tenancy continue. If the problem can be fixed, a 10-working-day letter must be sent before applying to the Tribunal.

### Monetary order

This says a landlord or tenant must pay money to the other party. This could be because:

- the tenant owes rent or has paid too much rent
- the tenant has to pay for damage, cleaning, gardening or rubbish removal
- the landlord owes the tenant money for urgent repairs
- the tenant or landlord has to pay exemplary damages (this is something like a fine) for breaking the law. Examples: the landlord doesn't pay the bond to the Department of Building and Housing; the landlord takes a tenant's goods; the tenant doesn't let the landlord come on to the property when the law says they can.
- either the tenant or the landlord has to pay *compensation* when something is lost or doesn't work because it hasn't been maintained or fixed properly.

### Work order

This says that a person has to fix something because it is damaged or they should have fixed it sooner. If they don't do the work, they may have to pay money instead.

### Alternative orders

An agreement or order can say what will happen if the person doesn't obey the order. It is then up to the other side to say if they need to do that. For example, an order for a landlord to give a tenant's goods back to them can say the landlord must pay money if they don't give them back. However, the tenant might say they don't want any money, even if they can't get their goods back.

### How can I get the other person to do what the order says they must do?

If you have a sealed *mediator's* order or a *Tribunal order*, you can ask the Collections Unit at your local District Court to *enforce* it. You have to pay for this. You can get information about enforcement from us. Visit [www.dbh.govt.nz](http://www.dbh.govt.nz) or call 0800 TENANCY (0800 83 62 62).

# Ending a tenancy

## Giving notice

### How much notice do we have to give each other?

#### Periodic tenancy

A tenant must write to the landlord at least 3 weeks (21 days) before they want to leave. The landlord may let the tenant leave earlier. If the landlord agrees to do this, they should write and tell the tenant.

Usually, a landlord must write and tell the tenant at least 3 months (90 days) before they want them to leave.

However, they only have to give the tenant 6 weeks' (42 days') notice if:

- the landlord wants the property for themselves, their family members or employees
- the property is being sold and the buyer wants the place empty.

When one of you gives notice to end a tenancy you must:

- send it in writing
- give the address of the property
- give the date when the tenancy will end
- sign it.

It's a good idea to keep a copy of the notice.

You can send the notice to the *address for service*. It doesn't have to be sent by registered mail or delivered in person, but you should add 4 *working days* to the notice period. This will make sure the other person gets the full amount of notice.

If you deliver the notice to the person by hand, it is considered to be served straight away. If you leave it on their door or letterbox, you should add 2 working days to the notice period.

If a landlord gives a tenant notice to end the tenancy, the tenant can stay in the place until the final date. However, if the tenant chooses to move out sooner than that, they must still give 21 days' written notice to the landlord. Sometimes a landlord will not mind the tenant leaving even earlier, but they must agree about this and write it down.

### **Fixed-term tenancy**

You can't end a fixed-term tenancy early unless both of you agree, or the Tenancy Tribunal says you can. The end date is in the tenancy agreement. This means neither of you has to give any notice when the tenancy ends. However, it is always a good idea to check with each other again nearer the time about what you want to do. For example, you might write another fixed-term agreement, or you might agree to change to a *periodic tenancy*.

### **Can the landlord tell the tenant to leave because they have complained?**

Sometimes a landlord tells a tenant to leave because they have told the landlord or the Department of Building and Housing about a problem. This is called *retaliatory notice*, and the law says the landlord can't give retaliatory notice. The tenants can ask the Tenancy Tribunal for an order to say they don't have to leave. The Tribunal will decide whether the tenant was only told to leave because they used or asked for their rights under the law. If the Tribunal agrees with the tenant, it will make an order saying they can stay.

### **Getting new tenants**

Sometimes just one flatmate leaves and the others stay on. If the landlord agrees, the new flatmate can simply 'take over' the old flatmate's share of the bond. If you do this, you must tell us by making sure the landlord, the old flatmate and the new flatmate fill in and sign a 'Change of tenant' form and one of you sends it to us. This does not mean the new flatmate is covered by the tenancy agreement. It is a good idea to include any new flatmates in a tenancy agreement.

## Getting the bond back

### How does the Department decide who gets the bond money back?

We rely on what the tenant and the landlord tell us on the '*Bond refund*' form.

First, both the tenant and the landlord should go through the place, using the *property inspection report* you both filled in when the tenant moved in. Check that the tenant hasn't damaged or broken anything. (The landlord can't ask the tenant to pay for normal *wear and tear* to the property or *chattels*.)

If you both agree that the tenant has looked after the property and doesn't owe any rent, you both sign the 'Bond refund' form. We sent you both a copy of this when we got the bond, but you can get another one from us or from our website.

If you agree that the tenant owes some money for damage or overdue rent, you write this on the form and then sign it. For example, if a bond is \$400 and both agree the cost of window repairs is \$150, you will write:

Pay landlord \$150.00

Pay tenant \$250.00

Make sure you write your bank account numbers on the form because we don't send cash or cheques.

One of you then sends us the form. When we get it we check all the signatures to make sure they're the same as the signatures on the 'Bond lodgement' form. This is why it's very important to make sure we always know whenever there is a new landlord or tenant. If the signatures aren't the same, we will not be able to refund the bond without asking for more information.

Then we look at what the 'Bond refund' form says. If you have agreed that everything is OK, we will pay all the bond money back to the tenant.

### How do we get the money?

If the tenant has agreed to pay for damage or overdue rent, we will pay this amount into the landlord's account. We will pay the rest into the tenant's account.

Sometimes a tenant is moving to a new place and it's easier for them if we just transfer their bond money from their old place to their new one. We're happy to do this. You will need to use the form called 'Bond transfer' form.

### What happens if the landlord and the tenant can't agree?

The landlord should apply to the Tenancy Tribunal as soon as possible. A *mediator* will then help to sort it out.

### What if I can't contact the landlord or tenant?

If you can't contact the landlord or tenant to fill in the 'Bond refund' form, contact the Department of Building and Housing to discuss your options.

## Preparing to leave

### What do tenants have to do when they leave the place?

There are quite a lot of things that tenants must do as part of leaving a property. They must:

- move out by the date the landlord has given them in a written notice or in a fixed-term tenancy agreement
- pay the rent up to the last day of the tenancy
- leave the house reasonably clean and tidy
- remove any rubbish by the last day of the tenancy
- remove their belongings
- give the landlord all keys, access cards, garage door openers, and other ways of getting into the property
- leave behind any *chattels* that belong to the landlord.

If a tenant doesn't do all these things, the landlord can ask us for some or all of the bond so they don't lose money.

# Other things about renting

## What is a service tenancy?

This is when employees are *renting* from their employer as part of their contract or terms of employment. Service tenancies are fully covered by the Residential Tenancies Act, but they have special rules about rent paid in advance and *notice to quit*.

## Rent payments

If the employer takes the rent out of the tenant's pay, they can also take rent out of any holiday pay to cover the holiday period.

## Notice periods

If the employment contract has ended or notice has been given that it will end, the employee or employer must give 2 weeks' notice to end the tenancy. That notice can't expire before the employment contract ends. Less notice can be given if the landlord:

- needs the house for another employee
- thinks the tenant will cause damage to the property.

If you are thinking about a service tenancy, we can give you more information and advice.

## Can the Department of Building and Housing help when there are arguments between flatmates?

No, we can't help. The law says we can only help with problems between tenants and landlords. However, remember that if you move into a flat and sign a tenancy agreement along with the other flatmates, you share responsibility for the whole tenancy. This is called being *jointly and severally liable*. It means that if one of the tenants damages the place or doesn't pay their share of the rent, you can all be held responsible. You might have to pay the debt if the offending tenant does not.

Community Law Centres, Citizens Advice Bureaux and student accommodation advisers can offer advice on flatmate relationships.

### **Can the landlord refuse to let the property to someone?**

It depends on their reasons. If they think someone won't be a good tenant, they don't have to let them live there. But they can't say no just because they don't like someone's colour, race, sex, age, where they were born, or their religious or ethical beliefs. They can't say no because the person is or isn't married, has children, or doesn't have a job or receives a benefit. They can't say no for a few other reasons too – you can read about them in the Human Rights Act 1993. A tenant who thinks a landlord won't let them live in a property for any of the above reasons can ask the Tenancy Tribunal or the Human Rights Commission to look into it.

# Glossary

TERM	MEANING
Address for service	The address (not a PO box) given in writing by a landlord or tenant where all formal documents about the <i>tenancy</i> can be sent and are sure to be received, even after the tenancy has ended.
Assign	When a tenant fully transfers a tenancy to another tenant. The new tenant takes over all the ' <i>rights and obligations</i> ' of the old tenant.
Automatic payment	Where a person arranges for their bank to make regular payments from their bank account.
Bond lodgement form	A form that landlords and tenants use when they send bond money to the Department of Building and Housing.
Bond refund form	A form that landlords and tenants use to get bond money back from the Department of Building and Housing when the tenant moves out.
Chattels	Things the landlord provides, such as curtains, a fridge or a washing machine, that are not fixed in place.
Compensation	Money that is paid to a landlord or tenant to make up for any loss or damage.
Enforce	Make sure you do what an order says you must do.
Fixed-term tenancy	A tenancy that has a final date for moving out, which is written in the <i>tenancy agreement</i> .
Hearing	When an independent person at the <i>Tenancy Tribunal</i> listens to people who can't agree and decides what will happen.
Jointly and severally liable	Where a group of people or any one person in the group can be made to pay for something that goes wrong, such as damage or unpaid rent, no matter who caused the damage or did not pay the rent.
Legally binding	When the law says you must do what has been decided.
Letting	This is what landlords do. They let a place to tenants who pay them rent.

TERM	MEANING
Market rent	The level of rent other people are paying for the same sort of property in a similar sort of area.
Mediated order	An order that a <i>mediator</i> writes up to record what has been agreed to at a <i>mediation</i> meeting.
Mediation	A meeting or phone call where a mediator helps the landlord and tenant sort out their problems.
Mediator	The independent person who helps tenants and landlords talk about their problems and come to an agreed solution.
Metered water	Water that the supplier charges for according to the amount used.
Monetary order	An order to pay a sum of money to another person.
Mortgagee sale	When a bank sells a property because the owner can't pay their mortgage.
Non-negotiable personal cheque	A cheque with the name of a particular person or company on it; no one else can bank it.
Notice to quit	Written notice a landlord gives to a tenant asking them to move out (usually in 90 days' time). This is also called a notice of termination.
Periodic tenancy	A <i>tenancy</i> that does not have an end date written in the <i>tenancy agreement</i> .
Possession order	An order that says the landlord can take their property back.
Property inspection report	A written report about what a property is like when a landlord and tenant inspect it together.
Prospective tenant or buyer	Tenant or buyer who is interested in renting/buying a property.
Renting	This is what tenants do. They pay to rent a place from a landlord.

TERM	MEANING
Rent in advance	Rent a tenant pays for an upcoming period (of no more than 2 weeks). For example, if a tenant pays 2 weeks' worth of rent on 1 May, they will have paid for the period from 1 May to 14 May. Rent is next due on 15 May.
Retaliatory notice	When a landlord gives a tenant <i>notice to quit</i> because they have complained about something or have tried to do something that they are allowed to do under the law.
Rights and obligations	Things that the law says you can do and things that you must do.
Serve	When you get a legal document delivered to you either personally or at your <i>address for service</i> because the court says you have to go to a hearing or be a witness.
Sublet	Where a tenant rents a property from a landlord and, rather than living there, he or she rents the property to another tenant and becomes their landlord. Both tenants will be responsible for rent and damage to the property.
Tenancy	When a property owner lets another person or group live in a place they pay rent for.
Tenancy adjudicator	An independent person at the <i>Tenancy Tribunal</i> who listens to your arguments and makes the decision on the outcome of the dispute.
Tenancy agreement	A written agreement that the landlord and the tenant sign before the tenant moves in, so everyone knows what they have agreed to.
Tenancy Tribunal	The body, similar to a court, that decides how a problem between a tenant and landlord will be solved.
Trespasser	Someone who comes on to a property without permission from the person who lives there.
Tribunal order	A written ruling made by the <i>Tenancy Tribunal</i> , that everyone has to obey.
Wear and tear	The normal things that happen in a property when people live in it, such as the carpet getting older or the walls getting small marks on them.

TERM	MEANING
Work order	An order to get a property fixed or for work to be done on the property.
Working days	Monday to Friday, but not public holidays or the days between 24 December and 3 January. This means that '10 working days' is usually a fortnight.
Written notice	A letter from the landlord or tenant to tell the other person that something is happening, such as moving out or an increase in rent.



## GETTING IN TOUCH WITH US

IF YOU'VE GOT A QUESTION ABOUT BONDS,  
CALL US FREE ON **0800 737 666**.

THIS GUIDE IS AVAILABLE IN SOME OTHER  
LANGUAGES. CALL US TO ASK FOR A COPY.

OUR WEBSITE CAN GIVE YOU LOTS MORE  
USEFUL INFORMATION. REMEMBER,  
YOU CAN DOWNLOAD COPIES OF ALL  
OUR FORMS TOO.

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AS ACCURATE AS POSSIBLE. HOWEVER,  
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