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NEXT ISSUE:

Family Trusts — Beneficiary Rights

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Tenants Obligations under Residential Tenancies

Whether, for financial reasons, a lifestyle choice or simply for convenience, an increasing number of New Zealanders are choosing to rent their homes. If you are among those who have entered into or are considering entering into a tenancy agreement, it is essential that you understand your legal obligations. The Residential Tenancies Act 1986 defines the rights and responsibilities of tenants under Tenancy Agreements in New Zealand.

The general obligations of tenants under the Residential Tenancies Act are as follows:

- Pay rent as and when it falls due
- Keep the premises reasonably clean and tidy
- Notify the landlord of any damage or of the need for any repairs as soon as possible
- Comply with any maximum number of residents in the tenancy agreement
- Ensure premises is not used for any unlawful purpose
- Not to interfere with the reasonable peace, comfort, or privacy of neighbors
- To use the property principally for residential purposes
- To ensure the property is not carelessly or intentionally damaged.

When the Tenancy Agreement has ended, the tenants obligations are as follows:

- Exit the property
- Leave the property reasonably clean and tidy
- Pay the rent up to the last day of the tenancy
- Remove all belongings
- Dispose of all rubbish
- Leave in the property everything the landlord owns
- Return all keys, access cards and garage door openers

If the tenant is in breach of an obligation and the landlord thinks that the problem can be fixed, they can give notice to the tenant in writing identifying the nature of the breach and giving the tenant a reasonable time period (not being less than 14 days) to remedy it. If the tenant fails to fix the problem, the landlord can either apply to the Tenancy Tribunal for mediation, or to make an order against the tenant. The Tribunal, at their discretion, can make an order that the tenant pay money owing, vacate the property or do repair work on the

property to remedy the breach.

If the landlord considers that the problem is unable to be fixed, and wishes to end the tenancy they can apply for an order terminating the tenancy. The Tribunal may grant such an order if they find the breach to be sufficiently serious. It is important to note that the Tribunal can also make an order terminating the tenancy if the tenant's rent payments are more than 21 days in arrears.

This might seem fair and reasonable if you are responsible for the landlord's loss or damage. However, what many people do not realise is that all tenants listed under a tenancy agreement are *jointly and severally* liable for the tenancy. This means, if any damage, rent arrears, cleaning or other debt arising from the tenancy is caused by one tenant, then that tenant and all other tenants named in the agreement can be held accountable.

Consider this example:

Eric and Hamish flat together. Eric is tidy and careful. Hamish, however, has a tendency to be reckless at times. After one particularly big Friday night out, Hamish comes home, makes himself a feast and accidentally leaves the stove on. Unfortunately the kitchen goes up in flames and suffers \$80,000 of damage. The landlord's insurer pays the landlord for the damage. However the insurer then exercises its legal rights and sues both Hamish and Eric collectively. To add insult to injury, Hamish then skips town and the insurance company sue Eric for the whole \$80,000. It is irrelevant that Eric didn't cause the damage as he is still *jointly and severally* responsible for the tenancy.

Eric now has two options. He can either; (a) beg his parents to take out a second mortgage on their family home or (b) declare himself bankrupt. Eric could have easily avoided this situation, however, if he had taken out a liability insurance policy.

Liability insurance covers against unintentional or careless damage of someone else's property caused by you, a flatmate or a guest. Most insurers and a number of banks offer adequate liability coverage with home contents packages. Taking the time to investigate today could save you a lot of stress and protect you and your family from financial ruin in the long run.

If you have any queries about residential tenancies, please do not hesitate to contact the Collins & May team.

- The next newsletter will cover the topic of # — by #

