

June 2012 Update

The Minefield Of Understanding Tenant & Landlord Responsibilities

The rights, responsibilities and obligations of a tenant and landlord are outlined in State regulated Tenancy Acts, as well as encompassing a wide range of other Acts, legislation and by-laws. Trying to understand and interpret the law can be a minefield.

We often receive phone calls wanting clear advice on specific situations; however, it is not always easy to provide a definite answer.

Legislation from State to State can be slightly different, however, one of the key focus points for managing a property is that the **tenant must maintain the property in a clean condition**, and the **landlord must maintain the property in a fit, safe and good state of repair**.

You then need to take into consideration the interpretation of the word 'reasonable' that appears many times in the Act. Reasonable is what takes place from the normal use of the property. Then add to this the interpretation of 'fair wear and tear' and you have a recipe for what we call 'the grey area' of the law. If you were to go to the tribunal court the decision can often vary depending on the circumstances and the mindset of the magistrate or registrar on the day.

With this in mind we would like to explore a few areas of property management that can be open to interpretation if not included in the agreement, as well as considering the risk associated to you as a landlord.

During the process of managing your property we must adhere to the legislation and we cannot contract outside of the law as there are serious penalty fines.

Replacement of light globes

One debatable area can be who is responsible for the replacement of light globes. Is this a fixture and fitting of the property that must be maintained by the landlord or is the tenant responsible? It can be questioned that the tenant is responsible for the replacement of all globes, while others may come to an agreement that the tenant replaces normal light globes and the landlord replaces specialised fluorescent globes or globes that can be too high to replace. For example: 2 metres high up in a stairwell.

Clearing of gutters

Once again is clearing of gutters cleaning or maintenance? Should it be an expectation of the tenant to climb on to the roof to clear the gutters to prevent damage to the property?

Lawn & Garden Care

On most occasions it is the tenant's responsibility to keep the lawns and gardens well maintained and clean. However, that poses the question of confusion with reference to 'maintenance' being a landlord responsibility. While the tenant is responsible for lawns and gardens — should they be climbing the ladders with chainsaws or the like to trim back trees and large shrubs?

Potential Risk Leading to a Liability Claim

As your managing agent it is our duty of care to ensure that we mitigate the risk to all parties with regards to personal injury and property damage. With this in mind it would be wise to limit the exposure to risk for the tenant. For example, you would not ask the tenant to change fuses, tamper with electrical appliances that are part of the property and you would not want the tenant climbing up ladders to clear gutters, cut or prune large trees and shrubs or to change specialised light globes.

As a property owner you need to understand that with the changing times and increased liability claims this does have an impact on what an owner must maintain.

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Investment Property of the month:



Perfect Investment Opportunity or 1st Home

This affordable low maintenance 1BR apartment is a great buy for those entering the property market or an investor looking for an addition to their portfolio. Currently rented at \$280pw it offers an immediate return or vacant possession.

This sizable freshly painted 1st floor apartment features a modern kitchen with meals area, spacious lounge with balcony, large bedroom with BIR's, bathroom with bath/shower & laundry facilities, intercom access and auto gate to undercover parking. Located within walking distance to Southland shopping centre, Charman Road Cafes and Cheltenham Train station, this property is one you wouldn't want to miss.

Contact: Genevieve Hill on 0423 094 639 or
genevieve.hill@raywhite.com

Price: \$279,000

Complete Replacement

Can you claim the cost of completely replacing an item in a rental property?

If you have to replace something identifiable as a separate item of capital equipment (such as a complete fence or building, a stove, kitchen cupboards or a refrigerator) you have not carried out a repair. This means you cannot claim the entire replacement cost you incurred in the year you incurred it. However, you may be able to claim the cost as a capital works deduction or a deduction for decline in value.

Example: Janet has owned and rented out a residential property since 12 January 1983. Recently she replaced the old kitchen fixtures, including the cupboards and appliances. The old cupboards had deteriorated through water damage and wear and tear.

The kitchen cupboards are separately identifiable capital items with their own function. This means the cost of completely replacing them is a capital cost. Because of this, Janet can only claim a:

- capital works deduction for the construction cost of this work
- deduction for the decline in value of the kitchen appliances.

Need We Say It Again:

Ladder falls add up

The dangers of ladders and roofs have been highlighted in a bizarre afternoon in Melbourne in which five men were seriously hurt in two hours.

A 72 year old man fell about 5 metres from a ladder while pruning a tree at Glen Waverley. The man had possible spinal injuries and a collapsed lung.

Paramedics were also called to treat four others. They included two 69 year old men who fell from ladders in Ascot Vale and Bulleen. In the Ascot Vale incident a man has possible spinal and internal injuries after falling 3 metres, while the other man has back injuries.

In yet another fall, a 75 year old man injured his hip and ankle when he fell 3 metres through a roof at Oakleigh, and a 21 year old man fractured his leg when falling through a pergola roof at Endeavour Hills.

Source: Herald-Sun, 18th May 2012.

Some of our New Listings:



55A Tulip Grove,
Cheltenham



102/62-76 Cavanagh St,
Cheltenham



23 Hedgeley Road,
Keysborough



3/19 Tulip Grove,
Cheltenham

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