



TENANCY AGREEMENTS – WHO IS RESPONSIBLE FOR DAMAGE?

Report by Despina Priala | Priala Legal Pty Ltd | 30 May 2012

In Queensland, the *Residential Tenancies and Rooming Accommodation Act 2008* (the Act) governs the relationship between lessor and tenant. Similar legislation would exist in other states.

The question that arises in the above scenario given is a common one and it is important to know who is responsible to repair the damage.

Under the Act both lessor and tenant have obligations and responsibilities for residential premises. At the start of any tenancy, the lessor must ensure the premises and inclusions are clean, fit to live in and are in good repair. Whilst the tenancy continues, the lessor must also maintain the premises and inclusions in good repair.

The tenant also has a responsibility to keep the premises and inclusions clean having regard to their condition at the start of the tenancy and must not maliciously damage, or allow someone else to maliciously damage, the premises or inclusions.

If the tenant knows that the premises or inclusions have been damaged, the tenant must also give notice to the lessor as soon as practicable of the damage. Generally, the lessor has to carry out repairs or organise someone else to do so, within a reasonable time after receiving the notice from the tenant. If they don't, the tenant can issue a notice to remedy breach to the lessor requiring them to fix the problem within 7 days.

Any failure to comply with the above responsibilities and obligations by either lessor or tenant may be considered a breach of the tenancy agreement.

The difficulty in the scenario given to us, is that the premises have been damaged, by a third party, not by the tenant, which appears to have been done maliciously.

An example of who may be responsible appears on the website for the Residential Tenancies Authority in Qld. It provides as follows:

“If the tenant breaks a window by throwing something through it, they are responsible and have to pay. If a window breaks because the putty comes loose due to age without the tenant knowing, and the window falls out, that may be fair wear and tear and the lessor/agent/manager may have to pay”.

It may very well be that the tenant in this situation will be responsible for the damage. If the tenant disputes this, the lessor will be able to have the dispute resolved by the Residential Tenancies Tribunal. However, it is always preferable I think to try and resolve the dispute directly with the other party. It will hold you in good stead generally for future relations.

I think the moral of the story here though is: as a tenant try and avoid other parties causing damage to your premises because ultimately you may very well be up for all costs to repair the damage.

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