

SKYLINE REAL ESTATE NEWSLETTER

FOR PROPERTY INVESTORS



August 2008

Time for a Winter Tidy Up

Winter weather has been fairly mild so far however, this doesn't mean that property investors can sit back and relax. Before a serious storm hits, you should carry out a review of your property, checking for any damage that may have already occurred from bad weather and undertaking any repairs before they become a serious issue.

A lack of action now may cost you more money if emergency repairs need to be carried out later in winter and, with the current state of the building industry, you may also face a lengthy wait for tradespeople.

A common complaint from tenants surrounds the timespan it takes to get problems fixed. Inaction may therefore result in the loss of a good tenant at the end of the lease, leaving you with the expense and loss of income associated with finding a replacement.



Under the Residential Tenancies Act property investors are responsible for:

- Undertaking any necessary repairs and maintenance, such as plumbing
- Ensuring the condition of the premises does not break any building, health or safety laws
- Cleaning and maintaining gutters and downpipes
- Major garden maintenance such as tree lopping

Common complaints at this time of year include water damage from gutters overflowing, damage caused by falling tree branches, leaks caused by broken or missing tiles, and fences being blown over by high winds.

To help prevent these problems you should:

- Clean the gutters and downpipes and repair any damaged areas.
- Check the roof for loose or broken tiles, broken ridge capping or loose flashing. It may be nice to watch the rain pouring down outside during a storm, but the last thing a tenant wants to see is water dripping off the ceiling.
- Trim any overgrown or overhanging branches and check trees for stability as fallen trees are often the result of storms.
- Securely anchor garden sheds and make sure fences are stable.
- Secure any awnings and shade cloth.
- Install a surge protector with an automatic cut-out facility which can prevent electrical damage if lightning strikes during an electrical storm and help keep tenants safe.

As the weather cools down, tenants will be making greater use of heating appliances. You should make sure that all chimneys and flues are clear if there are wood fires or stoves in the property. If you have gas heaters ensure that they are working properly. Smoke alarms should also be installed in case of fire.

When Tenants Move Out

When there are multiple tenants on a lease it is common for the mixture of tenants to change during the lease period. Often tenants move on, or new tenants move in, without telling the property owner or property manager. They may feel that as long as the rent is being paid, it doesn't matter who is paying it.

However, it is important to note any changes to the tenancy arrangement, and to follow proper procedure, as this does have a major impact on the bond.

Recently a magistrate from the NSW Local Court dismissed an owner's claim against the bond as a variation of tenants in the property had not been documented by the agent in writing. In this case, one tenant moved out and the remaining tenant fell behind in their rent and was terminated. At the hearing for the bond disposal, the tenant that vacated prior to the termination made a claim for their share of the bond. As the bond had not been moved into one name, the magistrate granted the tenant their half of the bond. This left the owner in a difficult situation.

What should happen?

If a tenant advises they are leaving, your property manager should ask for a letter from the vacating and remaining tenant. One needs to request permission to remain in the property and agree to take it over in the current condition. The tenant that is leaving needs to advise that they are vacating. You, the owner, will then be the one to make the decision regarding who stays, as you originally approved these tenants based on the information provided for each person in the original application.

If you are not happy for one party to remain in the property, then all the tenants are required to 'break the lease', vacate the premises, and complete the requirements of a breaking a lease agreement. If you agree that one party can remain, a bond variation must be signed. It is likely that the tenants shared the cost of the bond and that the vacating tenant will want their share – the tenants need to resolve this issue. Your property manager's role is to have the bond moved from two names into the name of the remaining tenant.

A CASE FOR THE TRIBUNAL

The following is a summary of a legal judgement arising from a tenancy dispute. It is important to remember that this is a summary and for a full account the entire judgement should be read. We do not recommend you rely on this summary in any decision making about your investment property.

In this case the tenant gave evidence that on 12 July, 2006 the owner asked her to vacate the premises immediately. At the time her rent was paid to 23 July, 2006. When the tenant did not leave, the owner became aggressive and offensive and threatened to place all her belongings on the street. The tenant went to the Police and was advised to take out an AVO and file an application with the Tribunal.

On 21 July 2006, the owner allowed the tenant access to the premises to collect her belongings which included furniture. The tenant found short term accommodation.

The owner gave evidence that he asked the tenant to leave on 12 July, 2006 because of non payment of bills, and because of what he described as her argumentative nature. There followed shouting between the two; a heated argument took place. The owner then told the tenant 'You are required to leave the house.' No notice was given and no time was discussed. The owner said the tenant's rent was paid to 22 July, 2006. The owner was also insistent that locks were never changed and that no one entered her room at any time.

The Tribunal was satisfied that the tenant was not locked out of the premises but that the relationship between the parties became untenable leading to the tenant to vacate the premises of her own volition. Accordingly, the tenancy came to an end.

The owner agreed to return the bond of \$300.00 less outstanding utilities of \$192.50 equating to \$107.50, plus one day's overpayment of rent being \$10.70.