

Understanding Real Estate Tenancy Agreements

As a legal document make sure you spend time reading and understanding what you are signing

A tenancy agreement (or lease) is a written agreement between a tenant or resident and a property manager / owner. As it is a legally binding contract spending time reviewing the agreement before you sign it is critical.

While each state and territories regulations vary slightly, all tenancy agreements must include the following:

- The name and address of the tenant, and the property manager/owner or provider
- The dates when the agreement starts and ends (or state that the agreement is periodic)
- Details about how the tenant should pay the rent and how much rent is to be paid
- Details about what the tenant and the property manager/owner or provider can and cannot do, known as 'standard terms'
- Any special terms (these should be agreed in advance, e.g. that dogs are allowed but must be kept outside or carpet cleaning, no smoking etc)
- The period of tenancy agreement
- Fixed term agreement - where a tenant/resident agrees to rent a property for a fixed amount of time (for example, 6, 9 or 12 months)
- Periodic agreement - when a tenant/resident lives there for an indefinite period

Other points to consider

A written agreement must always be used when renting, even if the person renting is family or a friend.

The tenant should be given the agreement before paying any money or being committed to the tenancy and should read it and ask questions if they do not understand anything in it.

If a tenant does not have a written agreement they still have protection under the law.

After thoroughly inspecting the property if you identify any maintenance issues that need to be rectified, ensure they are added into the tenancy agreement with a time frame to be fixed

Responsibilities of the Landlord / Agent

The landlord /agent is responsible for:

- Meeting all the costs of preparing the tenancy agreement
- Ensuring the correct form is used and completed
- Providing a copy of the proposed agreement along with any relevant body corporate rules or bylaws to the tenant before they sign it. Once the tenant signs the agreement, they must

return it to the lessor/agent within five days. The lessor/agent then has 14 days to give a copy of the signed agreement to the tenant

- Ensuring that, when an agreement is signed, there are no legal problems that would prevent the tenant from living in the premises for the length of the tenancy
- Ensuring the premises are in a good state of repair and ready for the tenant to move into on the agreed date

Holding fee and tenancy agreement

A landlord/agent may ask you to pay a holding fee on approval of your application for a tenancy. The most they can ask for is one week's rent.

The landlord/agent can hold only one holding fee at any one time. Depending on what state or territory you are in, determines how long the agent is restricted on entering into an agreement with another prospective tenant. For instance in Queensland the agent can not take another holding deposit from another prospective tenant for 48 hours but in NSW it is 7 days. Make sure you discuss the time period with the agent as you may be able to negotiate longer.

Upon signing the tenancy agreement, the fee goes toward the rent from the first day of your tenancy.

The landlord/agent must refund the fee if:

- They decline to enter into the tenancy agreement, or
- You refuse to enter into the tenancy agreement because the landlord/agent made any false or misleading statement, or they failed to tell you any 'material facts'.

If you otherwise decide not to enter into the tenancy agreement, the landlord/agent can keep the fee.

Q: How is this different from a 'reservation fee'?

A: A holding fee can only be requested from a prospective tenant after their tenancy application has been approved.

Q: What does a holding fee do?

A: Acceptance of a holding fee means the agent or landlord must keep the premises for the prospective tenant for at least 7 days. The property must not be offered to anyone else during this time.

Q: What happens if the tenant changes their mind after paying a holding fee?

A: If the prospective tenant decides not to go ahead with the tenancy they will lose the full amount of the holding fee, not just a portion of it, as was the case under the old 'reservation fee' system.

Keep Good Records

A year can be a long time, and it's easy to lose documents or throw out old paperwork. Don't let this happen with your tenancy agreement. It's a vital document that you will need when the lease ends, and is effectively the rules you must live by in the house.

Keep this, any bond lodgement forms and copies of emails in a specific folder for safe keeping. Nine times out of 10 they won't be needed to resolve a dispute, but better safe than sorry! Taking photos of the residency before you move in is also an excellent idea, to prove the condition of the dwelling both before and after your tenancy.

Each state and territories rental regulations vary slightly, to find out about what is required for your area make sure you read our state and territory renting articles.