Workplace accommodation disputes: a reminder to employer and landlords

Providing accommodation to employees often means an employer assumes a dual role as both employer and landlord. Because accommodation is tied to the employment, this can create additional legal complexities

Service tenancies are governed by the Residential Tenancies Act 1986 (**RTA**). Below are recent examples highlighting common mistakes and legal considerations we're encountering.

Healthy homes standards apply (*Guinee v Cable Bay Wine Limited* [2024][1])

Ms Guinee was employed as the General Manager at Cable Bay Wines. She was also provided with accommodation at a reduced rent as part of her employment. Her employer was also her landlord. The Tenancy Tribunal (**Tribunal**) confirmed this arrangement was a service tenancy under the RTA.

The Tribunal accepted that the landlord did not provide an insurance, insulation or Healthy Homes statements to the tenant. These statements are legally required under the RTA. The Tribunal also accepted there were a number of other breaches including the failure to comply with the ventilation standard by not having an extraction fan in the kitchen, failing to maintain the heat pump, kitchen floor and bathroom vanity and issues with draught due to a large cat flap that could not close.

The landlord was ordered to pay the tenant $1,450.

Tenant liable for poor behaviour from guests *(Cookson v Guest* [2023][2])

Ms Guest was an employee at Mr Cookson's farm. She entered into a service tenancy for a tiny house situated on the farm.

The landlord applied to the Tribunal seeking unpaid rent from Ms Guest. Ms Guest experienced poor health in the latter stages of the tenancy due to complications with her pregnancy and she spent a period of time away from work and the property. The Tribunal stated a tenant's obligation to pay rent continues to the termination date of the tenancy, irrespective of whether the tenant is living in the property. Ms Guest was ordered to pay the outstanding rent arrears of $1,540.

In addition to the unpaid rent, there was extensive damage to the property. In any claim for damage, the landlord must establish that the damage occurred during the period of the tenancy and that the damage is beyond fair wear and tear. The tenant is legally liable for damage that is caused by themselves or by anyone who is at the premises with their consent.

The Tribunal accepted there had been intentional damage to the tiny home likely caused by the tenant's ex-partner. The damage included stab marks in the kitchen bench, damage to an electrical fitting, and the UV filter ripped off its bracket. There was also a missing fridge/freezer, fire extinguisher, registration plate and security lights.

In total, Ms Guest was required to pay $4,303.43 to the landlord/employer.

[1] *Cookson v Guest* [2024] NZTT 4726609
[2] Guest v Cookson [2023] NZTT 4666889

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(Continued)

14-days' notice to terminate *([Tenant] v Apex on Fenton* [2024][3])

The tenant was employed by Apex on Fenton, a motel. He was provided accommodation on-site as he was undertaking duties for the motel operation but was not required to pay rent. This was found to be a service tenancy, despite a written agreement referring to the arrangement as a "flat/house – sharing agreement".

It is not clear the specific details but the tenant's employment was summarily terminated. The employer wrote to the tenant setting out *"Your actions have significantly harmed the reputation of Apex Motel. Therefore, we have no choice but to terminate your contract with our company. We request you vacate the premises within one day from now…"*

The termination of the tenancy was deemed unlawful. The RTA sets out that a landlord may terminate a service tenancy by giving at least 14 days' notice. The Tribunal stated that there was no provision to justify an immediate eviction and awarded the tenant compensation of $500.

Even if the agreement contemplated a lesser notice and both parties signed it, the RTA is clear; any clause that is inconsistent with the RTA will have no effect.

When can the Employment Relations Authority and Employment Court get involved?

An employee, Mr Wilson, recently attempted to raise concerns about his accommodations in the Employment Relations Authority[4]. Mr Wilson had a service tenancy arrangement and he stated that his accommodation was not compliant with the healthy home standards. He claimed he was unjustifiably disadvantaged by being charged rent. The issues included a leaking roof, mould, holes in the garage wall and rotten window frames.

The Authority confirmed it does not have jurisdiction over these matters and that this fell within the Tenancy Tribunal's jurisdiction. It stated the relevant relationship was between landlord and tenant.

Where an employment dispute arises, if it involves a service tenancy, parties will need to keenly analyse the different elements and ensure they are raised in the correct jurisdiction. We envisage some elements might overlap and create complex scenarios, for example, a dispute over a deduction from the employee's pay that relates to the accommodation.

There are accommodation types where the RTA does not apply. In these circumstances, the employment jurisdiction would be the appropriate avenue to hear the full claim.

Want to know more?

Aside from service tenancies, there are other arrangements such as a service occupancy and licence to occupy, or a standard residential tenancy. We strongly recommend employers seek to understand what arrangement they are forming and ensure they are meeting their legal obligations.

If you have any questions about workplace accommodation, please contact our specialist Employment Team.

[3] [*Tenant] v Apex on Fenton* [2024] NZTT 4711789

4 *Wilson v Pic New Zealand Limited* [2024] NZERA 676