# Property Speaking

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**Welcome to the first issue of *Property Speaking* for 2025.**

We hope you enjoy reading this e-newsletter, and that you find the articles to be both interesting and useful.

To talk further about any of these articles, or indeed any property law matter, please don't hesitate to contact us – our details are on the top right of this page.

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## New deed of lease documentation

### Landlords and tenants should be up to date

In November 2024, The Law Association of New Zealand, formerly the ADLS, released an updated version of the standard form deed of lease, its 7th edition.

This new edition of the deed includes a number of new or varied provisions that TLANZ has included in response to the evolving commercial leasing landscape. In some cases, these provisions address pitfalls in earlier deeds of lease editions that sought to deal with situations that arose during Covid, as well as a number of other issues.

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## Issues affecting finance and settlement

### Insurance and natural hazards, and unconsented works

When you have lending secured by a mortgage on your home, it will be a condition of that lending that you have full replacement insurance for your house. This is a requirement for any new lending (and your lender won't allow you to draw down the loan without seeing evidence that this in place), and an ongoing requirement with existing lending.

Insurers are now commonly asking whether the local council has recorded that a property could be impacted by any natural hazards.

We also discuss the implications of unconsented works on a property.

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## Updates to the residential tenancies legislation

### Tenancy terminations and pets

The Residential Tenancies Amendment Act 2024 has significantly updated the Residential Tenancies Act 1986 and the laws governing the relationship between landlords and tenants.

Some of these updates took effect on 30 January and others are expected to roll out in the remainder of 2025.

These updates transform the rights and obligations of landlords and tenants - for better or for worse. We summarise the key updates.

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# New deed of lease documentation

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## Landlords and tenants should be up to date

In November 2024, The Law Association of New Zealand (TLANZ), formerly the Auckland District Law Society, released an updated version of the standard form deed of lease document, its 7th edition.

This new edition of the deed of lease (DoL) includes a number of new or varied provisions that TLANZ has included in response to the evolving commercial leasing landscape; in some cases these provisions address pitfalls in earlier DoL editions that sought to deal with issues that arose during Covid. The result is that there are a number of new default provisions for both landlords and tenants to consider when entering into a lease, and new procedures to be aware of that didn't form part of previous leases.

## Rent

Numerous provisions affecting rent, rent adjustment and rent abatement have been included in this new DoL. Where previous DoL editions referred only to CPI or market rent adjustments, the 7th edition includes an option in Schedule 1 to include a fixed rate adjustment for rent. That means that on the rent adjustment date recorded in your lease, the rent will be adjusted by a fixed percentage, rather than an adjustment being based on market rent or a CPI calculation.

There are benefits in this approach for both landlords and tenants. It provides a greater level of certainty for anticipating rent increases for tenants and income for landlords.

In addition to adding this option, the 7th edition has added to Schedule 1 an option to include upper and/or lower limits on rent adjustments. This sets out at the forefront of the DoL limits on any ratchet-type provisions which previously would have been buried in the standard/further terms of the lease.

Again, these provisions can give greater clarity to both parties around the extent of any rent adjustment, where the adjustment is not a fixed rate, and would advise tenants whether an adjustment could result in a lower rent payable (although it is rare that this would be the case).

## Outgoings

The outgoings are other expenses under the lease that the landlord passes on to their tenant. The 7th edition requires, as the default position, that the landlord provides an annual budget of outgoings to the tenant.[1]

This is a helpful inclusion for tenants as it provides certainty for budgeting and greater transparency around the costs additional to rent that the tenant must pay. This is invaluable information for anyone looking to enter into a lease and should be reviewed by any prospective tenant prior to entering into a new lease.

## Reinstatement

Reinstatement is not a new concept under the lease, although provisions have been added to better define the rights and obligations relating to signage, tenant's chattels, alterations and the premises overall.

An important aspect of this relates to the tenant's chattels; this is a new inclusion in Schedule 6. Items listed here will inform the obligations around the removal of tenants' chattels under the new reinstatement provisions.[2]

Knowing what tenants need to remove, put back and who bears the cost is crucial to understand before entering into a new lease, especially if you plan on modifying the premises in any way before or during the term. A tenant will always need the landlord's permission to make any changes or alterations, and it is best to get this in writing.

## Rent abatement

If at any time a tenant cannot access the premises (or part thereof), they should receive a discount on the rent at the rate that is set out in Schedule 1. This has been included to set a starting point for rent to be discounted during no access periods rather than tenants having to endure a long determination process to agree the discounted rate during the term of the lease.

The rate recorded in Schedule 1 can be reviewed under the terms of the lease and the process for this is clearly set out.[3]

These are just some of the changes that have been included in the Deed of Lease 7th edition. Whether you're a tenant entering into a new lease for your business or you're looking to get a lease prepared for a commercial property you own, talk with us so you understand and use these changes to ensure the terms are best suited for you. +

1 Clauses 3.7–3.10 in 7th edition.

2 Clauses 23.1–23.5.

3 Clauses 29.3-29.5.

# Issues affecting finance and settlement

## Insurance and natural hazards, and unconsented works

### Natural disaster risk and insurance

When you have lending secured by a mortgage on your home, it will be a condition of that lending that you have full replacement insurance for your house. This is a requirement for any new lending (and your lender won't allow you to draw down the loan without seeing evidence that this in place), and an ongoing requirement with existing lending.

Insurers are now commonly asking whether the local council has recorded that a property could be impacted by any natural hazards (for example, whether it is in a flood zone). If it is noted that the property is potentially impacted by a natural hazard, the insurer may have some follow up questions before deciding on whether it will offer insurance. It may ask whether the local council has completed any remedial work to address the hazard, or whether any specific work has been completed with the property to reduce the impact of the hazard, such as the property being built on piles to elevate it above the anticipated flooding level.

Insurers are also asking questions about whether the property has previously been affected by natural hazard events, such as flooding, earthquakes or landslides/slips. As above, if it has, an insurer is likely to have follow up questions regarding any remedial work that may have been completed.

Depending on the potential hazards, some insurers may be reluctant to offer insurance cover. If you are considering buying a property that could potentially be impacted by natural hazards, we recommend you confirm you can obtain full replacement insurance before submitting an offer or within the period of your finance condition.

### Unconsented works: what can go wrong when selling?

Completing work on your property without obtaining a building consent may seem like a good way to renovate your property without the time delays or cost of your local council involvement. It is, however, likely to lead to significant headaches during your ownership or when you sell your property.

Should you suffer a loss to your property that is caused by non-compliant work, such as installing a wet-area shower without a building consent and the shower room then floods and causes water damage to your property, you may find that your insurer declines your claim. Not only can this mean you will need to fund the cost of repairs yourself, but it can also have implications in obtaining other insurance policies in the future as you will need to disclose that you have previously had a claim denied.

When selling your property, you have an obligation to disclose to buyers any work you have completed but for which you have not obtained the required consent. Additionally, buyers will often review either a Land Information Memorandum or the Property File as part of their due diligence. If the buyer (or their lawyer) notices that there are renovations to the property which required a building consent and it was not obtained, the buyer may not be able to obtain insurance or finance.

Any unconsented works will need to be disclosed to both the insurer and the lender. Depending on the nature of the work (and the insurer), insurers may decline to cover the property with the unconsented work.

If the buyer can't obtain full replacement insurance, they will not be able to confirm satisfaction of a finance condition. Even if the buyer can obtain insurance, their lender may not accept the property as security; this means the buyer will be unable to confirm satisfaction of the finance condition.

We recommend you always obtain the required building consent before beginning any building work.

If you have already completed work without a building consent, talk to us about the best way to approach your local council to rectify the issue.

If you aren't sure whether your next project requires consent, Can I Build It is a good tool which can be used as a guideline; the website can be found **here**. +

# Updates to the residential tenancies legislation

## Tenancy terminations and pets

The Residential Tenancies Amendment Act 2024 has significantly updated the Residential Tenancies Act 1986 and the laws governing the relationship between landlords and tenants.

Some of these updates took effect on 30 January and others are expected to roll out in the remainder of 2025. These updates transform the rights and obligations of landlords and tenants – for better or for worse. We summarise the key updates below.

## Termination of tenancies

**No reason needed to terminate tenancy**: Since 30 January 2025, landlords are no longer required to provide a reason to their tenants for terminating a periodic tenancy; they simply have to state they are giving 90 days' notice of termination. For clarity, a 'periodic tenancy' is a standard tenancy with no end date, unlike a 'fixed term' tenancy which lasts for a set amount of time, say 12 months. Before 30 January 2025, landlords had to give grounds for terminating a tenancy, such as for demolition or extensive renovations.

**Terminating on 'special grounds'**: Landlords now only need to give 42 days' notice when they are terminating the tenancy on special grounds, including if a

family member needs to live in the property as their main residence, or the property has been sold and needs to be vacated for the new owners to take over. Until 30 January, landlords had to give 63 days' notice.

**More rights for tenants**: The legal rights and abilities of tenants have also increased. Tenants now have up to 12 months to apply to the Tenancy Tribunal for an order declaring a termination notice to be unlawful and that the landlord has retaliated against the tenant for enforcing their legal rights, or in response to legal actions taken against the landlord by another person or body. If a tenant applies within 28 days of receiving the termination notice, they can request that the notice be cancelled.

Before 30 January 2025, tenants only had 28 days to apply to the Tenancy Tribunal in respect of a notice in general.

Tenants also now only need to give 21 days' notice for ending a periodic tenancy. Previously, they had to give at least 28 days' notice.

The Amendment Act also confirms that tenants may leave their tenancy at shorter notice if they, or one of their dependents, are experiencing family violence.

It will be interesting to see how these amendments play out, especially when reviewing future decisions of the Tenancy Tribunal, including where tenants dispute termination notices. We touch upon other changes and updates to the powers of the Tenancy Tribunal below.

As an aside, the ways in which landlords and tenants can give notice to one another has changed. The Amendment Act confirms that landlords and tenants can give notices in more modern ways, such as over text or messenger, rather than a physical written notice.

## Pets

In the second half of 2025, we expect to see major law changes relating to pets kept in rental premises. Landlords will be able to require their tenant to pay a 'pet bond,' on top of their original bond, which can be an additional two weeks' rent on top of the original bond.

A tenant must obtain their landlord's written consent to keep a pet on the premises. A landlord may refuse the request only on reasonable grounds, including the premises not being suitable for the type of pet or vice versa. It could be that the breed of dog is too large, and/or the nature of the breed is considered destructive or aggressive and/or could be disruptive to neighbouring properties.

If a tenant's pet dies during the tenancy, the tenant is entitled to ask for the return of the pet bond from the landlord less any compensation for any damage, and reasonable wear and tear attributable to the pet.

We look forward to seeing how these new rules relating to pets play out.

## Tenancy Tribunal

Since 20 March 2025, the Tenancy Tribunal should become quicker and more efficient in its day-to-day operations. The Tribunal now has, for example, the ability to determine matters 'on the papers' (considering an application and response, then making a decision) without the need for a hearing.

In more complex and technical cases, and where there are major factual disputes, however, it is likely that the Tribunal will still require a proper hearing. +