



Laing+Simmons property investor news

Flood-prone landlords suffer with no tenants and no liveable property to rent

Natural disasters are becoming more prevalent around the world and this can be seen with the devastation caused by the Queensland floods. They are the worst floods that Queensland has seen in decades and many have lost their lives or are still missing, have damaged/destroyed homes, watched cars float away, lost their furniture and irreplaceable items that money can't replace and are living in areas where the infrastructure has been completely destroyed.

This type of disaster is non-discriminatory; it affects both landlord and tenant alike, leaving the landlord with no rentable property and the tenant with no home. Surprisingly, a tenancy agreement does not end just because of a natural disaster, even if the property has been totally destroyed. The tenant is still legally obliged to continue paying rent on the damaged property.

No tenant will wish to continue paying rent on a property that is either destroyed or uninhabitable and once they have signed a "notice of intention to leave" they can cease paying rent from the day the notice

is served. Notice must be given within one month of the disaster occurring.

This obviously leaves the landlord in a sticky situation with no rental income and in many cases a mortgage to continue paying. Landlord insurance will not cover you for this type of disruption.

"If you own rental property in one of the flood affected areas, the first thing you should do is make sure your tenants are safe and are following instructions from emergency services relating to their return to the property", said Terri Scheer Insurance General Manager, Carolyn Majda.

"Landlord insurance is designed primarily to cover landlords against actions by tenants rather than weather event.

"Events such as flood damage generally fall under building insurance... Landlords should check the product disclosure statements of their insurance policies and contact their insurer to confirm their level of coverage". Reading the fine print will help you understand what the insurer



defines as a flood as there are various definitions around. The Australian Securities and Investments Commission defines a flood as:

In general terms, the inundation of a property by water which overflows from a natural watercourse, while storm and tempest damage refers to the inundation of a property by water as the result of a storm.

Therefore, not all risks are covered by the term "flood". If you are unsure contact your insurance company for clarification.



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When tenants get creative...

It is not always easy picking the right tenant but it is worth the extra work involved in getting all the necessary checks and references in place before you allow someone to move into your home.

This case illustrates the damage that can be done by tenants and also highlights the need for an ingoing and outgoing property inspection report. The tribunal in this instance relied heavily on the evidence supplied by the report and thus the landlord was able to successfully claim \$5,736 for the following:

- The landlords requested that the kitchen bench top be replaced and initially claimed a sum of \$1,300 as there were cut and burn marks on it. The ingoing report showed no damage to the bench top.
- The tenants had apparently installed five extra lights in one of the upstairs bathrooms and so the landlord claimed the cost of repairing, gyprocking and repainting the ceiling at a cost of \$2,000. This was evidenced by comparing the ingoing report with photos provided at the end of the tenancy.
- The timber floors had also been damaged with scratches and marks which did not show up in the ingoing report and the landlord claimed a sum of \$1,584 to re-sand them. The tribunal was satisfied that these scratches were considerably more than fair wear and tear and they allowed for 70% of the landlords original claim thus entitling him to \$1,108.
- The tenant had installed a new wall in the garage creating an additional living space and according to the landlord it was without his consent. The landlord further argued that he wished to restore the garage to its original condition at a cost of \$2,100 plus rubbish removal. The tenant, however, argued that the landlord knew about this and although there was no written agreement the installation would be of benefit to the premises. Tenants are not entitled to make additions to property that does not belong to them regardless of whether or not it improves the property and thus the tribunal awarded the landlord the full sum plus \$148 in tip fees.
- A further claim for rekeying and garden restoration was claimed.

So the tribunal ordered the tenant to pay the following sums:

- Bench top \$ 230.00
- Removal of ceiling lights and rectification of ceiling \$2,000.00
- Resanding floors \$1,108.00
- Garage rectification \$2,100.00
- Tip fees \$ 148.00
- Key cutting \$ 50.00
- Gardening \$ 100.00



Tree disputes – who is responsible for what?

Neighbourhood disputes are hard enough to deal with at the best of times but when your property is tenanted it makes it a little more difficult as the information is often second or third hand.

Tree disputes can vary from minor issues such as a tree/branch overhanging your garden and needing pruning to large branches falling on your property and causing major damage.

Generally speaking, you are entitled to cut/prune/remove any branches that are growing over your property but remember that you then have to clean up the ensuing mess. Addressing the issue with your neighbours first is advisable as they may have no idea that the tree/branch is causing so much concern or damage to your property and are often happy to deal with the matter themselves.

However, if a tree branch falls from the neighbouring property into your garden and damages your fence and your garden, then unfortunately most insurance companies view this as accidental and you will be financially responsible for the damage to your garden and the cost of the removal of the tree/branch.

You need to be aware of this when your property is tenanted as swift action will be needed to ensure the safety of your tenant.

From the desk of
Melanie van Bentum

CHANGES TO THE RESIDENTIAL TENANCY ACT ARE HERE!!

From 31st January 2011 the changes to the Residential Tenancy Act will commence. We have previously sent out notification of these changes. If you have not received this or you require further clarification please contact us immediately on 96884000. Alternately feel free to access the below link for more information. There are some big changes and we suggest all investors are aware of the changes that are in place.

http://www.fairtrading.nsw.gov.au/About_us/News_and_events/Media_releases/20101221_new_tenancy_laws_to_commence_early_next_year.html

Kindest regards,

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