



The Tribunal Edition

The Tribunal is an unknown entity to many investment property owners, so we have dedicated our first eBulletin of 2012 to explaining and unveiling the mystery of the Tribunal.

For most owners the 'Tribunal' is something they may only hear about in passing. Lucky them. In reality if you own an investment property long enough or build enough properties into your portfolio, you are likely to encounter, if only indirectly, the Tribunal. Some Property Managers have an intense dislike of it, while others see it as one of the challenging elements of the job. The truth is, it is neither a place to be avoided at all costs nor should it be a place of first option.

Over the years we have told you of particular cases and outcomes at Tribunal and the feedback from owners has often been, "how did they arrive at that?" or "why did you have to go through that?". We thought that we might provide a little insight into what is an important body for all of us. It has to be said that the laws and regulations it oversees are rather complex (and we're only talking tenancy laws here) so it should be expected that simple outcomes are not always possible. Like most areas of law, the Tribunal is a specialised field and it is true that many have come badly undone there, perhaps because they were complacent or they didn't have a grasp of the processes and requirements.

The underlying aim of the Consumer Trader and Tenancy Tribunal is to provide a more accessible process for people to seek resolution to matters and while its proceedings are more informal and expeditious, it has a legal obligation to provide procedural fairness in conducting its proceedings. That said we don't think it is unfair to say that the expectations on us is somewhat greater than it is on tenants and they will generally err on the side of the tenant.

So what can we/you use Tribunal for?

- To seek a specific performance order against a tenant, for example where they may have fallen behind in rent, a payment plan can be enforced. It can also be used to ensure lawns are maintained or address noise complaints at the property... it is a step that can help if it comes to terminating the tenancy
- To seek vacant possession...whether because of a serious breach, or you want to sell or renovate the property
- To resolve issues after a tenancy such as cleaning, damages, unpaid rent rubbish removal etc
- **Important note...** Seeking these orders from the Tribunal can at times be a lengthy process (we have seen cases that have taken up to 3 months before an order has been made). As a result we only pursue this avenue when absolutely necessary.

The Facts

- Tribunal generally does not work on precedent - they base individual cases on their own merits usually because of the variables. However, their decision is guided by the principles set out in the Residential Tenancies act.
- When evaluating damages or repairs required to a property the tribunal will depreciate everything. It's important to have an understanding of the life span for items such as paint and carpet etc.
- We cannot estimate the time a tribunal hearing will take, due to the variables such as other cases, whether both parties attend the hearing and the terms agreed upon.
- Cases will not always go before a formal hearing. The Tribunal requires conciliation between both parties before the matter can be formally heard. If an agreement is made at the time of conciliation the Tribunal will make orders reflecting the agreement.
- Often the outcome is a compromise for both parties and you may not always be fully reimbursed. Other than cases of unequivocal unpaid rent it is realistic to expect a lesser amount be awarded by the Tribunal. When seeking any reimbursement written evidence must be provided to support the claim, such as tenancy ledgers, photos, quotes, invoices and any correspondence with the tenant.

Real tales from the Tribunal

Property Manager Sue from our Warners Bay office, recently had a case go to the Tribunal as the owners of the property claimed the carpets needed to be professionally cleaned upon the tenants vacating, as it was stated on the ingoing condition report that they were done on commencement of the tenancy. The tenants maintained that they had looked after the carpet and it was not required on their leaving and as such no agreement was reached between the two parties. After hearing the case the Tribunal member ruled in favour of the tenant as it was not possible to sufficiently prove that the carpets were in need of professional cleaning and the owner was required to pay the carpet cleaning invoice.



In a more complex case, East Maitland Property Manager Renee, required the assistance of the Tribunal when tenants approved for a property withdrew their application and requested their holding deposit be returned. The property had been held for more than the 7 days required under the Residential Tenancies Act, which then allows the owner to keep the holding deposit as compensation for the time the property was off the market. However these tenants were claiming misrepresentation of the location of the property to the train line, which would have caused them health issues.

The Tribunal member ruled in our favour determining that it was clearly displayed on our website the proximity to the train line (not to mention that it can be seen from the property) and that the tenant's health concerns were specific to them and it was not possible to disclose this information to them prior. The holding deposit was credited to the owner and a new tenant for the property was found.

Future Tribunal cases and rulings will be featured in coming eBulletins, however if you would like more information about the Tribunal please contact your Property Manager.

Please note: As at 23/01/2012, this eBulletin is intended as general news and not as advice, as each individual's situation will vary depending on specific circumstances relating to that individual. You should seek professional advice as it relates to your own circumstances.