

Unlawful Dwellings

Quick Guide for Landlords

It's crucial for landlords to know if a property they're trying to rent is classified as a lawful dwelling in respect of The Residential Tenancies Act 1986. As soon as a residential tenancy agreement is completed your lawful dwelling requirements come into effect, and this can occur even without a written agreement where an 'implied tenancy' may be in place.

There can be risks for both landlords and tenants involved with renting or living in an unlawful dwelling, so clarity on this issue for everyone is important. This quick guide is intended to provide a brief framework to help prevent these risks, however, if more detailed information is required, we recommend you contact your local Ray White property manager.

How can I tell if a property is classed as a lawful dwelling and can therefore be attached to a residential tenancy agreement?

- **Does the dwelling have a Building Consent/Permit?**
Most dwellings built after 1945 required a building consent/permit as the authority for the owner at the time to construct it. You can easily obtain evidence of this from your local Council to ensure compliance is in place.
- **Does the dwelling have a Certificate of Acceptance for any additional work done at the property?**
COAs are issued by some councils, often after the construction of the initial dwelling for any work done without a building consent. Some councils issue COAs in place of a building consent providing they can be satisfied the bulk of the work undertaken meets all council requirements.
- **Have alterations been made to the original structure, or has the intended use of the dwelling changed from when it was first built?**
A property may change in layout from its original construction, perhaps a wall removed, or bedroom created from areas once used for another purpose, e.g. a sleepout that is converted to become a self-contained dwelling. In any scenario where the original intended use of a space has changed, consent and approval for this change is required to become a legal dwelling and residential tenancy.
- **Is there more than one dwelling on the same piece of land?**
If there are two or more *separate* dwellings on a piece of land then there must be local Council consent to have two dwellings on this title, and this should be in writing. There must also be evidence to show that the Council have approved each dwelling to be rented/inhabited independently from each other.

Where can I go to find more information about a dwelling?

There are a number of sources to learn about a property and remove the risk of potentially renting a dwelling that may be classed as unlawful. Sometimes this can be as easy as a quick online search to see if available records match the current state of the property. Consider things like zoning records, the number of bedrooms and property age, and how this compares to what you see at the dwelling today.

- Local Council files
- Local rates database
- QV property search - qv.co.nz
- Google search
- CoreLogic/Property Guru

At first glance, how can I easily tell if a dwelling might be classed as unlawful?

There are some simple steps you can take that may alert you to the need for further investigation before a residential tenancy agreement is signed:

- Is there more than one stand-alone dwelling on a single section?
- Does the dwelling have its own legal address, letterbox and rubbish bin, etc?
- Has the space being rented always been used for this purpose?
- Are there any obvious signs of alterations or different building styles / eras within the main dwelling structure?

What are the risks associated with renting an unlawful dwelling?

The risks of renting out an unlawful dwelling will ultimately depend on the extent of the unlawfulness, and in some cases the individual adjudicator at any Tenancy Tribunal hearing. In essence, the Tribunal will consider two key points in making their decision:

- Was it an unlawful *and* unsafe dwelling - *intentional & reckless*
- Was it a safe dwelling that's unlawful as it fails to tick all the correct boxes - *careless*

The consequences for landlords can vary, however, they are significant - up to \$5,000 in damages, payable to the tenant, and in some situations an order enforcing the landlord to repay all rent back to the tenant for the entire duration of the tenancy.

The Residential Tenancies Amendment Act 2019

This legislation updated the rules around unlawful dwellings for both landlords and tenants, providing a greater ability of enforcement by the Tenancy Tribunal. Some key outcomes implemented by this Act are:

- Tenants in unlawful premises may terminate their tenancy with two days' notice
- If a tenant in an unlawful premises falls into arrears the Tenancy Tribunal will not order this to be paid back by the tenant, and the Tribunal may also order the landlord to:
 - Reimburse the tenant for some of the rent
 - Reimburse the tenant for all the rent that has ever been paid
 - Complete work at the property requiring it to be made lawful
 - Terminate the tenancy without consequence to tenant

What shall I do next if I have concerns my dwelling may be unlawful?

If you have followed the steps outlined in this quick guide and have remaining concerns, we recommend you speak with your local Ray White property manager. We can advise you on your next steps or the best plan of action to help resolve these concerns. Alternatively, you can contact Tenancy Services on 0800 TENANCY as another avenue for free and impartial advice.