

Protect your investment with a proper lease

If you're the owner of any kind of residential property that is being rented out to someone else, you need a proper written lease to protect your interests as well as those of your tenant.

"Whether you have a garden cottage to let, a house at the coast or a high-end, fully-furnished apartment, a clear and detailed lease agreement is your best defence against misunderstandings and disputes with unreliable tenants that could result in you losing your investment," says Andrew Schaefer, MD of leading national property management company Trafalgar.

"And in terms of the pending amendments to the Rental Housing Act, every lease agreement will soon have to be in writing in any case. Verbal agreements or 'handshake arrangements' will no longer be valid in any respect."

The best leases, he notes, are of course those which leave the least room for doubt on any aspect of the agreement between landlord and tenant, but at the very least landlords should make sure that their lease documents contain the following information:

- The names and ID numbers of both landlord and tenant and the street address of the property;
- A clause describing the property and stating how many people may live there;
- A clause stating the period of the lease and what penalties may apply if the tenant terminates the lease prior to the agreed expiry date;
- A clause stating the amount of rent payable and how and when it should be paid, for example, into a certain bank account on the first of every month;
- A clause detailing any other charges payable, such as municipal charges for water and electricity consumption, or the costs of a security or garden service;
- A clause outlining the responsibilities of the landlord with regard to the maintenance of the property and essential repairs;
- A clause detailing the responsibilities of the tenant with regard to looking after the property and using it only for its "proper purpose", for example, not running a business from a residential property;
- A clause stating how the lease can be renewed and by how much the rent will go up if it is;
- A clause or two stating what the process and consequences will be if either party breaches the agreement, for example what will happen if the tenant does not pay the rent on time or what the tenant can do if the landlord fails to maintain the property.

"And finally, it is most important that the lease agreement contain a clause that clearly states what deposit is payable by the tenant, what it is for, where it will be kept and in what circumstances it will be or won't be returned."

Both the landlord and tenant must make sure they keep a copy of the signed lease agreement, Schaefer says, as well as a copy of the ongoing inspection report. "And if the rental property is in a sectional title complex, the landlord or managing agent must also ensure that a copy of the Conduct Rules for that complex is attached to the tenant's copy of the lease."

Given the increasing complexity of the legislation relating to property rentals, he says, landlords should avoid drawing up their own lease documents and instead seek expert help from a reputable managing agent like Trafalgar.

"In addition, no-one should ever sign a lease unless they fully understand the contents and implications, and should get proper legal advice if they are in any doubt."

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