

Creating Exceptional Outcomes

The impact of flooding on tenancy arrangements – hints and tips for helping tenants navigate the aftermath

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Agenda

- **Individuals renting houses, apartments, moveable dwellings/caravan park sites where the home or site is no longer habitable or damage has occurred**
- **The tenant is still residing in the property following flood events**
- **Rental housing stock shortage – what happens if the tenant has to move?**
- **Body corporate / community living considerations**
- **Tenants in community title buildings not being notified by building managers / body corporates flooding issues may arise**
- **Leases issues for small businesses / sole traders**

Individuals renting houses, apartments,
moveable dwellings/caravan park sites
where the home or site is no longer
habitable or damage has occurred

Terminating Tenancy Agreements Due to Flood Damage

- **Applicable legislation**

- *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (**RTRA Act**)

- **The starting point**

- A tenancy agreement does not automatically come to an end when the property is rendered non-liveable.
- A tenancy agreement will only end if one of the following happens:
 1. Property manager / owner and tenant agree in writing:
 2. Tenant gives the property manager / owner a *Notice of Intention to Leave* (Form 13), or Resident Leaving Form (Form R13) for rooming accommodation, on the grounds of non-liveability:
 3. The property manager / owner gives the tenant a *Notice to Leave* (Form 12) or Notice to Leave (Form R12) for rooming accommodation on the grounds of non-liveability; or
 4. QCAT makes a termination order.

Notice to Leave / Notice of Intention to Leave on Grounds of Non-Liveability

- **Notice Requirements – s 305(1) RTRA Act**

- Notice must be given within **one month** of the event causing non-liveability. Either party to a tenancy agreement may give notice to end the tenancy because the premises:

- a) Has been destroyed, or made completely or partially unfit to live in; or

- b) No longer may be used lawfully as a residence. If a tenant is aware of damage to a property, the tenant must give notice as soon as practicable.

- **Non-liveability**

- “event causing non-liveability” should be considered on a case-by-case basis

- **Tenancy Agreement End Date**

- When a notice is issued on the grounds of non-liveability, the relevant tenancy agreement ends on the date the notice is given unless otherwise noted.

Access to the Property Post Flood Event

- **s 192 RTRA Act**

- If an agent is not contacted by a tenant after a major flood event, but the agent is aware that the property is located in a damaged affected area, they should endeavour to make contact with the tenant to determine if damage has occurred.
- If an agent is unable to contact the tenant, the agent should attempt to conduct an inspection of the property as soon as practicable.
- If access is available to the property, no notice is required by a property manager / owner who may enter in an emergency or for reasonable grounds to protect the premises.

The tenant is still residing in the property
following flood events

Rent Reduction

- **Obligation to pay**
 - Until a notice is given to end a tenancy, the tenant is obliged to continue paying rent – even if the tenant has been evacuated from the property.
- **Bond**
 - There is no provision for emergency release of bonds to those tenants adversely affected by a natural disaster.
- **s 94 RTRA Act**
 - Where the property is damaged not through the fault of either party, the parties may come to an agreement to reduce the rent during an evacuation time, or for the period the property is damaged. Any such agreement should be made in writing.
 - A tenant may be able to negotiate a rent reduction with the property manager / owner while the property is being repaired. Rent reductions may occur if:
 - The property is significantly damaged, to the extent where its standard or amenity has decreased substantially; and/or
 - Services or facilities provided under the tenancy agreement, such as car parks, pools or a laundry, are not available.

Scenarios Where a Rent Reduction Would Likely be Appropriate

- **Examples:**

- The property is without power or water.
- The property does not have a functioning, or a reduced functioning sewerage system or other plumbing system.
- The downstairs of a 2 level property (e.g. a Queenslander) is unable to be used for its intended purpose such as for car parking, laundry or storage or bedrooms or other rooms on the downstairs level are unable to be used for their intended purpose.
- In a community living situation, some parts of the complex are still inaccessible or unusable. For example, common property amenities – gym, pool, etc.
- In a community living situation, the basement car parking remains unusable due to flood damage, or the lifts are still not operating due to flood damage, or operating in a reduced capacity.

Property Repairs

- **Who's responsible?**

- A landlord must repair a property if it is damaged as a landlord is obliged to ensure that the property is fit to live in, in good repair and complies with any law regarding health and safety – s 185(3) RTRA Act .
- A tenant is responsible for removing or cleaning their own possessions within the property.
- Where a tenant's own possessions have been damaged or destroyed as a result of flooding, then the tenant's first point of call should be to the tenant's contents insurer.

Emergency Repairs

- **s 214 RTRA Act defines emergency repairs as the following:**
 - (a) A burst water service or a serious water service leak;
 - (b) A blocked or broken lavatory system;
 - (c) A serious roof leak;
 - (d) A gas leak;
 - (e) A dangerous electrical fault;
 - (f) Flooding or serious flood damage;
 - (g) Serious storm, fire or impact damage;
 - (h) A failure or breakdown of the gas, electricity or water supply to premises;
 - (i) A failure or breakdown of an essential service or appliance on the premises for hot water, cooking or heating;
 - (j) A fault or damage that makes premises unsafe or insecure;
 - (k) A fault or damage likely to injure a person, damage property or unduly inconvenience a tenant of the premises;
 - (l) A serious fault in a staircase, lift or other common area of premises that unduly inconveniences a tenant in gaining access to, or using, the premises.

Emergency Repairs

- **s 216(1) RTRA Act**
 - Landlord can nominate a person to act on their behalf in arranging emergency repairs or can nominate a person to conduct the emergency repairs or can nominate a person to conduct the emergency repairs.
- **s 216(2) RTRA Act**
 - The nominated repairer can be stated in the tenancy agreement or in a separate written notice given to the tenant. The agreement or notice must state whether the nominated repairer is the tenant's first point of contact for notifying emergency repairs. Any change in a nominated repairer must be advised to the tenant in writing.
- **s 217 RTRA Act**
 - The tenant may notify the nominated repairer of the need for emergency repairs if they are the tenant's first point of contact (as stated in the tenancy agreement) or the tenant has been unable to contact the property manager / owner after making reasonable efforts to do so.

Emergency Repairs

- **s 218 RTRA Act**

- If the tenant has been unable to notify the property manager / owner or nominated repairer of the need for emergency repairs or the repairs are not conducted within a reasonable timeframe, the tenant may at their own initiative arrange for a suitably qualified person to attend to the repairs

- **s 219(1) RTRA Act**

- A tenant cannot incur emergency repair costs in excess of two weeks' rent under the agreement. A tenant can either seek reimbursement from the landlord for any repair costs properly incurred or require the landlord to pay the repairer directly.
- The tenant must provide the landlord with documentary evidence to support the demand for reimbursement or payment to the repairer.
- If the landlord does not reimburse the tenant within seven days of receiving notice to reimburse the tenant or pay the repairer, the tenant may apply to QCAT for an order seeking payment of the sum incurred.

- **s 221 RTRA Act**

- The tenant can apply to QCAT for orders in relation to the repairs.

Vermin & Mould

- **Vermin**

- If issues with vermin in the premises have arisen as a result of flooding, it is likely that the landlord will be responsible for treating the issue.

- **Mould**

- Responsibility for mould will depend on how it originally appeared. If it has appeared in the premises as a result of the flooding, it is likely that the landlord will be responsible for removing it.

Insurance

- **Landlord Insurance**

- Generally, the landlord insurance will not cover the tenant for damage to the tenant's possessions, or the cost of replacing food, resulting from flood. These matters are the responsibility of the tenant and may be covered by their own contents insurance.

- **Home Offices – compensation for office damage or loss of income**

- A tenant may be entitled to make a claim with their insurer – subject to the tenant's coverage and entitlements.

Disputes

- Where an agreement cannot be reached, either party may lodge a Form 16 – *Dispute Resolution Request* with the Queensland residential Tenancies Authority and enliven the dispute resolution process under the Act. This will enliven the QCAT jurisdiction.
- Rent under an existing tenancy agreement cannot be increased outside the normal rules for rent increases.

Rental housing stock shortage – what happens if the tenant has to move?

Alternative Accommodation

- It is the responsibility of a tenant to find alternative accommodation.
- Generally, compensation is not payable to a tenant by a landlord if the tenant is required to seek accommodation in emergency housing as a result of a flood.
- Tenants experiencing hardship should check if they qualify for any of the following government assistance or grants.

Government Assistance or Grants

- **Australian Government Disaster Recovery Payment**
 - Eligible tenants may claim up to \$1,000 per adult and \$400 per child through the Services Australia website or call the Australian Government Information Hotline.
 - The payment provides one-off financial assistance to eligible people affected by the floods in Queensland.
- **Australian Government Disaster Recovery Allowance**
 - A short-term payment that offers support to people where their income has been affected by the floods.
 - Available for a maximum of 13 weeks and is a taxable payment.
 - Services Australia website or call the Australian Government Information Hotline.

Government Assistance or Grants

- **Joint Queensland/Commonwealth essential household contents grant**
 - Tenants may be eligible for financial assistance to provide a contribution towards replacing or repairing essential household contents, such as beds, linen and white goods, that have been lost or damaged in the floods. Eligible tenants may receive up to \$1,765 for single adults and up to \$5,300 for couples/families. For more information, call the Community Recovery Hotline.
- **Joint Queensland/Commonwealth emergency hardship assistance grants**
 - Personal hardship and distress assistance
 - The emergency hardship assistance grants help cover the costs of essential items, such as temporary accommodation, food, medication and clothing. If deemed eligible, tenants can claim up to \$180 per person and \$900 for a family of five or more. Details of such assistance can be accessed from the Department of Communities or the Community Recovery Hotline.
 - This grant is not income or asset tested

Body corporate / community living considerations

Is flood Damage Covered by Insurance?

- **Body Corporate Insurance**

- In most cases the body corporate must have building insurance and public risk insurance for the common property and assets. Different insurers and policies can contain different levels of cover. A tenant's first steps might include:
 - locating a copy of the relevant policy for the scheme — the tenant may wish to contact the body corporate, on-site manager or body corporate manager (as applicable)
 - checking the policy for the extent of its coverage
 - contacting the tenant's insurer or broker to discuss any damage and the process for lodging a claim in the context of the body corporate insurance

- **Who will pay when insurance does not cover the flood damage?**

- Bodies corporate and their members will need to cover the costs of restoring the scheme to a good and structurally sound condition if the damage is not covered by insurance.
- In general, lot owners will each need to cover the costs of fixing their own lot.

How Long Can a Body Corporate or Lot Owner Take to Repair Flood Damage?

- **Timing of Repairs**

- The body corporate must act reasonably and perform certain maintenance duties under the applicable legislation (*Body Corporate and Community Management Act 1997* (Qld)).
- The body corporate may fail to meet its obligations if it does not repair damage or rectify maintenance problems within a reasonable time of becoming aware of the problems (for example, reinstating a basement for car parking, reinstating common property facilities for use or having a lift repaired).
- Lot owners have a responsibility to repair their lots as soon as practicable.
- These obligations do not impact upon a tenant's ability to seek a rent reduction under the RTRA Act while the relevant repair work is to be carried out.

Tenants in community title buildings not
being notified by building managers / body
corporates flooding issues may arise

Tenants/Owner Occupiers in Community Title Buildings Having Lifts Turned off Without Notification to Residents

- Ultimately, a tenant living in a community title building does so at their own risk.
- First point of call should be for an affected tenant/owner occupier to put the on-site manager / body corporate on notice that the tenant / owner occupier is unable to leave their property.
- If possible, a line of communication should be opened with the on-site manager / body corporate to discuss the impact on the tenant / owner occupier and whether any alternative arrangement can be reached.

Tenants in community title buildings not being told by building managers/body corporates that basement car parks may flood

- In circumstances of basement car park flooding which has lead to property damage for a tenant – e.g. damage to vehicle – the tenant’s first point of call should be to the tenant’s insurer or insurance broker.
- Generally, body corporate insurance only covers the common property and body corporate assets.
- Where a building manager / body corporate has made any representations or statements regarding a building or basement car park **not** flooding, and it has then flooded, in those circumstances the building manager / body corporate may have breached some statutory obligations. However, it could be a costly exercise and of no direct benefit for a tenant to pursue this, particularly where the tenant can make a claim on the tenant’s insurance.

Leases issues for small businesses / sole traders

Compensation for Office Damage / Loss of Income?

- **Commercial Leases**

- Review lease to determine who is responsible for repairs / insurances claims.

Thank you



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