

CORE TERMS TO WATCH IN A TENANCY AGREEMENT

by Neil Molyneux

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Tenancy agreements (also known as leases) can be in writing or if for less than three years can also be agreed orally. Oral agreements can be unwise, as there is no written record of terms and conditions.

Oral agreements for less than three years have certain implied terms such as monthly rent in advance, tenant responsibility for utility payments and for running repairs to the interior – and with a landlord right of entry on 24 hours' notice. Landlord responsibilities include repairs to the exterior, main structure and tanks. A landlord should also keep services in working order.

Tenancy agreements are legal contracts to be read and considered carefully prior to signing. Reading a tenancy agreement is less daunting if you know core terms to look out for.

Usual tenancy agreement core terms are:

- security deposit, when it's paid and possible deductions;
- rent and when it's paid;
- rental period, also known as the term;
- furnished, part furnished, or unfurnished; and

- if the property is to be tenant repainted.

There are also many other terms and conditions in a tenancy agreement, many of which are typical while some are unique to the property, or to the parties.

Traditionally a tenancy agreement is prepared by a landlord's side and so likely favours the landlord.

All terms are negotiable, but if a property is under rent control, there is a maximum permitted rent and the security deposit should not exceed two weeks' rent. Whether the landlord or tenant has the upper hand in negotiations depends on the state of the market and how flexible each party is to reach a deal.

The security deposit is usually paid before the rental period starts. A wise landlord will prefer not to provide a key to a tenant until after receipt of the security deposit and the first month's rent.

Typically tenancy agreements permit deposit deductions for non-payment of rent, righting tenant wrongs, eviction and legal costs. If a deposit is insufficient, a well drafted tenancy agreement requires a tenant to make good any shortfall.

The lower a deposit, the higher the risk of not covering tenant damage in full. The higher the deposit, the more is at risk of unfair deductions. Unfortunately it is rarely cost effective to litigate over a few thousand dollars.

Rent must be paid monthly in advance under the Landlord and Tenant Act 1974, unless the tenancy agreement says otherwise.

Tenants do not typically pay any outgoings such as land tax or for grounds maintenance. Landlords should capture such outgoings when calculating and negotiating an acceptable rent.

Tenants typically pay for utilities, as utility charges vary with tenant consumption. Sometimes as a sweetener, a landlord might include one or more utilities with the rent, to secure a tenant in a difficult market.

If a tenant is in Bermuda under a work permit, it is usual to include a termination or break clause, to allow a tenancy to end on permit revocation or non-renewal.

The rental period is important because a landlord and a tenant are contractually bound to each other for that time. Only in very limited circumstances (if any), can a party terminate early. Unlawfully attempting to end a rental period early can be expensive.

If there is no written agreement, or an expired agreement, and rent is paid monthly, the law implies a month-to-month tenancy. A month-to-month tenancy continues until either the landlord or tenant gives at least one clear month's written notice to the other. Notice should expire on the day the rent was otherwise due.

Most properties come with major appliances such as fridge/freezer, oven, washer and dryer, with a tenant typically responsible for maintenance and repairs. A wise tenant prefers that fair wear and tear of major appliances and any other furnishings is a landlord's expense.

If there are furnishings, an inventory is typically stapled to the tenancy agreement. A wise tenant makes sure pre-existing defects are noted on the inventory. Photographs can help and are easily captured on a smartphone.

Repainting at the end of a tenancy is going to be an expense and inconvenience for either a tenant (if a tenant responsibility), or for a landlord. An unpainted property is less marketable to a new tenant.

At the end of a tenancy, a tenant must typically return the property to a landlord in good condition, if not repainted. Therefore a tenant should agree condition with a landlord, before any tenancy agreement is signed. The condition should ideally be

recited in the tenancy agreement. Photographs can help and, again, are easily captured on a smartphone.

As with all contracts ideally consult with an attorney, as in addition to core terms mentioned in this column, a tenancy agreement often has many other technical terms, with potentially unexpected and expensive consequences.

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