



Tenancy

This section discusses the requirements of offering accommodation to farm employees.

- The 1986 Residential Tenancy Act
- Giving notice
- Payment of accommodation and bonds
- The Health and Safety in Employment Act of 1995
- Useful links for more information

[Note: for comprehensive legal advice regarding tenancy matters, please ensure to contact an appropriately recognized legal professional]

1.4 Accommodation

Why this is important

When you provide accommodation to staff you are bound by the same laws as anyone who owns a house and rents it. You need to make sure you are aware of these laws and abide by them.

Employer's responsibilities

There are two main Acts associated with providing accommodation to farm employees:

1. The Residential Tenancy Act 1986
2. The Health and Safety in Employment Act 1995

The Residential Tenancy Act 1986

This Act applies if you are providing staff with a house on your farm – this includes if they are sharing the house with other employees.

The Act requires all tenancy agreements to be in writing and sets out the minimum information that should be included in the agreement. The agreement must include the following minimum information:

- The full names and contact addresses of the landlord and tenant
- The date of the tenancy agreement and the date the tenancy starts (if that is different from the date of the tenancy agreement)
- The addresses for service of the landlord and tenant (that is, the addresses where they can be served with formal documents such as notice to terminate the tenancy or applications to the Tenancy Tribunal)
- Whether the tenant is under 18 years of age
- The amount of any bond
- The rent and the frequency of payments, and the place or bank account where it is to be paid
- Any lawyer's or real estate agent fees payable by the tenant
- Any metered water charges to be paid by the tenant
- A list of any chattels (such as furniture) provided by the landlord
- If the tenancy is for a fixed term, the date on which it ends.

Other things may be included that are specific to the particular tenancy, for example:

- How many people are allowed to live in the house or flat
- Whether the tenants may sublet or assign (transfer) the tenancy to anyone else (but this does not prohibit the tenant from having flatmates or boarders)
- Where cars may be parked.

The agreement can provide for other matters, but any term of the agreement that contravenes the Act will be invalid.

Before a tenant moves in, the landlord and tenant need to complete a tenancy agreement, which sets out the key things the landlord and tenant agree to do. The landlord must give the tenant a copy before the tenancy begins.

Giving notice

Providing accommodation to staff is called service tenancy and it has the same rules as renting the house out to people you do not employ with one exception – there is a shorter notice period for vacation of the property if the accommodation is linked to employment. The notice on the service tenancy when employment has been terminated is 14 days, compared to 90 days for a standard residential tenancy. If the accommodation is needed for another employee and no other suitable alternative is available, then this notice can be shortened. It can also be shortened if there is threat to damage of the accommodation.

The employee can only be removed from the accommodation during their employment with the standard 90 days' notice, or 42 days if the accommodation is required for a member of the employer's family, in some situations where another employee needs it or if the house has been sold.

Employers must give written notice for the vacation of accommodation, as well as notice for termination of employment. Make sure that the employee's termination letter or letter acknowledging their resignation, notes when notice was given and when the property is to be vacated.

If an employee will not vacate the accommodation, and has been given adequate notice under the Act, then the employer should apply to the Tenancy Tribunal for a possession order.

Apart from the notice period, the nature of the relationship is essentially the same as a 'standard tenancy' - for instance the employer must give 48 hours' notice before conducting an inspection and the employee is expected to keep the premises reasonably clean and tidy.

Payment for accommodation

The IRD requires that a fair market rental is charged for accommodation provided to staff – staff must be charged something for the accommodation you provide. This is often worked into the Total Package Value (TPV) you offer for the role.

To fulfil IRD requirements you can either:

- a) Take the rent out of the person's wages after tax has been paid. Note the provision of accommodation is a taxable benefit so it is liable for PAYE
- b) Pay an accommodation allowance which covers the value of the accommodation, within their wages and then deduct the rent back once tax has been paid on the total wages; or,
- c) Pay Fringe Benefit tax on the value of the accommodation.

Options a) and b) are essentially the same, there is just more paperwork in option b). However, option c) is the only method that can be called offering free rental.

The amount of rent paid for accommodation must be clearly written into the employment agreement and the employee must agree in writing to the deduction of the rent from their wages. If they do not agree no deduction can occur.

Bonds

As a landlord you do not have to take a bond. However, if you do you are entitled to ask for up to the equivalent of four weeks' rent as the bond. You must lodge each bond, or any part of a bond, with the Department of Building and Housing within 23 working days of receiving it from the tenant. It is also important for both you and the tenant to complete a bond lodgement form and send this with the bond to the Department of Building and Housing.

Rent in advance

As a landlord you can ask for up to a maximum of two weeks' rent in advance. In doing so you are asking for rent to be paid fortnightly and at the beginning of each fortnightly period that the rent should cover. If you ask the tenant to pay one week's rent in advance, the tenant must pay the rent weekly and at the beginning of each weekly period that the rent should cover. You cannot ask the tenant to pay any more rent before all the rent paid to the landlord is used up, nor can you hold rent from the start of the tenancy to be used at the end of the tenancy.

Rent increases

For most tenancies, the rent cannot be increased within 180 days of the beginning of the tenancy, nor within 180 days of the last rent increase. In addition to a period giving the tenant notice, you must give the tenant at least 60 days' written notice to increase the rent. There is no limit as to how much you may increase the rent by, as long as the rent is not increased excessively above market rate.

Health and Safety Legislation

The Health and Safety Legislation also has regulations relating to accommodation provided to farm employees. These regulations include a basic list of conditions that should apply to all rural staff accommodation. Under these conditions the property must:

- Be maintained in good order and condition with working smoke alarms
- Contain or have access to suitable toilets, washing facilities and sleeping facilities
- Have lighting in all rooms
- Have ventilation in all rooms
- Have heating facilities
- Have refrigeration facilities
- Have rubbish disposal facilities
- Have furniture.
- Have sufficient and wholesome drinking water.

For more information on these requirements, visit: <https://www.tenancy.govt.nz/maintenance-and-inspections/laws-and-bylaws/>

More details

The Department of Building and Housing has an extensive range of details on tenancy agreements, requirements and sorting out problems. The landlord pack has a range of forms and information booklets aimed at helping landlords learn about their rights and responsibilities.

The pack has information about bond, rent records, sorting out problems and more. It also contains helpful resources like the pre-letting checklist, pre-tenancy application form, tenancy agreement and bond lodgment form. See: www.dbh.govt.nz for more details.

The IRD provide details on Fringe Benefit tax and payment of accommodation allowances. See www.ird.govt.nz for more details.

Federated Farmers provides information and advice on specific accommodation issues.

Useful websites

www.dbh.govt.nz or 0800 242 243

www.fedfarm.org.nz or 0800 FARMING (0800 327 646)

www.ird.govt.nz

Note: This information should not be relied upon in lieu of legal advice. If you require specialised legal advice, you should contact your own lawyer.



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