

## FAQ Sheet - LEASES

This frequently asked question (FAQ) sheet is based on the Auckland District Law Society Deed of Lease 5<sup>th</sup> Edition 2008 (“the Lease”) in its standard unamended form. Please note that these FAQs have been prepared for information purposes only. They do not constitute legal advice and are not intended to be exhaustive. Whilst care has been taken in the preparation of these FAQs, no responsibility is accepted for completeness or accuracy of the FAQs. Landlords and tenants should seek their own legal and other professional advice should any matter arise under their Lease.

1. ***Who pays for broken windows as a result of vandalism?***

This depends on whether the landlord has full replacement and reinstatement or indemnity to full insurable value insurance (including loss, damage or destruction of windows and other glass). This information should be at the bottom of the First Schedule of the Lease. You should contact your landlord if this is unclear. It is common for tenants to pay the landlord’s insurance premium and any excess provided Clause 5 of the Outgoings list in the First Schedule of the Lease has not been deleted.

2. ***What can I do to make my landlord repair a leaking roof, walls, windows etc?***

The relevant provision in the Lease is Clause 11 whereby the landlord is responsible to maintain the building, all building services and landlord’s fixtures and fittings. The Lease provides little assistance as to the rights against the landlord in its failure to make repairs to its own building. One would have thought it would have been in the landlord’s best interest to ensure that their building is maintained to avoid damage or destruction. If any damage or destruction does occur, then the provisions in Clauses 26 and 27 of the Lease would apply. It is not in anyone’s interest to let the situation escalate to this.

This is a particularly complicated area of the law and if this situation applies to you, you should seek the services of your solicitor to advise on your particular circumstances.

3. ***Can I hold rent payments if the landlord won’t fix the above problems?***

You may be able to hold rent payments in terms of Clause 27 of the Lease. However, you must first consult with your solicitor to assess your particular circumstances. You must not assume you can withhold rental payments because if you do, you run the risk of breaching an essential term of the Lease which among other things, may give the landlord the right to cancel the Lease in terms of clauses 28 and 29 of the Lease.

4. ***What does landlord’s insurance cover?***

The landlord’s insurance should be detailed at the bottom of the First Schedule of the Lease. Further more, the landlord’s insurance may extend to a twelve month indemnity in respect of the consequential loss of rent and outgoings, loss, damage or destruction of any of the landlord’s fixtures, fittings and chattels or public liability in terms of the Clause 23.1 of the Lease.

5. ***Who pays for any damaged or soiled goods?***

This depends on who owns the particular goods, for example, the tenant or landlord. The maintenance and care of premises provisions are contained in Clauses 8 to 15 (inclusive) of the Lease. The tenant is responsible to maintain and repair its own fixtures, fittings and chattels and must maintain the landlord’s fixtures, fittings and chattels in the same clean order, repair and condition as they were in at the commencement of the Lease and will at the end or earlier determination of the Lease yield up the landlord’s fixtures, fittings and chattels in the same clean order, repair and condition.

The tenant’s obligations are set out in Clause 8 of the Lease together with those outgoings listed in the First Schedule of the Lease.

The landlord’s obligations are set out in Clause 11 of the Lease.

Any damage caused by the tenant, or those for whom the tenant is responsible, must be repaired by the tenant to the landlord’s reasonable requirements.

6. ***Who is responsible for building compliance?***

In terms of Clause 13 of the Outgoings list in the First Schedule of the Lease, the tenant must pay the costs incurred and payable by the landlord in supplying to the territorial authority a Building Warrant of Fitness and obtaining reports as required by Sections 108 and 110 of the Building Act 2004. However, before entering into any Lease, the tenant should check with the local authority that the premises can be used for the intended “business use” in accordance with that local authority’s District Plan. Please refer to Clause 16 of the Lease in this regard.

If the tenant is carrying out any building work on the premises, then it is the tenant’s responsibility to comply with all statutory requirements pursuant to the Building Act 2004 (see Clause 20 of the Lease).

For issues regarding compliance with Statutes and Regulations in general, please refer to Clauses 21 and 22 of the Lease.