



Tenancies E-Bulletin

Charging for water in a rental property

The issue of charging for water during a tenancy agreement is one that can cause some anxiety between a landlord/agent and tenant during a tenancy agreement.

Under Section 73 (2) of the *Residential Tenancies Act 1995* (the Act) rates and charges for water supply can be passed on to the tenant. Landlords/agents and tenants should negotiate the amount for which the tenant will be liable for at the start of the tenancy and include this in the tenancy agreement. In the absence of an agreement, the landlord will bear the cost of water supply as well as the first 136 kilolitres per year.

What about the garden?

When calculating the amount of the water usage charge that is to be forwarded to the tenant, the landlord/agent should consider the following:

- What is the average water usage in the area?
- How many people will be living in the premises?
- Are there gardens or lawns that the landlord wants watered?
- Is there a pool or other special items that use a lot of water?
- Are the premises fitted with water saving devices, such as dual flush toilets, watering systems and shower roses?

No separate water meter.

The lack of a separate water meter does not preclude the landlord from passing on water usage charges. However, the lease must clearly stipulate how the water usage charge is to be calculated and this calculation must be seen to be fair and just by the tenant. A percentage of the water usage based on the number of properties and number of tenants may be considered reasonable. If water charges are not clearly written

into the agreement or the agreement is seen to be unfair by the tenant then the tenant has the option to apply to the Residential Tenancies Tribunal for an order precluding payment of water usage charges on the grounds that the terms of the lease are harsh and unconscionable.

An alternative to passing on water usage charges is to take into account water costs when setting the rental amount.

Tenant's responsibilities.

It is important that the tenant knows to advise their landlord/agent immediately if, for example, there are leaking taps. If the tenant does not notify the landlord/agent and there is an increase in water costs, the landlord may wish to pursue the tenant for the increased costs. Ultimately, whether or not the tenant is held responsible for the costs would be a matter for the Residential Tenancies Tribunal.

When should the charges be passed on to the tenant?

It is good practice to pass on water charges to the tenant as soon as the bill is received. There have been instances where tenants have been given a lump sum bill at the end of the tenancy, rather than during the life of the tenancy. In some instances, this has been for several years and is for amounts of several thousand dollars which the tenant had not been expecting to pay. Under these circumstances the tenant may dispute paying for the water as the bills have not been passed on promptly and the Residential Tenancies

Tribunal has reduced claims for water usage by as much as half in these cases. The Tribunal has ordered that where water usage bills have not been passed onto the tenant immediately, the tenant has not been given an opportunity to modify their use of water and so cannot be reasonably held responsible for excessive claims for water usage.

What if the property is not on mains water?

If the rental property is not on mains water then the property should include a water tank. The landlord is responsible to ensure that the tank is a suitable size for the property and that a reasonable amount of water is provided to the premises. At the beginning of the tenancy, there should be provision for the tank to hold a reasonable amount of water for the period of the tenancy at the landlord's cost.

The tenant should also be given clear instructions for the use of any specialised equipment such as pumps.

Avoiding disputes.

To avoid disputes about water issues ensure that;

- The lease clearly stipulates the method by which water charges will be forwarded.
- The tenant *understands* and agrees with the method of water charging.
- The tenant understands their responsibility to notify the landlord/agent of maintenance issues.
- Water charges are forwarded to the tenant promptly.