



Can a tenant sue an agent or landlord for negligence?

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Can a tenant sue an agent or landlord for negligence?

Negligence refers to the failure to exercise reasonable care or the breach of a duty of care towards others, resulting in harm or injury.

Liability refers to the responsibility or obligation to compensate for harm or loss caused to another person or entity. It arises when a person or entity is found to have engaged in conduct that gives rise to a legal claim against them.

In relation to rental properties, both landlords and agents are obligated to exercise a duty of care in order to safeguard others from potential losses. Duty of care entails the responsibility to reasonably take precautions and prevent foreseeable harm to individuals present on the property.

Landlords and agents have a duty of care towards their tenants and any individuals present on their property, including visitors and tradespeople. If the landlord or agent fails to ensure the safety of the rental property, they can face legal consequences if there are instances of injury, death, or damage/loss of personal property. In the event that an agent is deemed negligent in their responsibilities, such as not informing the landlord about safety concerns or disregarding them, they can be held responsible for any resulting harm.

As an agent, you are required to adhere to the safety requirements which

must be met in accordance with the Residential Tenancies Act 2010 (NSW), such as, and not limited to, ensuring that there are working smoke alarms, electrical and gas safety, windows and balcony safety, swimming pool and spa safety, and health-threatening issues are promptly rectified. In addition, landlords and agents have an obligation to arrange for urgent repairs necessary to avoid exposing a person to risk of injury.

If a tenant sustains an injury at the rental property due to a hazardous condition or lack of maintenance that went unnoticed because the landlord or their agent neglected to perform regular inspections or failed to promptly address known issues, they can be held responsible for the resulting harm. This is seen in the case of “*Than v Galletta & Ors [2019] NSWDC 9*”, where two real estate agents were ordered to pay a tenant \$330,000 after they failed to respond to an email about a broken light, and the tenant tripped down a staircase in the dark and broke her foot.

Landlords and agents must have knowledge of their legal responsibilities and proactively fulfill them. These obligations encompass resolving repairs, rectifying safety risks, ensuring essential services, adhering to building standards and safety regulations, and conducting periodic inspections.

In the event that a landlord or agent fails to fulfill their duty of care, the affected individual has options for seeking recourse to recover their losses, and depending on the specific circumstances,

the tenant may pursue a legal resolution by initiating proceedings in a tribunal or court. This could involve suing the landlord and/or agent on grounds of negligence.

Legal claims for liability can be for substantial amounts of money, based on the extent of the injury endured. Compensation awarded typically corresponds to the severity of the harm suffered. Moreover, landlords may have grounds to pursue claims against their agents for negligence if they experience losses attributable to the actions or inaction of their managing agent.

In the event of a finding of negligence, it is possible that the landlord and/or agent will be instructed to provide compensation, along with potential responsibility for the claimant's legal expenses as well as their own.

Negligence can manifest in various ways and may result in costly legal conflicts between landlords, agents, and

tenants. This emphasises the importance for landlords and agents to comprehend their legal obligations and the potential risks involved.

Rosy Sullivan
Director | College Principal



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The advertisement features a blue and yellow color scheme. It includes a circular inset image showing three people (two men and one woman) looking at a laptop screen. The text is arranged in a clear, hierarchical manner, with the program name in large, bold letters.

From the office

And all of a sudden July is over and we are heading towards the end of Winter, which is making some of our trainers very happy, as they have been travelling to some the colder parts of NSW. We had training preparation in Bathurst for a conference with the Elders Rural Agents and also CPD for other agencies, plus visits to Dubbo and Mudgee for student support. Back here in the office in Sydney CBD, we have had large classes for both our licensing programs in Trust Accounting, Property Management, Strata Insurance and of course the compulsory CPD classes. The training combined with a couple of Agency Compliance Audits in the Newcastle region has meant a busy fortnight for the team.

There is much preparation happening in the office for members of the team who will be attending a few conferences in the next fortnight and sharing our expertise with hundreds of conference delegates from across Australia – we are all looking forward to these opportunities.

We sadly said farewell this past week to one of our long-term Senior Trainers/Assessors, Kristine Bice - in various capacities, she has worked with the College for over 15 years and has spent a huge amount of time helping students reach their goals and educating them. Her students from her favourite area of strata will miss her greatly. Whilst Kris has moved to a local government position much closer to her home, and yes still related to property, she will be continuing to assist the College in writing course materials and facilitating some training sessions, which means ACOP has not lost her totally from the training family. And of course, her last day was celebrated with Disney cupcakes, large cakes, and plenty of food to supplement the cakes. Kris will be greatly missed in the office every day.

We welcomed Alexa back into the office after her knee surgery and a few weeks away whilst she recovered – and it's great to see that she is almost ready to stop using the crutches, which is terrific. We also celebrated Priscilla's birthday this past fortnight and there are so many people in the office everyday, that we now need two cakes to make sure all needs are satisfied – so it was Priscilla's favourite watermelon cake and also a caramel layer cake for her birthday. It has certainly been a fortnight of eating and drinking at ACOP – and there's nothing we like better.

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