

What happens when disaster strikes?

It is surely the thing of nightmares for both tenant and landlord to suffer an event, such as flood or fire, which means your home/rental property becomes uninhabitable. It can take months or years to reinstate the property ready for reoccupation.

The Residential Tenancy (Jersey) Law 2011 states that if a tenant's home is uninhabitable, through no fault of their own, the tenant does not have to pay rent. The Law also allows the Petty Debts Court, on the application of the landlord or tenant, to make an order varying or terminating the lease/tenancy agreement, if, in all circumstances the Court considers it just to do so.

However, the Law is silent on what should happen about who finds the tenant somewhere else to live and who is to pay for this alternative accommodation.

Deputy Montford Tadier is calling for a law change to protect tenants made homeless by fire saying there should be a presumption in law that the landlord must provide suitable alternative accommodation at no added cost.

The obvious flaw in this argument, is that the landlord is unlikely to have a suitable alternative accommodation, empty for the tenant to move into, at the relevant time that it is needed.

It would, therefore, mean that the tenant, or landlord, needs to look to the open rental market, to secure alternative accommodation.

But what happens, if the rent for suitable alternative accommodation is more than the tenant was paying at the damaged property? This may particularly be a problem, due to the urgency of having to find another property – it might cost more. In addition, if the landlord of the damaged property has forgone previous rent increases, or if it was otherwise rented under the current rental value, at the time for the incident, the new accommodation might well cost more. This may be more likely, if the tenant has been in situ for a number of years.

Given the Law already states the tenant need not pay rent for the damaged property, is the landlord to be expected to pay the full rent on the alternative accommodation? Does that leave the tenant, not paying any rent at all whilst living in the alternative accommodation? Or is the landlord only to pay the difference in rent, if higher?

This issue of payment for the new accommodation is probably, in reality, one of insurance.

Landlords can take out insurance which covers the loss of rent if their rental property becomes uninhabitable due to an insured risk. They can also get insurance, which will pay the rent for alternative accommodation for their tenant whilst the damaged property is being reinstated.

Likewise, tenants would be wise to get contents insurance which includes alternative accommodation insurance, which will pay the rent for alternative accommodation, should their home become uninhabitable due to an insured risk. Organisations representing tenants may be able to recommend appropriate insurers and policies for tenants.

Who should be responsible to purchase/hold the insurance, should be made clear in the lease/tenancy agreement. (although, even if it is the tenant's responsibility, the landlord may also want to obtain its own insurance),

If any change to the Residential Tenancy Law needs to be made, it should just be a provision that alternative accommodation insurance be held, either by the landlord or by the tenant, and the party responsible for holding it should be reflected in the lease/tenancy agreement.

We would urge landlords to think about this issue and perhaps check whether their insurance covers, alternative accommodation for their tenants or whether their lease/tenancy agreement provides that their tenants should hold such insurance.

We would also suggest that the lease/tenancy agreement makes clear who is to find the alternative accommodation.

On a practical level, as the tenant will be living in the accommodation, they will have to be involved in some way and they should try to mitigate any loss, so it might make sense that they make every effort to find alternative accommodation. If this were left solely to the landlord, what would happen if, the alternative accommodation offered to the tenant was not to their liking? How many choices, would the landlord have to find or offer? No new accommodation is going to be a carbon copy of the damaged home.

Fortunately these circumstances are rare, but to call for a change of the law to presume that the landlord should provide alternate accommodation, at no addition cost, seems to be trying to legislate for every eventuality and does not consider the practicalities.

The information contained in this advisory is necessarily brief and general in nature and does not constitute legal advice. Appropriate legal or other professional advice should be sought for any specific matter.