

# Do tenants have the right to smoke cannabis in a rental property?

By [Rowan Terry](#)

20 Mar 2023

There have been numerous complaints in recent years from both landlords and neighbours that tenants are smoking cannabis in their rental property. When neighbours start to complain, landlords are often caught in the middle. Is there really anything they can do to resolve the situation?

The reality is that the possession, use and cultivation of cannabis for personal consumption, in private, was decriminalised in 2018. This means that anybody is entitled to grow, possess, or smoke cannabis in the privacy of their own property, including tenants renting a property. As such, landlords may not cancel the lease agreement because the tenant is smoking cannabis on the property for the simple reason that the tenant is not in breach of the agreement.

When it comes to smoking on outside balconies or where common gardens are shared, if the body corporate has rules that state no smoking in common areas, then these rules would still apply. If the balcony falls within the exclusive-use area of the tenant, then they may smoke on the balcony.

## Breach of lease agreement

The only time that smoking cannabis is illegal, is if the rental unit does not permit smoking. In this instance, smoking cannabis in the rental property would constitute a breach of the lease agreement in the same way that smoking cigarettes would constitute a breach of the agreement. In this case, the tenant needs to receive three consecutive written warnings to stop smoking in the unit.

Once the tenant has received three consecutive written warnings to stop smoking, the lease agreement can be cancelled after the third written warning, giving the tenant notice to vacate. If the TPN Residential Lease Agreement has been used, the tenant is given 20 business days' notice to vacate.



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5 May 2022



## Tenant liability

Lease agreements need to be clear and unambiguous about whether the rental property is designated as a smoking or a non-smoking unit. If the unit is designated as a smoking unit, then the tenant is obliged to ensure that the smoking will not damage any portion of the property. It may also hold the tenant liable to restore the property to the pre-smoking condition at the end of the lease period.

If damage has been caused as a result of smoking, for example, if the walls are discoloured, or the carpets smell of cannabis or cigarette smoke, then the tenant is liable for the costs, which could include repainting, cleaning or replacing the carpet. These costs can be deducted from the deposit.

The bottom line is that landlords need to be proactive and ensure that they have put adequate measures in place to protect their property from every conceivable threat.

## ABOUT THE AUTHOR

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