



DEPARTMENT OF **FAIR TRADING**
NSW Consumer Protection Agency

The Renting Guide

Your rights and responsibilities
as a tenant or landlord

February 2002



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This publication must not be relied on as legal advice.
For more information please refer to the appropriate legislation
or seek independent legal advice.

The Renting Guide

Your rights and responsibilities as a tenant or landlord

The Renting Guide is also available in the following languages.*

عربي, 中文, Hrvatski, فارسی, Ελληνικά, Italiano, 日本語, ខ្មែរ, 한국어, Македонски, Polski, Português, Русский, Српски, Español, Türkçe, Việt ngữ

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* For easy reference, the information and page numbering is the same in all versions.

ENGLISH
If you have difficulty understanding English, contact the Telephone Interpreter Service on 131 450 and they will telephone Renting Services.

ARABIC
إذا كنت تجد صعوبة في فهم الإنكليزية، اتصل بخدمة الترجمة الهاتفية على الرقم 131 450 للاتصال نيابة عنك بمكتب خدمات الإيجار.

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CROATIAN
Ako teško razumijete engleski, nazovite Telefonsku službu tumača na 131 450, koja će zatim nazvati Renting Services.

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POLISH
Jeśli masz trudności z językiem angielskim, zadzwoń do Telefonicznego Biura Tłumaczy pod numer 131 450, które z kolei skontaktuje się telefonicznie z Renting Services.

PORTUGUESE
Se tiver dificuldades em compreender Inglês, ligue para 131 450 dos Serviços de Intérpretes por Telefone para que eles contactem Renting Services.

SPANISH
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MACEDONIAN
Ако имате тешкотии да го разберете англискиот јазик, јавете се во Телефонската служба на преведувачи на 131 450 и тие ќе телефонираат во Renting Services.

KHMER
ប្រសិនបើលោកអ្នកមានផលវិបាកក្នុងការយល់ទៅលើភាសាអង់គ្លេស សូមទាក់ទងជាមួយនឹងក្រសួងអ្នកបកប្រែភាសាតាមទូរស័ព្ទ លេខ 131 450 ទោះគេនឹងទូរស័ព្ទទៅ Renting Services ជូនលោកអ្នក។

RUSSIAN
Если вы испытываете трудности с пониманием английского языка, звоните в телефонную переводческую службу по номеру 131 450, откуда позвонят в Renting Services.

SERBIAN
Ако имате тешкоћа с разумевањем енглеског језика, обратите се Телефонској служби тумача на 131 450 и они ће назвати службу за изнајмљивање (Renting Services).

TURKISH
İngilizce anlamada güçlüğüntüz varsa, 131 450'den Telefonla Tercüme Servisi ile ilişkiye geçiniz, Onlar Kiralama Servisleri'ni arayacaklardır.

JAPANESE
英語がわからない場合は電話通訳サービス TEL: 131450 にご連絡ください。あなたに代って Renting Services (賃貸借サービス) にお電話いたします。

VIETNAMESE
Nếu quý-vị gặp khó-khăn khi đọc mà không hiểu tài-liệu viết bằng tiếng Anh, xin liên-lạc với Sở Thông-dịch qua Điện-thoại số 131 450 để nhờ nơi này gọi cho Renting Services.

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Role of the Department of Fair Trading

The Department of Fair Trading administers the laws which set out the rights and responsibilities of landlords and tenants. Our role includes the following activities:

- Providing information about the laws affecting tenants and landlords.
- Handling complaints about possible breaches of the legislation.
- Providing mediation to help resolve disputes.
- Conducting education campaigns.
- Producing educational resources.
- Reviewing and amending the legislation to ensure it remains relevant.
- Monitoring the marketplace to detect unfair practices.
- Processing and holding rental bonds.



Introduction

Purpose of this booklet

This booklet is designed as a guide to all tenants, landlords and agents involved in renting residential premises in NSW. It explains in simple language their rights and responsibilities under the tenancy law.

The agreement entered into at the beginning of every tenancy outlines the legal rights and responsibilities of the tenant and landlord. This booklet contains practical advice on what many of the terms of the agreement mean in common situations.

The Act

The Residential Tenancies Act was introduced on 30 October 1989. The Act sets out a balanced set of rules by which landlords and tenants must operate.

The Act applies whenever a house, a unit, part of a house or unit, or any other property is rented and intended to be used as someone's place of residence. All residential tenancies are covered by the Act, including those that existed when the Act began.

The law applies to both private and public tenancies, although the Department of Housing is exempt from some sections of the Act about rent matters.

Exemptions

The Act does not apply to:

- nursing homes, hostels and retirement villages
- hotels and motels
- boarders and lodgers
- protected tenancies
- commercial or predominantly commercial tenancies.


If there is uncertainty as to whether the Act applies please contact an advisory service (see Chapter 13).

1 Beginning the tenancy

Disclosure

Before a tenant enters into an agreement or moves in to the property they must be given the following documents by the landlord or the landlord's agent:

- A copy of the proposed tenancy agreement (including a premises condition report), filled out where appropriate in the space provided; and
- A list of all entry costs payable to begin the tenancy; and
- A copy of this booklet.

 **The tenant must be given time to read and understand the tenancy agreement before being asked to sign.**

Tenancy agreement

The law now requires that there must be a written tenancy agreement between all landlords and tenants. The agreement must be provided by the landlord. Agreements can be purchased from most newsagencies and stationery stores.

The Act contains a standard form of tenancy agreement that must be used in all circumstances. Each tenancy agreement must consist of 2 parts:

- Part 1 - The terms of the agreement (ie. what the landlord and tenant agree to do during the tenancy)
- Part 2 - A premises condition report, setting out the state of the premises at the beginning of the tenancy.


The standard terms of the agreement (terms 1 to 28) apply to all landlords and tenants and cannot be altered or deleted. Additional terms may be added to the agreement. It is essential that all parties read the tenancy agreement before signing it.

Additional terms

There need not be any additional terms added to a tenancy agreement. The standard terms are broad enough to cover most situations.

Additional terms may however, be added to the agreement so long as they:


- expand on one of the standard terms of the agreement, or
- cover a matter under the Act which is not already dealt with in the agreement.

 **It is a breach of the tenancy law to add an additional term which conflicts with either the Act or one of the standard terms of the agreement. Any such terms are not binding or enforceable, even though the tenant may sign the agreement.**

All additional terms, including any which may be printed on the agreement, are negotiable. The parties can agree to alter the wording or delete an additional term altogether.

Examples of additional terms which are not binding or enforceable include:

- the tenant agrees to have the carpet professionally cleaned when they vacate, or
- the tenant agrees to replace tap washers, stove elements or to be responsible for any other repairs to the premises.

 **If there is any doubt about the validity of an additional term, further advice can be obtained from an advisory service. See Chapter 13.**


Length of tenancy

The length of the fixed term period of the tenancy is a matter to be agreed upon. The most common fixed term periods are 6 months or 12 months. The parties can agree to have a tenancy agreement for any other length of time.

Once the fixed term period of the tenancy ends the tenancy agreement itself does not end. It becomes a continuing agreement with the same terms and conditions.

2 Condition reports


Condition reports

 **Whenever a tenancy begins a premises condition report must be filled out. It should be a true and accurate account of the condition of the premises. The condition report may become the most important piece of evidence if a dispute arises over the condition of the premises at the end of the tenancy.**

The steps needed to complete a condition report are:

- The landlord or agent must fill out and sign the condition report in triplicate (ie 3 copies) noting the cleanliness, general condition and working order of each applicable item on the report. Any comments should be written in the space provided, or on a separate page if there is no room.
- If the property is furnished a list of all the furniture and the condition of each item should be attached to the report.
- The tenant should then be given 2 copies of the filled out condition report at or before the time the tenancy begins.
- The tenant should take the report away and fill out the 'tenant agrees' column with a Y (for yes) or an N (for no). If the tenant does not agree they should write a reason in the comments area of the report.
- The tenant should sign and return a copy to the landlord or agent within 7 days and keep the other copy for themselves.

Promised repairs


 **If the landlord or agent promises, prior to the start of the tenancy, to fix anything or do other work (eg. cleaning or painting) this should be noted in the space provided at the end of the condition report. The tenant will then have written evidence on which to take the matter further if the repairs or other work are not carried out by the agreed date.**

3 Entry costs

A tenant may be asked to pay the following entry costs when or before signing the tenancy agreement:

Reservation fee

A reservation (deposit) fee is an amount of money (no more than 1 week's rent) that is sometimes paid to reserve the premises while an application for tenancy is being considered. A reservation fee is a sign of good faith, but does not guarantee that the tenancy will go ahead.


 **If the landlord or agent decides not to go ahead with the tenancy, on the agreed terms, or makes no decision within 1 week of the fee being paid, the full amount must be refunded. Should the tenancy go ahead the reservation fee is applied to the first week's rent.**

If the applicant withdraws, the landlord may retain rent for the days the premises were reserved. This is provided the premises were not let or occupied during the period of reservation, no more than one reservation fee was being held at the same time and a proper receipt and written acknowledgment were given to the prospective tenant when the fee was paid.

Rental bond

A rental bond is an amount of money paid by a tenant as a form of security for the landlord against any future breaches of the tenancy agreement. The maximum rental bond that can be asked for is:

- 4 weeks rent, for unfurnished premises, or
- 6 weeks rent, for fully furnished premises with a rent of \$250 or less per week, or
- Unlimited, if the rent for fully furnished premises is more than \$250 per week.

 **The amount of bond that is to be paid (if any) must be written on the agreement.**

The landlord or agent must send any bond paid to Renting Services Branch, Department of Fair Trading, within seven days. A lodgement form is needed to do this and can be obtained from any Fair Trading Centre or from Renting Services.


Demanding or receiving a written guarantee from a tenant, or somebody on their behalf, is not permitted. A rental bond must be in the form of money and not as a guarantee.

Advance rent

A tenant must pay the rent in advance from the first day of the tenancy. The tenant can be required to pay:

- 2 weeks rent in advance, if the weekly rent is \$300 or less, or
- 1 month rent in advance, if the weekly rent is more than \$300.

It is important to remember that a tenant cannot be required to pay the rent other than on a weekly or fortnightly basis if the weekly rent is \$300 or less.

 **Advance rent is not money that the landlord can keep in reserve as some form of extra rental bond. A tenant cannot be asked to make any more rent payments until the rent which they last paid has been used.**


For example; on the day the tenancy commences the tenant may pay 2 weeks rent and be 14 days in advance. As each day passes the tenant becomes 1 day less in advance, so that when the rent next falls due (a fortnight later) the tenant is no longer in advance with the rent. By making their next fortnightly payment the tenant is again 14 days in advance and the cycle continues.

Agreement costs

The landlord can ask the tenant to pay half the cost of preparation of the tenancy agreement, but only up to a maximum of \$15 (GST inclusive).

This means that if an agent or solicitor charges more than \$30 to prepare an agreement the landlord must pay the balance over \$15.

Keys

 **All tenants listed on the agreement must be given a set of keys and all other lock opening devices, swipe cards, remote controls, etc., so that they can enter and secure any part of the premises. This includes keys to any door, window, garage, or letterbox locks. Under no circumstances can any tenant be charged a separate fee, bond or deposit for keys.**

4 Rent

Rent

Rent is the main charge that tenants have to pay on a regular basis. The level of rent should be agreed upon before the tenancy begins, and the figure should be written in the space provided on the tenancy agreement. Rent payments are GST free.


Rent receipts

Receipts must always be given if the rent is paid in person.

Receipts for rent must show:

- the address of the premises
- the name of the tenant
- the name of the landlord or agent
- the amount of rent paid
- the date the rent was paid
- the period of time which the rent covers.

If rent is posted, a receipt must still be filled out and either sent back to the tenant, or kept until the tenant wants to collect it. If the rent is paid into a bank account, no rent receipt need be given.

 **The landlord or agent must keep copies of all rent receipts and a separate rent record for at least 12 months. It is advisable that receipts be kept by both parties until after the end of the tenancy.**


Electronic rent payments

A landlord cannot pass on the cost of providing a payment card or deposit book to the tenant for paying rent at a post office or bank.

How can rent be increased?

From time to time rent may be increased after the fixed term period of the agreement has expired. Before a landlord (other than the Department of Housing) can increase the rent the tenant must first be given at least 60 days notice in writing. The notice must show the amount of the increased rent and the day from which the increased rent is to be paid. This also applies where an existing agreement is to be renewed.

If the notice is sent by post at least 4 working days should be added to the amount of notice, to allow time for the notice to be delivered.


 **For rent to increase during a fixed term tenancy the agreement must have an added term showing the amount or method of calculating the increase. A 60 days rent increase notice must still be given.**

Challenging rent increases

If a tenant thinks that a proposed rent increase is too high they can:

1. Negotiate


Even though the landlord or agent has given notice they may still agree to reduce the amount of the increase or withdraw it altogether. They may be persuaded by evidence of market rents in your area or what you have done to the premises. You should carefully explain the reasons why you believe the increase is too high in a letter to the landlord.

 **If the condition of the premises is the reason you think the increase is too high you should raise this with the agent or landlord. For instance, they may be prepared to paint the premises in exchange for the rent increasing. It is up to the landlord to consider the costs involved in any such proposal.**

If the landlord agrees on a lower amount of increase this should be put in writing. It is not necessary to give another 60 days notice. The lower increase becomes due from the same date the original increase was payable.

2. Apply to the Consumer, Trader & Tenancy Tribunal

Tenants can apply to the Tribunal to have a proposed increase reduced or withdrawn, if they believe that the increase is too high. The only tenants who cannot do this are Department of Housing tenants receiving a rent rebate.

 **Applications must be made within 30 days of receiving the rent increase notice. Tenants have to prove that the increase is excessive. The main evidence the Tribunal considers is comparable rents for similar properties in the same area.**

Before you apply to the Tribunal you may wish to visit a number of estate agents in your area and gather evidence of the current market rent for properties similar to your own. It is often worthwhile to view the available premises to make sure they are similar (eg. size, location, view, etc.).

5 Water and sewerage charges


Service charges

Landlords are responsible to pay for all service charges for water and sewerage issued by the local water supply authority.


Water usage

In some cases a tenant may be asked to pay, to the landlord, the water usage part of the bill. Under no circumstances can connection fees be passed on to the tenant.


The 'water usage' charge which appears on the landlord's bill for the rented premises is for the total amount of water which flows through the water meter on the property.

 **A tenant may only be charged for water usage when they have agreed to pay for water usage under the additional terms of the tenancy agreement.**

If there is no additional term about 'water usage' (usually under clause 29 of the standard form of residential tenancy agreement), a tenant cannot be asked to pay any amount.

 **A tenant can only be charged for the metered amount of water which they use. For this reason it is important that the water meter be read and the figure noted on the premises condition report before the start of each tenancy. Otherwise there will be no way of dividing the first account between the tenant and the former occupant.**

If there is no individual meter for the rented premises, as is the case with most blocks of units, a tenant cannot be charged for water usage. If the supply authority has a minimum amount payable for all properties the tenant does not have to pay for water.


 **A tenant is entitled to a photocopy of the water account and should pay any amount owing before the due date on the bill.**

Sewerage charges

Some water authorities also charge a fee for sewerage discharge or waste water. This fee is usually based on the amount of water supplied to the premises (eg. 75% of water consumption) and may be charged to the tenant.

6 Privacy and access

Privacy

 **Tenants have a basic right to privacy and quiet enjoyment of the premises that must be respected by their landlord.**

The landlord must make sure they, or anybody else on their behalf, do not interrupt the tenant's reasonable peace, comfort and quiet enjoyment of the premises.

Access

The landlord, agent or other authorised person may enter the premises only in the following circumstances:

- to carry out a **general inspection** of the premises if the tenant is given at least 7 days notice. There can be no more than 4 inspections in any 12 month period.
- to carry out **necessary repairs** if the tenant is given at least 2 days prior notice. The repairs must be necessary and must not simply be improvements or renovations. For **urgent repairs** no notice is necessary.
- to show the premises to **prospective tenants** on a reasonable number of occasions if the tenant gets reasonable notice on each occasion. This access is only permitted during the final 14 days of the tenancy.
- to show the premises to **prospective buyers**, on a reasonable number of occasions if the tenant gets reasonable notice on each occasion. What is 'reasonable' is for the parties to agree upon. The Tribunal can settle any disputes if one party believes the other is being unreasonable. Access to show buyers can occur at any stage during the tenancy.
- if there is good reason for the landlord to believe that the premises have been **abandoned** by the tenant.
- in an **emergency**
- if the **Tribunal orders** that access be allowed, or
- if the **tenant agrees**.

 **Unless the tenant agrees, access is not permitted on Sundays, public holidays or outside the hours of 8am to 8pm.**

7 Repairs


Landlord's general responsibilities

The landlord must make sure that premises are reasonably clean, and fit to live in at the start of the tenancy. The landlord must then maintain the premises in a reasonable state of repair considering:

- the age of the premises,
- the amount of rent the tenant is paying, and
- the prospective life of the premises.

This does not mean that the premises must be let in perfect condition, or that the landlord must immediately attend to every small matter during the tenancy. The state of the property and level of repair expected should be in proportion to the premises' age and the amount of rent.

Urgent repairs

 **Residential premises must always be 'fit to live in'. Landlords are obliged to organise any urgent repair, as soon as reasonably possible, after having been notified by the tenant of the fault or damage.**

An **urgent repair** is any work needed to fix:


- a burst water service
- a blocked or broken lavatory system
- a serious roof leak
- a gas leak
- a dangerous electrical fault
- flooding or serious flood damage
- serious storm or fire damage
- a failure or breakdown of the gas, electricity or water supply to the premises
- a failure or breakdown of any essential service on the premises for hot water, cooking, heating or laundering
- any fault or damage that causes the premises to be unsafe or not secure.

How to get urgent repairs carried out

Tenants can spend up to \$500 on urgent repairs and be reimbursed within 14 days by the landlord (see page 15 for which repairs are urgent). The landlord or agent must first be given a reasonable opportunity to arrange the work, or if they cannot be reached, any properly qualified tradesperson nominated in the agreement should be contacted. Refer to your tenancy agreement for more information.


Responsibilities of tenants over the premises

Under the law the tenant must keep the premises in a reasonable state of cleanliness, having regard to the condition of the premises at the start of the tenancy. If the premises includes a yard, the lawns and gardens must also be kept neat and tidy by the tenant.

 **Tenants must notify the landlord or agent of any damage to the premises as soon as practicable, regardless of who or what caused the damage. It is recommended that this notice be put in writing.**

The tenant must not intentionally or negligently cause or permit damage to the premises. **Negligence** means forgetting to do something which a reasonable person would usually do in the circumstances, or doing something which a reasonable person would not do. In simple terms it is a lack of care or attention.

A tenant is also responsible for damage caused by other occupants of the premises or any person the tenant allows on the premises.

 **A tenant cannot, except with the landlord's written permission attach any fixture or make any renovation, alteration or addition to the premises. This ranges from small items such as putting picture hooks into the wall, adding locks or having a telephone installed, to larger matters like painting the whole premises.**


Because a landlord has the right to refuse any requests by a tenant to add fixtures or otherwise change the look of the premises, tenants should discuss any proposals prior to moving in. Any consent by the landlord should be put in writing, preferably as an additional term of the agreement.

Tenants are responsible for repairing any damage that may result from the removal of a fixture, which they have added at any stage of the tenancy.

How to get repairs carried out

The following steps are recommended when you want to have repairs or other work carried out:

1. Phone or speak to the landlord or agent in person, and explain what you think the problem is or what you would like done to the premises. Write down somewhere the date of all conversations and what was said. This will be important if the problem is not easily resolved.
2. If the response is favourable write a letter to the landlord or agent confirming your view of what was agreed to in the conversation.
3. If the response is negative, consider carefully if the problem is important enough to pursue the matter. If you believe it is, write a letter to the landlord or agent outlining what you want done. Give a reasonable time limit in which you expect the work to be carried out.
4. If the work has not been done within a reasonable time write a final letter to the landlord or the agent explaining that you intend to apply to the Consumer, Trader & Tenancy Tribunal or seek the help of an advisory service (see Chapter 13).
5. If all else fails you can apply to the Tribunal for an order that the landlord carry out work to maintain the premises in reasonable repair. The Tribunal can also grant compensation, or allow the rent to be paid to the Tribunal until the work has been completed.

 **Under no circumstances should you stop paying the rent.**

8 Locks and security

Reasonable security

The law states that a landlord must provide and maintain such locks or other security devices as are necessary to ensure that the premises are reasonably secure. What is 'reasonably secure' will vary in different situations.


The potential risk (ie. the likelihood the premises may be broken into) will have a bearing on the type and standard of locks needed to make a property reasonably secure. This will depend largely on the area in which the premises are located.

Even then, the same standard cannot be applied to all premises within an area. The ability of a thief to gain access to doors and windows can vary from one property to another. For instance, the level of security needed for a ground floor unit will usually be greater than for a unit on an upper level.

A landlord does not have to make the property so secure that the premises can never be broken into. The requirements of insurance companies are not the test of 'reasonable security'. Insurer's requirements are merely another factor to be taken into account.

What if the premises are not reasonably secure?

A tenant who believes at any time that the premises are not reasonably secure should immediately notify the landlord, preferably in writing, and request steps be taken to fix the problem.

 **Should the landlord fail, within a reasonable time, to carry out the work, the tenant may apply to the Tribunal. It is then up to the tenant to prove that the premises are not reasonably secure.**


Added security

If a tenant wishes to add locks or other security devices to make the premises **more than** reasonably secure, the tenant must obtain the landlord's prior consent and pay all costs.

9 Resolving problems

First step

The first step in resolving any problem or dispute is to carefully read the term/s of your agreement and the section of this booklet which deals with the matter.

 **It is always best for a tenant and a landlord/agent to try and solve any problems between themselves. To avoid possible problems later, any agreement reached should be put in writing.**

Obtaining information and advice

The Department of Fair Trading has specialist Information Officers from whom tenants, landlords, agents and other interested persons are able to obtain further information on the tenancy laws free of charge. Should you wish to clarify any tenancy matter you may contact Renting Services or your nearest Fair Trading Centre (see Chapter 13).

Tenants also have the option of contacting their local Tenants' Advice and Advocacy Service for more information about their rights and obligations. See Chapter 13 for more details.

It is recognised that information will not resolve every problem or dispute. Some matters may need to be taken to the Consumer, Trader & Tenancy Tribunal. Renting Services staff can provide the application form needed to apply to the Tribunal and can answer any questions you may have on the process involved.

10 The Consumer, Trader & Tenancy Tribunal

General

The Consumer, Trader & Tenancy Tribunal is an independent decision making body which hears and decides applications for orders from tenants and landlords. The Tribunal is a quick, inexpensive, and relatively informal way of resolving disputes. Applications may be lodged by post or at any Fair Trading Centre.

Costs

The application fee is \$26. NB. This fee is subject to review on 1 January each year. There is no fee if you hold a pensioner or full-time student concession card. Hearings are usually held within one month and are conducted at a venue as close as possible to the premises.

Time limits

There are prescribed time limits for making applications to the Tribunal for certain orders. For example, in cases where an order is requested regarding broken terms of the tenancy agreement, this order should normally be sought within 30 days of becoming aware of the event. The application time limits are included in the Tribunal's *Application for an Order* form.

Orders


The Tribunal can make orders, among others that:

- a term of the agreement be complied with
- compensation be paid to a tenant or landlord
- a rent increase is excessive
- the agreement be ended

Hearings

The Member will first ask the parties to try to reach a settlement. If this cannot be achieved the case will then be heard in the Tribunal hearing room. The Member will allow both parties, in turn, to tell their side of the events and present any evidence.

Hearings are usually informal, but formal hearings can be held on request, where witnesses can be called and evidence is given under oath.

 ***It is up to the person who made the application to provide enough evidence to convince the Tribunal Member, on the balance of probabilities, that the orders they are seeking should be given. Any orders made are binding.***

11 Ending the tenancy


Notice

Written notice must be given to the other party if a tenancy agreement is to be ended in the standard manner.

A notice of termination must:

- be in writing
- state the address of the premises
- be signed and dated
- allow the required period of time
- give the date on which the tenant intends to, or is requested to, move out
- give full details of all breaches (if any) or reasons for ending the agreement
- and, if given to a tenant, include a statement that information about their rights and obligations can be found in the tenancy agreement.

The notice can be posted or given personally. A notice cannot be stuck to or put under a door by the person sending the notice.

 ***If the notice is sent by post at least 4 working days (not including the day the notice was sent) should be added to the amount of notice, to allow time for the notice to be delivered.***

The notice period is counted from the day after the notice is served.

Notice periods

When the fixed term period of the agreement is due to run out, either party can give 14 days notice to end the tenancy. This notice can be served up to and including the last day of the fixed term.

Once the fixed term period has ended, a tenant is required to give at least **21 days** notice, and the landlord must give at least **60 days** notice.

Notice on sale of premises

If the premises is sold and vacant possession is required in the contract of sale, the landlord must give the tenant at least **30 days written** notice (after the contracts of sale have been entered into). This is only applicable **after** the fixed term has ended.

Notice of breach

A notice of termination may be given at any time if either party seriously or persistently breaches a term of the agreement, or if the tenant is more than 14 days in arrears of rent. At least **14 days** notice must be given in writing.

Breaking an agreement early

If a **tenant** wants to end their tenancy agreement early they should give as much notice as possible, preferably in writing (keep a copy of the letter). It is a good idea to state the exact date you intend to leave and that you want the landlord (or agent) to find a new tenant. Any assistance in finding a replacement tenant (such as making the property readily available for inspection) may help to reduce the costs involved.

Having said this, breaking an agreement can be costly. A landlord can claim compensation for any loss they suffer as a result of a tenant ending the agreement early. The costs a tenant could be liable for include:

- rent until new tenants move in or the existing agreement runs out (whichever happens first);
- a reletting fee (usually one week's rent) when the property is let by an agent who charges the landlord a fee for finding new tenants; and
- advertising costs.


For a landlord to successfully claim, they must be able to show that their loss was caused by the tenant breaking the agreement early, not by other factors. For example, if a tenant breaks the agreement just prior to the expiry date, the full amount of reletting and advertising charges may not be able to be passed on since the landlord would have incurred these expenses shortly anyway. The landlord also has a duty to keep their loss to a minimum. This means that the landlord must make a reasonable effort to find a new tenant, otherwise any claim they later make may be reduced by the Consumer, Trader & Tenancy Tribunal.

Undue hardship

A tenant or landlord can at any stage of the tenancy apply to the Consumer, Trader & Tenancy Tribunal to end the agreement on hardship grounds. No prior notice is required. It is up to the party claiming hardship to satisfy the Tribunal that there are grounds for ending the agreement. If the Tribunal makes an order to end the tenancy, the party suffering hardship may be ordered to pay compensation to the other party.

Fair wear and tear

At the end of a tenancy the tenant is responsible to leave the premises as nearly as possible in the same condition, fair wear and tear excepted, as set out in the original condition report.

 ***Fair wear and tear means the deterioration that occurs over time with the reasonable use of the premises by the tenant and the ordinary operation of natural elements, even though the premises receive reasonable care and maintenance.***

Final inspection

At, or as soon as possible after, the end of the tenancy both the tenant and the landlord/agent must carry out a final inspection of the premises. The original condition reports should then be completed by both parties. However, if a reasonable opportunity is given to the other party to be there and they do not show up, the report may be filled out in their absence.

Returning keys


A tenant is responsible to return all copies of keys given to them by the landlord or agent at the start of the tenancy.

Bond refunds

During the tenancy, the rental bond is held by the Department of Fair Trading. At the end of the tenancy, after the final inspection, a claim form should be filled out by the landlord or agent and given to the tenant to sign.

 ***Any disagreement over how the bond is to be paid out should first be discussed between the parties.***

If agreement cannot be reached, either party may send a claim form to Renting Services Branch, Department of Fair Trading without the signature of the other party. The bond will not be paid out straight away. A letter will be sent to the other party advising them of the claim and giving them 14 days to apply to the Tribunal to dispute the claim. If no reply is received within 14 days the bond will then be paid out.


 ***No matter who applies to the Tribunal it is always up to the landlord to prove any claim on the bond.***

12 Abandoned premises and uncollected goods

Abandoned premises

If the residential premises appear to have been abandoned by the tenant, a landlord may apply to the Consumer, Trader & Tenancy Tribunal for an order to have the premises declared abandoned. Once such an order is given, the premises are considered abandoned from the date specified on the order.

The landlord or agent must present evidence to the Tribunal to support their claim that the premises have been abandoned. This may include statements from witnesses, notices of disconnection of electricity, telephone or gas, empty premises etc.

 **An application to the Tribunal is not necessary if there is sufficient information to be certain that the premises have been abandoned. In this situation, the premises can be secured immediately, though it may be advisable to obtain an order or seek further advice.**

Compensation

The tenant who abandons the residential premises is liable to pay compensation to the landlord for any loss (eg. loss of rent) caused by the abandonment. The landlord should take all reasonable steps to minimise any loss. If steps are not taken by the landlord to avoid the loss, compensation for that loss may not be recoverable.

Some of the costs the landlord may recover are the agent's reletting fee and reasonable advertising costs, if the abandonment occurs during the fixed term.

Uncollected goods

Items that have been left in the residential premises by the tenant after vacating become 'uncollected goods'. If these goods remain in the premises for 2 working days after the tenant has vacated, they may be disposed of if their value is estimated not to be higher than the cost of removal and storage. Otherwise they must be stored in a safe place. If the goods are perishable foodstuffs, they may be disposed of immediately.

Tenants may apply to the Tribunal for orders that the landlord deliver to them the goods left behind. Persons other than tenants and landlords who may have an interest in the goods also have the right to apply to the Tribunal (eg. an appliance hire company).

Auctioning of goods

Once the uncollected goods have been stored for 30 days, they may be sold by public auction.

The landlord is required to account to the tenant for the balance of the proceeds of the sale after the deduction of the reasonable costs of removal, storage and sale of the goods.

Notice to tenant required

If the uncollected goods are stored, a landlord or their agent must take the following steps within seven days of placing the goods into storage:

- provide the tenant with a written notice that the goods are in storage, and
- publish the notice in a Statewide newspaper.

The notice may be given to the tenant by posting it to the last forwarding address known to the landlord. It may also be given to a person who was nominated by the tenant before the tenant vacated the premises.

The notice must contain the following:

- the landlord's name and address, or an address where the goods can be claimed
- the tenant's name
- the address of the rented premises
- a description of the goods
- a statement that, on or after a specified date, the goods will be sold by public auction unless they are first claimed, and the reasonable costs of removal and storage, but not other costs (e.g. outstanding rent), are paid, and
- a statement that the landlord will retain the reasonable costs of removal, storage and sale from the proceeds of the auction.

Claiming uncollected goods

A person who is entitled to possession of the goods left in the premises may claim them at any time before they are disposed of or sold, provided the landlord is satisfied that the claim is genuine.

The landlord is entitled to require payment of the actual costs of removal and storage of the goods being claimed before allowing the goods to be collected.

If the claim is for some but not all of the uncollected goods, and the remaining goods are still worth enough to cover reasonable costs of removal and storage of all of the goods, the landlord must deliver up those claimed goods without requiring payment for the costs of removal and storage of those claimed goods.



13 Where to get more information

Tenancy and rental bond information

The Department of Fair Trading provides a free information service to tenants, landlords and agents on their rights and responsibilities under the tenancy law. If you require more information please contact:

Renting Services

Level 4, 234 Sussex Street, Sydney NSW 2000

Postal Address

Locked Bag 19, Darlinghurst NSW 2010

TTY: 9377 9099 (*Telephone service for the hearing impaired.*)

- **Tenancy Information**

Tel: 9377 9100 or Freecall: 1800 451 301 (outside Sydney)

For general tenancy information you may also contact your nearest Fair Trading Centre (see back cover for details).

- **Rental Bond Information**

Tel: 9377 9000 Freecall: 1800 422 021 (outside Sydney)

Fax: General Claim Forms only

9283 1508 9283 1490

1800 807 028 1800 803 655

- **Aboriginal Tenancy Information**

Tel: 9377 9200 Freecall: 1800 500 330 (outside Sydney)

Consumer, Trader & Tenancy Tribunal

After you have lodged an application for a hearing, you may contact the Tribunal's Registry for information relating to that hearing.

Registry, Consumer, Trader & Tenancy Tribunal

Postal address:

GPO Box 4005, Sydney NSW 2001

Tel: 1300 135 399 TTY: 9641 6521

Fax: 1300 135 247

Applications for a hearing may also be lodged in person at:

Hurstville Registry
Level 4, 4-8 Woodville St

Parramatta Registry
Level 2, 10 Valentine Ave

Liverpool Registry
Level 1, 45-47 Scott St

Sydney Registry
Level 12, 175 Castlereagh St

Newcastle Registry
Level 1, 175 Scott St

Tamworth Registry
155-157 Marius St

Penrith Registry
Level 1, 308 High St

Wollongong Registry
Level 3, 43 Burelli St

Financial assistance

Some low income tenants may be eligible for financial assistance under the Department of Housing's Rentstart Scheme. For more information on Rentstart please contact:

The Department of Housing

23-31 Moore Street
Liverpool NSW 2170
Tel: 9821 6111
Fax: 9821 6900

Financial or other assistance may also be obtained from charities, churches and other non-government organisations in your local area. Contact your local community centre to find out where you may be able to obtain such assistance.

Discrimination

Some forms of discrimination are prohibited under the NSW Anti-Discrimination Act. Tenants or prospective tenants who believe they have been unlawfully discriminated against may wish to contact the New South Wales Anti-Discrimination board.

NSW Anti-Discrimination Board

Tel: 9268 5555 Fax: 9268 5500
TTY: 9268 5522 Freecall: 1800 670 812 (outside Sydney)

Information services for tenants

Tenants' Advice and Advocacy Services are independent community based organisations funded from the interest on tenants' bonds. Their role is to help both private and public tenants by providing tenancy advice, information and advocacy.



	For tenants living in:	Contact
Inner Sydney	Inner Sydney, South Sydney, Botany and Leichhardt – local council areas	9698 5975
Inner Western Sydney	Ashfield, Burwood, Concord, Drummoyne, Marrickville & Strathfield	9559 2899
Eastern Sydney	Randwick, Waverley & Woollahra	9386 9147
Northern Sydney	Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Manly, Mosman, North Sydney, Ryde, Pittwater, Warringah and Willoughby	9884 9605
Southern Sydney	Bankstown, Canterbury, Hurstville, Kogarah, Rockdale and Sutherland	9787 4679
Western Sydney	Auburn, Baulkham Hills, Blacktown, Blue Mountains, Hawkesbury, Holroyd, Parramatta and Penrith	9891 6377
South Western Sydney	Camden, Campbelltown, Fairfield, Liverpool and Wollondilly	9601 6577
Central Coast	Gosford & Wyong	4353 5515
Hunter	Greater Newcastle & Hunter Valley	4929 6888
Mid North Coast	Greater Taree, Hastings, Kempsey, Nambucca, Bellingen, Coffs Harbour	1800 777 722
North Coast	North Coast council areas	1800 649 135
Illawarra/South Coast	Illawarra & South Coast	1800 807 225
North Western NSW	North West of the Great Dividing Range	1800 642 609
SouthWestern NSW	South West of the Great Dividing Range	1800 642 609

There are also four Services specifically assisting Aboriginal tenants

Greater Sydney	Includes Sydney metropolitan area to Gosford	9569 3847 9621 1653
Southern NSW	Southern NSW	1800 672 185
Western NSW	Western NSW	1800 810 233
Northern NSW	Northern NSW	1800 248 913

Aged Tenants Service		9281 9804
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Tenants' Union Hotline	Web site: www.tenants.org.au	9251 6590
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Services

Tenancy Information

For help on any fair trading issue call your nearest Fair Trading Centre, or call the specialist service listed below which is relevant to your inquiry. A range of Fair Trading services are also available via Government Access Centres (GACs) and other agency locations throughout regional New South Wales. For details, visit the Web site www.fairtrading.nsw.gov.au

Fair Trading Centres – call 13 32 20

Albury	Gosford	Orange	Tamworth
Armidale	Grafton	Parramatta	Tweed Heads
Blacktown	Hurstville	Penrith	Wagga Wagga
Broken Hill	Lismore	Port Macquarie	Wollongong
Coffs Harbour	Liverpool	Queanbeyan	
Dubbo	Newcastle	Sydney	



PLEASE NOTE

When phoning the Department on 13 32 20, your call is automatically diverted to the Fair Trading Centre nearest you, except for calls from mobile phones which are received at our Penrith Call Centre.

Specialist Services

Rental Bond Inquiries	..9377 9000 ....1800 422 021	(outside Sydney)
Tenancy Inquiries	.....9377 9100 ....1800 451 301	(outside Sydney)
	.....9377 9099	(*TTY)
Strata Schemes	.....9338 7900 ....1800 451 431	(outside Sydney)
Aboriginal	.....9377 9200 ....1800 500 330	(outside Sydney)
REVS	.....9600 0022 ....1800 424 988	(outside Sydney)
	.....1300 369 889	(*TTY)
Business Licences	.....9619 8722 ....1800 463 976	(outside Sydney)

TTY9338 4943 * Telephone service for the hearing impaired.

Language assistance

Tel. 13 14 50 Ask for an interpreter in your language.

Department of Fair Trading
1 Fitzwilliam Street Parramatta NSW 2150
PO Box 972 Parramatta NSW 2124
Tel. 9895 0111

www.fairtrading.nsw.gov.au