

Changes to tenancy laws

Script for the video that can be found on the Fair Trading website at:

http://www.fairtrading.nsw.gov.au/About_us/Publications/Changes_to_tenancy_laws/index.html#Scene_1

Hello. You must be interested in finding out about the Residential Tenancies Act two thousand and ten, and how the reforms to NSW tenancy laws affect you. We're here to give you an overview of some of the key changes.

So, do the new laws apply to existing tenancies?

Yes. The new laws apply to *all* residential tenancies in NSW from the date the laws commence.

Existing leases remain valid and there is no need to replace current agreements with new ones. But, if there are any terms in an existing lease that conflict with the new laws, the new laws will apply.

If you would like more information after watching this presentation, there are documents you can download that explain the changes in more detail. Or, if you would like to speak to someone at Fair Trading, call 13 32 20 between the hours of 8.30am and 5pm Monday to Friday.

Beginning a tenancy

1. Before signing a lease

The new laws introduce a number of changes to things that happen *before* a new lease is signed.

First up, a landlord or agent can ask a prospective tenant to pay a holding fee of up to 1 week's rent.

How is this different from a 'reservation fee'?

A holding fee can only be requested from a prospective tenant *after* their tenancy application has been approved.

What does a holding fee do?

Acceptance of a holding fee means the agent or landlord must keep the premises for the prospective tenant for at least 7 days. The property must not be offered to anyone else during this time.

What happens if the tenant changes their mind after paying a holding fee?

If the prospective tenant decides not to go ahead with the tenancy they forfeit the full amount of the holding fee, not just a portion of it, as was the case under the old 'reservation fee' system.

What happens if things change and the landlord or agent *is forced* to withdraw from their commitment to rent the property?

Once a holding fee has been accepted, the landlord is committed to entering into a lease with the prospective tenant. If for whatever reason they do not do this, the prospective tenant can apply to the Tribunal for the matter to be resolved.

Before the tenant signs a lease at the start of a tenancy, the landlord or agent must disclose certain things to them. These include:

- if a sale contract has been prepared for the property
- if a financial institution has commenced court action to take possession of the premises
- and certain material facts about the premises.

What do you mean by material facts?

A material fact is information about the premises that is relevant to the tenant's decision as to whether or not they want to live in the property. For example, if it has any significant health or safety risks, or if a serious flood, bushfire or violent crime has occurred in it in the last 5 years.

What if a landlord has recently bought a property and doesn't know all the *historical* material facts?

There is no expectation that a landlord or agent look into the history of a property. But they *are* required to disclose what they already know about the property to a prospective tenant.

So what happens if any of these things are not told to a tenant?

Failure to disclose this information may mean that the tenant can get out of the lease and seek compensation from the landlord.

2. Lease

The new laws make it clear that a landlord or agent must provide a tenant with a written lease in the standard form at the start of a tenancy. And by the way, the formal name for a lease is residential tenancy agreement.

The new laws also make it clear that landlords and agents are no longer permitted to charge tenants a fee to prepare a lease.

If for some reason a tenancy begins and is *not* covered by a written lease, it is deemed to be a six month agreement.

What does that mean?

It means that for six months, the rent cannot be increased and the tenant cannot be asked to leave unless they breach the terms of a standard lease.

The standard tenancy agreement and the premises condition report have been updated and modernised. As well, certain lease terms are prohibited under the new laws, including compulsory carpet cleaning at the end of a tenancy.

So does this mean that the tenant cannot be charged to clean the carpet if they leave it dirty?

No, the tenant is responsible for leaving the carpet clean. If they don't, the tenant would have to pay for the carpet to be cleaned.

What about if the tenant has a pet?

If the landlord allows the tenant to keep a cat or dog, the lease *can* include a carpet cleaning term. This is the *only* circumstance where a carpet cleaning term could be added to a lease.

3. Rental bonds

Under the new Act, the maximum amount that can be requested as a rental bond is 4 weeks rent, regardless of whether or not the premises are furnished.

Is this a change?

Yes, under the old law, furnished places could attract a higher bond than unfurnished places. The new law caps the bond at 4 weeks, for all premises.

Can a tenant be asked to *top up* a bond to keep it at the 4 weeks rent if the rent goes up during the tenancy?

No, landlords and agents are not allowed to request or receive any bond 'top-ups' during the course of a tenancy.

Rental bonds have to be lodged with Fair Trading and there are new time limits for this.

What is the new lodgement time limit for agents?

Agents have 10 working days from the end of each month to lodge all the bonds they've collected in that month.

And the new time limit for landlords?

Landlords have 10 working days from the date they receive a bond to lodge it with Fair Trading.

Where both parties agree, a bond can be paid off by instalments, and the landlord or agent will be able to retain the part payments until either the bond is fully paid or 3 months has elapsed, whichever happens first.

And it is against the law for more than one rental bond to be charged per lease.

During a tenancy

The rights and responsibilities of tenants and landlords are spelled out in the standard lease.

Here are a few of the important areas of the law which affect landlords, agents and tenants during a tenancy. Remember, there is more detailed information you can download.

1. Rent payments and receipts

The new Act stipulates that tenants have to be given at least one way to pay their rent that does not attract a specific fee. For example, by making a direct transfer into the landlord or agent's bank account.

What happens if a rent payment is dishonoured?

Tenants will have to pay the landlord's bank charges if a rent cheque bounces or a direct debit rent payment is dishonoured.

So what about existing tenants, does this apply to them?

Yes, under the new laws, all tenants, including existing ones, must be given a fee-free way to pay their rent. *And* all tenants will have to pay the landlord's bank charges if a rent payment cannot go through due to a lack of funds.

The maximum amount of rent in advance that can be requested from any tenant is two weeks. Tenants can voluntarily pay more if they want to.

So is this a change?

Yes, under the old law, tenants could be asked for one month's rent in advance if the rent was over \$300 a week. The new laws cap rent in advance to a maximum of 2 weeks, regardless of the amount of the rent.

Landlords and agents can keep rent ledgers electronically, or in any other format and tenants can ask for a copy at any time. Such requests will need to be met within 7 days.

2. Alterations

The new law regarding alterations *does not* give tenants the right to make alterations without approval from the landlord. Tenants must *still* get written permission before doing any alterations to the property.

Under the new Act, landlords must not unreasonably refuse requests from a tenant to add a fixture or make a minor change to the property. For example, installing child safety locks on windows, connecting pay television to the property, or adding picture hooks in rooms which don't have any.

Well what sort of request *can* a landlord refuse?

Landlords can refuse a tenant's request to:

- paint the property
- make structural changes
- make any alterations that are prohibited under another law
- do any work that is not easily rectified, repaired or removed
- do any alterations that are not consistent with the *nature* of the property
- or any other request where it would be reasonable for the landlord to say no.

If there is a dispute over permission for alterations, either party can take the matter to the Tribunal to have it resolved.

3. Protection for domestic violence victims

Victims of domestic violence living in a rented property have the right to change the locks and seek to take over the tenancy if their name is not already on the lease.

That's right, this new provision means immediate protection for domestic violence victims.

A person who has taken out an apprehended violence order will not need to get the landlord's permission to change the locks, so long as the AVO prohibits the violent person from accessing the rented premises. The landlord or agent should be given a copy of the new set of keys within seven days.

4. Water usage

Under the old laws, tenants can be charged for water where there is a separate water meter, such as in most houses. But under the new laws, water efficiency measures have been introduced.

What does that mean?

It means that rented premises must be *made* water efficient if tenants are to pay for their water.

What about for existing tenancies?

Landlords who wish to continue charging their existing tenants for water will have 12 months from the start of the new laws to install water efficient measures.

And for new tenancies?

Landlords will need to install water efficiency measures in their rented premises *before* starting a new lease if they want to charge their tenants for water usage.

Another change is the introduction of time limits to these arrangements. Landlords must seek payment from their tenant within 3 months of receiving a water bill. And tenants will have 21 days to pay their landlord for the water used.

Under the old laws, if there is no individual water meter for a rented property, as is the case with most blocks of units, a tenant cannot be charged for water. This is unchanged under the new laws.

5. Sub-letting

If a tenant wants a new or replacement co-tenant to move in and sign the lease, the tenant first needs to ask the landlord for permission.

Under the new laws, a landlord cannot unreasonably refuse a tenant's request to bring in a new co-tenant or sub-let *part* of the premises, such as the granny flat downstairs, the spare room or the parking space.

Can the landlord ask for any information about the person looking to move in or sub-let? Yes, they can even sit down and have a chat with them if they want to.

On what basis *can* a landlord refuse?

The law says it *is* reasonable for a landlord to refuse a sub-letting or co-tenancy request under a number of circumstances. These include:

- If it would result in overcrowding
- If the person was listed on a bad tenant database
- If the number of occupants permitted under the lease would be exceeded
- or any other good reason.

If the tenant believes the landlord's refusal is unreasonable, they can take the matter to the Tribunal to have it resolved.

Landlords have complete discretion to refuse a request from a tenant to sub-let the whole premises.

6. Rights of co-tenants

When more than one person signs the lease, all those who sign are called co-tenants. Co-tenants each have a legal contract with the owner of the property and share full responsibility for the tenancy.

The new laws recognise the rights of co-tenants for the first time.

If there is a dispute, a co-tenant can apply to the Tribunal for an order to terminate their own tenancy, the tenancy of another co-tenant, *or* the tenancy as a whole, which would bring the agreement with the landlord to an end.

Once the fixed term period of the lease is over, a co-tenant can give 21 days notice if they want to move out and end their contract with the landlord. This will bring an end to their joint legal liability with the other co-tenants for things like future rent and damage to the property.

The remaining co-tenants will need to decide whether or not they want to keep the tenancy going, get someone else in, or give their own notice to move out.

7. Sale of rented premises

If rented residential premises are to be sold, the tenants must be told about this at least 14 days before the first inspection is to take place.

Is this a change?

Yes. This is to address situations that occurred in the past where tenants have come home to learn their place is for sale by finding a 'for sale' sign in the front yard.

Under the new laws, the selling agent must try to come to an agreement with the tenant about what days and times the premises will be open for inspection.

Two inspection periods each week are allowed, such as one evening and on Saturday, and the parties can negotiate if more access is required.

What if the agent and tenant can't agree on inspection times?

The agent or landlord still has the right to show the property to potential buyers. They don't need the tenant's consent but the tenant must be given at least 48 hours notice.

The tenant may ask for a rent reduction during the inspection period to compensate them for being inconvenienced. It is up to the parties to negotiate what the amount of any discount might be.

Ending a tenancy

1. Termination notices

Under the new Act, a landlord or agent has to give at least 30 days notice if they want the tenant to move out *when* the fixed term period ends.

Under the old laws, this was 14 days notice, is that right?

Yes, that's right. But this has been replaced by a 30 day notice period.

Also changing under the new Act is the notice period that applies when the fixed term has *already* ended. The landlord or agent has to give at least 90 days notice if they want the tenant to move out *after* the end of the fixed term.

Under the old laws, this was 60 days notice, right?

Yes, that's right. But this has been replaced by a 90 day notice period.

The new laws also allow a tenant to leave at any time after receiving notice from the landlord *without* having to give their own notice. In addition, the tenant is only liable to pay rent until they return vacant possession to the landlord, and by that I mean they have moved out and handed the keys back.

Is this a change?

Yes, under the old laws, a tenant would have to stay until the end of the notice period or give their own notice and *possibly* have to pay rent on two places for a period of time.

So if a tenant is given 90 days notice after the lease has already ended, are they liable to pay rent for the whole 90 days?

No, the tenant is only liable for rent until they move out, which can be at any time during the 90 days.

Under the new laws, termination notices, and *any* notice for that matter, issued by either a landlord, agent or a tenant, can be hand delivered to the mail box of the other party.

So, is this a change?

Yes. It provides a speedy alternative to posting a notice through the mail because it avoids the need to add four working days to the notice period.

Another new change is that the Tribunal can overlook errors in the content of a termination notice or the way it has been served. As long as the Tribunal decides that the person receiving the notice has not been significantly disadvantaged by those errors, the notice will be acceptable.

The period of notice that has to be given by a tenant stays the same. A tenant will have to give at least 14 days notice if the fixed term period is due to end and at least 21 days notice if the fixed term period has already ended.

2. Rent arrears evictions

When a tenant cannot pay their rent on time, they fall behind and are in 'rent arrears'. Being in rent arrears is a reason for the landlord to evict a tenant.

The new law streamlines the rent arrears eviction process in two ways:

1. The termination notice can be hand delivered to the tenant's mail box, avoiding the need to add four days to the notice period for postage

2. the Tribunal application for a termination order can be made at the same time as the notice is given to the tenant, cutting up to 2 weeks off the time it takes to get an application heard.

The termination notice must spell out for tenants that they have 3 options:

1. pay the arrears amount in full
2. follow a repayment plan that is acceptable to both parties
3. move out by a specified termination date.

If a tenant offers to pay the landlord or agent a full payment of rent arrears at any time, the landlord or agent must accept it.

So landlords and agents are *not* allowed to refuse the payment in order to get the tenant evicted?

That's right, rent arrears payments must be accepted even if they are offered at the last minute.

But what happens when tenants are repeatedly late with their rent?

Landlords and agents can apply to the Tribunal for a termination order. The Tribunal *will* be able to issue an order if the landlord or agent can show that the tenant is frequently late with their rent. The order can be enforced *even if* the tenant pays and the landlord or agent accepts the rent arrears.

3. Certainty for landlords

At the end of a fixed term tenancy, it is not uncommon for a landlord to want their tenant to move out. To do this, the landlord or agent would generally issue a termination notice asking the tenant to move out by a certain date.

What happens if the tenant doesn't move out?

If the tenant doesn't vacate the premises by the due date, the landlord or agent can apply to the Tribunal for an order to terminate the tenancy.

Does this resolve the situation?

Well, under the old laws, the Tribunal could use its discretion to allow the tenant to stay living in the premises, despite the landlord's wish to get their property back. But under the new laws, this discretion has been completely removed. Provided the landlord or agent served a proper termination notice, the Tribunal *must* order the tenant to vacate the property.

Are there any exceptions to this?

Yes, if the tenant can show that the notice was retaliatory, the Tribunal can decide to let the tenant stay living in the premises.

What does *retaliatory* mean?

I can best explain it by using an example. Suppose a tenant has just taken the landlord to the Tribunal to get some repairs done. Then, soon after, they receive a termination notice. In this situation, the Tribunal may find that the landlord wanted to terminate the tenancy as a way of punishing the tenant. This is what is meant by a 'retaliatory' notice.

4. Breaking an agreement

Under the new laws, there are four specific situations when a tenant can break a fixed term lease without penalty.

And what are they?

1. if they accept an offer of public housing
2. if they need to move to a nursing home
3. if the landlord puts the property up for sale without telling the tenant before the lease was entered into, or
4. where a co-tenant is the subject of a final AVO barring them from the premises.

In these situations, the tenant can give 14 days notice to end the tenancy and is not liable to pay any compensation or other amount to the landlord.

Under the new laws, parties to a tenancy agreement have the option of including a break fee in the lease.

When does the break fee apply?

The break fee applies if the tenant breaks the lease before the end of the fixed term period. The exception to this is in those special circumstances I mentioned a moment ago.

The amount of the break-fee is set under the new laws:

- In the first half of the fixed term period it is 6 weeks rent
- In the second half of the fixed period it is 4 weeks rent.

What if there is no break fee in the lease?

The tenant would still be liable to compensate the landlord for any loss, which resulted from them breaking the lease early. For example, they may need to pay rent until the landlord or agent can find a new tenant.

Upon the death of a tenant, the tenancy can be terminated at any time by the tenant's executor, any other legal personal representative, or the landlord.

In these situations the estate will only be liable to pay an occupation fee until vacant possession is given to the landlord. The occupation fee is an amount equivalent to the rent.

5. Immediate grounds for eviction

A landlord can go straight to the Tribunal for a termination order, without having to give a termination notice, under certain circumstances. Under the new laws, these circumstances have been expanded. They are:

- If a tenant uses the premises for illegal purposes,
- If a tenant injures, threatens, abuses, intimidates or harasses the landlord, or their agent, employees or contractors
- If any occupants cause serious damage or injury, or
- If serious damage or injury is caused to neighbouring property.

What is meant by using the premises for illegal purposes?

Well, this doesn't mean things that are simply a breach of the agreement, like keeping an animal without consent. This is directed at serious criminal activities such as the manufacture or cultivation of illegal substances on the premises.

6. Goods left behind

Under the new laws, rubbish and perishable items left behind after a tenant moves out can be disposed of immediately. For all other goods, including a tenant's personal documents, a landlord is required to make reasonable attempts to notify the former tenant that their goods will be disposed of unless collected within a certain period.

How long do goods need to be kept?

General goods such as furniture and clothing must be held for at least 14 days. Personal documents such as photos and bank statements have to be kept for at least 90 days.

How do tenants get their goods back if they want them?

Landlord and agents have to make a reasonable effort to notify the former tenant about the goods they have left behind. The notification can be given in writing, in person or over the phone. The tenant can collect their goods during the notice period.

Can tenants be charged for this?

Yes, but only if sufficient goods have been left behind to hinder re-letting of the premises. In these situations, landlords can only charge a storage fee which is equal to the rent. A maximum of 2 weeks fee can be charged.

What happens if the tenant cannot be contacted or doesn't want their things?

The landlord or agent can dispose of the items after the end of the notice periods in any appropriate legal manner. Official documents like passports and Medicare cards can be returned to the issuing authority.

Well, we've reached the end of this presentation. We hope you found it a useful and informative introduction to the Residential Tenancies Act 2010.

More detailed information is available for you to download.

This document must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.