

# Living there

## Information for renters

This edition includes a change relating to 'urgent repairs' that came into effect on 1 September 2006. This change will be included in the next printed edition of this publication, due in 2007.

Living in a rented property means that a tenant (renter) enters a trading transaction with a landlord. As in all trading situations both parties have rights and responsibilities (obligations) to make their partnership work successfully.

### Landlord's obligations

The rented premises must be reasonably clean and fit to live in when a tenant moves in.

The rented premises must be maintained in a 'reasonable' state of repair, considering the age of the premises, the rent paid and the prospective life of the premises.

### Tenant's obligations

Keep the premises 'reasonably' clean. Any gardens, lawn or yard which the tenant has exclusive use of must also be kept neat and tidy.

Tell the landlord/agent about any damage to the premises as soon as possible.

Leave the premises in a similar condition as it was at the start of the tenancy except for fair wear and tear.

Do not deliberately or negligently damage the premises or permit anyone else to. Negligence means not doing 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.

Do not add or remove any fixtures or fittings, or do any renovations, alterations or additions without the landlord's written permission (the landlord is entitled to refuse permission).

**IMPORTANT** – Tenants must notify the landlord of any damage to premises, as soon as possible, regardless of who or what caused the damage. This notice should be in writing.

### Rent increases

If rent is increased, this usually occurs 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 be given at least 60 days notice in writing. The notice must show the amount of the increased rent and the date from which it is to be paid.

For rent to be increased during the fixed term period of the agreement, details to this effect would need to be written into the agreement. An additional term would need to state the amount of the increase (or the method of calculating the increase) and the day from which it is to be paid.

Written notice of 60 days must still be given. If the notice is posted, at least 4 working days must be added to the amount of the notice to allow time for the notice to be delivered.

### Challenging an increase

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

**Negotiate** – the landlord may agree to reduce the amount of the increase or withdraw it altogether. They may be persuaded by evidence of market rents in the area or what the tenant has done to the premises. The tenant should carefully explain the reasons why they believe the increase is too high in a letter to the landlord. If the landlord agrees to lower the increase, this should be put in writing. Another 60 days notice is not necessary and the lower increase becomes due from the same date the original increase was payable.

### Apply to the Consumer, Trader and Tenancy Tribunal

(CTTT) – tenants can apply to the CTTT to have the proposed increase reduced or withdrawn if they believe that the increase is too high. Department of Housing tenants receiving a rent rebate cannot do this.

Applications to the CTTT must be made within 30 days of receiving the rent increase notice. Tenants have to prove that the increase is excessive.

### Rent arrears

If the tenant gets into arrears, they should contact their landlord/agent and explain the situation. They may be able to come to an agreement about paying off the arrears over time. Any agreement should be confirmed in writing and notes made of any conversations with the landlord. This may be helpful if the matter has to go to the CTTT at a later date.

The landlord can give the tenant a notice of termination if they are more than 14 days behind in their rent. The termination notice must give the tenant 14 days to leave. If the notice is mailed, the landlord/agent must allow 4 working days for postage on top of the 14 days. The tenant should check the dates on the notice carefully.

If the tenant does not comply with the notice, the landlord/agent must apply to the CTTT for a hearing to decide whether the tenant has to leave.

Tenants are entitled to stay in the premises until the CTTT orders an end to the tenancy and give a date to leave. The landlord must follow this process and it is illegal for them to evict the tenant without an order from the CTTT.

### Getting repairs done

Under the *Residential Tenancies Act*, repairs are classified as either 'urgent' or 'non-urgent'. Residential premises must always be 'fit to live in'. Landlords are obliged to organise any urgent repairs, as soon as reasonably possible, after having been notified by the tenant of the fault or damage.

**IMPORTANT** – Under no circumstances should a tenant stop paying rent.

### Urgent repairs

Urgent repairs are for 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.

The landlord/agent must first be given a reasonable opportunity to arrange the repair work, or if they cannot be reached, any properly qualified tradesperson nominated in the tenancy agreement should be contacted. If the landlord/agent failed to nominate a tradesperson in the agreement, the tenant can contact any qualified tradesperson. The tenant can spend up to \$1,000 on urgent repairs (up from \$500 on 1 September 2006 under the Residential Tenancies Regulation 2006) and must be reimbursed within 14 days by the landlord/agent.

### Non-urgent repairs

The following steps are recommended for repairs or other work that needs to be carried out:

1. The tenant should contact the landlord/agent and explain the problem and what needs to be done. Record the date of all conversations and a summary of what was said (this will be important if the problem is not easily resolved).
2. If the landlord/agent agrees to the repair or work, the tenant should write a letter confirming what was agreed to.
3. If the landlord/agent says no to the repair or work, the tenant should keep paying rent and carefully consider how important the repair or work is.

If the tenant considers the repair or work important enough, the tenant should write a letter to the landlord/agent outlining what and why it needs to be done, giving a reasonable time limit in which to have the work completed.

4. If the work is not done within a reasonable time, the tenant should write a final letter to the landlord/agent explaining that they intend to seek help from an advisory service or apply to the CTTT.
5. The tenant can contact a tenants' advisory service (see back page for more information) for assistance.
6. The tenant can apply to the CTTT for an order that the landlord carries out the work to maintain the premises in a reasonable condition. The CTTT can also grant compensation or allow the rent to be paid to the CTTT until the work has been completed.

## Locks and security

The landlord is required to provide and maintain locks or other security devices to ensure that the rental premises are 'reasonably' secure.

What is 'reasonably secure' will vary in different situations. The potential risk (likelihood of premises being broken into) will have a bearing on the type and standard of locks needed to make a property reasonably secure and will depend largely on the area in which the premises are located. But even then, the same standard cannot be applied to all premises within the area.

The 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', merely another factor to be taken into account.

Neither the tenant nor the landlord can change or remove locks and security devices without the permission of the other except:

- in an emergency
- with a reasonable excuse
- with an order from the CTTT.

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

## Fixtures and fittings

The landlord has the right to refuse any requests by a tenant to add fixtures or otherwise change the look of the premises. Fixtures added by tenants cannot be removed without the landlord's permission. If the landlord refuses to allow the fixture to be removed, the tenant must be compensated for the value of the fixture (depreciation should be considered). If removing a fixture causes damage, the tenant is responsible for repairing the damage or compensating the landlord.

## Privacy and access

It is a term of every tenancy agreement that all tenants have a basic right to privacy and quiet enjoyment of the premises. This right must be respected by landlords/agents. The landlord must make sure that they, or anybody on their behalf, do not interrupt these basic rights.

The landlord, agent or any person authorised by the landlord may enter the premises only in certain circumstances (the table on the following page lists these circumstances).

### Can a tenant refuse access?

A tenant does not have the right to refuse access to the landlord or someone with written permission from the landlord if they have been given proper notice. However, there is nothing to stop the tenant from negotiating a more acceptable arrangement. If the tenant is not given proper notice they have the right to refuse access.

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)



Reason for access	Minimum notice to tenant
In an emergency or for urgent repairs	None
To do repairs and maintenance	2 days
To inspect the premises	7 days (not more than four times a year)
To show the premises to prospective buyers or mortgagees	Reasonable* (can only show the premises a reasonable* number of times)
To show the premises to prospective tenants	Reasonable* during the 14 days before the agreement ends
If the landlord has good reason to believe the premises are abandoned	None
If the tenant gives permission	None
Consumer, Trader and Tenancy Tribunal Order	As specified on the Order

\* The Act does not define what is *reasonable* notice. This should be negotiated between the parties.

The landlord/agent **cannot** enter the premises:

- on a Sunday or a public holiday – unless the tenant agrees
- before 8.00 am or after 8.00 pm – unless the tenant agrees.

If anyone besides the landlord/agent wants to enter the premises, they must have written permission from the landlord/agent and show it to the tenant.

Fair Trading enquiries 13 32 20  
TTY 1300 723 404  
Language assistance 13 14 50

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

## Changes to shared tenancies

In a shared tenancy (usually made up of flat-mates or house-mates), there may be more than one householder's name listed on the rental bond. If one or more people listed on the rental bond changes, a 'Change of shared tenancy agreement' form should be completed and lodged with Fair Trading. This is to ensure that bond records are up to date. To use this form, one original household member must still be in the premises. The form should be signed by:

- the remaining tenants
- the person(s) leaving
- the person(s) moving in and
- the landlord/agent.

Contact Fair Trading for a copy or download the form from the Fair Trading website.

## Tenancy advisory services

Tenants' Advice and Advocacy Services (TAAS) are independent community-based organisations that provide tenancy advice, information and advocacy for both private and public tenants.

Tenancy advisory services are located throughout metropolitan Sydney and regional NSW. There are specialist Aboriginal tenancy advisory services and an advisory service for seniors.

The contact details for tenancy advisory services are listed in the *Renting guide*, the Fair Trading publication landlord/agents are required to give to tenants at the start of a tenancy.

Contact the Office of Fair Trading for a copy of the *Renting guide* or download it from the Fair Trading website.

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

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