

Moving in

Information for renters

Most residential tenancies in NSW are covered by the *Residential Tenancies Act*, which sets out the rights and obligations of both tenants (renters) and their landlords.

The *Act* also gives the Consumer, Trader and Tenancy Tribunal power to hear and settle disputes about residential tenancies, including bond disputes.

The *Act* covers private tenants and public or 'social housing' tenants including the Department of Housing, community housing and Aboriginal Housing Office tenants. (However, social housing providers are exempt from some parts of the *Act*).

Residential tenancy agreement

It is a requirement of the *Act* that landlords or their agents must offer the tenant a written tenancy agreement (lease) before the start of a tenancy. The lease sets out the rights and obligations of all parties. A tenant should always insist on being given a copy of the lease. In the event that the law is broken and a tenancy exists without a written lease the *Act* protects the tenant in the same manner as if a written agreement had been signed.

The *Act* states that agreements between landlords and tenants must use a set of standard terms which cannot be changed. If a tenant or landlord does not carry out their responsibilities listed in the agreement, they may be in breach of a term of the agreement (and therefore may be in breach of the *Act*).

Most residential tenancy agreements also have a section called 'Additional Terms' where the landlord can include any extra terms. These are negotiable but the landlord cannot add terms which conflict with either the *Act* or one of the standard terms set out in the agreement. Any such terms are not binding or enforceable, even though the tenant may sign the agreement.

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

- automatically being required to steam-clean carpets
- being responsible for repairs to the stove
- penalties for paying rent late.

The tenancy agreement comes in two parts:

Part 1 – sets out the terms of the agreement between the landlord/agent and the tenant.

Part 2 – is the Condition Report that describes the condition of the premises at the time the tenant moves in.

Under the *Act*, a copy of a Fair Trading publication called the *Renting guide* must also be given to the tenant by their landlord/agent when the tenancy agreement is signed.

IMPORTANT – Tenancy agreements should be read carefully before being signed. The landlord/agent should be able to explain anything that is not clear. Tenants should contact Fair Trading or a Tenant Advisory Service (see back page) if any part of the agreement is not understood.

Condition Report

The tenant must be given a copy of the Condition Report when they move in. The tenant and landlord use the report to record the condition of the property and it is completed by both the landlord/agent and tenant at the start and also at the end of the tenancy.

The landlord/agent initially completes the Condition Report and gives two copies to the tenant to record their assessment of the property. The tenant has seven (7) days to fill in both copies and return one to the landlord/agent. The tenant keeps the other.

It is important that tenants take the time to inspect the property thoroughly and record on the report the condition of the property as they see it. If the landlord/agent disputes the return of the bond at the end of the tenancy, a carefully completed condition report may help a tenant prove that the bond should be refunded.

Common conditions that can easily be missed are cracked windows, grease on the stove, marks on the walls or stains on the carpets. All of these conditions should be noted on the report.

If a Condition Report is not provided, the tenant should write a detailed report on the condition of the property and get a witness to sign and date it and send a copy to their landlord/agent.

If repairs are needed, the tenant should ask the landlord/agent to get them completed and obtain agreement in writing. There is also a section on the Condition Report for listing repairs that are promised.

The tenant should keep their copy of the Condition Report in a safe place – it will be needed at the end of the tenancy when an inspection is done.

Reservation fees

A tenant may be asked to pay a reservation fee while the landlord is deciding whether to accept their application. The maximum a landlord can ask for is one week's rent and only one reservation fee can be held for a particular property at a time. A reservation fee is a sign of good faith, but does not guarantee that the tenancy will go ahead.

The prospective tenant must be given a receipt for the reservation fee paid. If their application is accepted, the reservation fee becomes the first week's rent.

If the application is not accepted or the landlord makes no decision within 1 week of the fee being paid, the full amount must be refunded.

If the applicant withdraws, the landlord may retain rent for the days the premises were reserved but only if the premises were not let or occupied during the period of reservation, no more than one reservation fee was being held, and a proper receipt and written acknowledgement were given to the prospective tenant when the fee was paid.

Costs

A tenant is required to pay rent in advance (less any reservation fee) from the first day of their tenancy:

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

In addition, a tenant will usually be asked to pay a bond (no more than 4 weeks rent unless premises are furnished).

Tenants may also be asked to pay a fee for the preparation of the tenancy agreement but only up to \$15.

The landlord should give the tenant a written statement of the costs before the agreement is signed. Security deposits for electricity, gas and telephone are not part of the residential tenancy agreement. The tenant must organise for these to be paid direct to the relevant authorities.

The bond

The landlord may request a tenant to pay a bond at the start of the tenancy as security in case the tenant does not follow the terms and conditions of the agreement.

If a bond is paid, both the tenant and the landlord/agent must sign a completed bond lodgement form and then (the form and the money) should be lodged by the landlord/agent with the Office of Fair Trading within seven (7) days.

Once lodged, all parties should receive an advice of lodgement that states a rental bond number. If the advice is not received, the tenant should telephone Fair Trading to confirm that the bond had been lodged. It is an offence for a landlord/agent not to lodge a rental bond with Fair Trading if they request one from their tenant.

Rent and rent receipts

The tenant and landlord should agree on the rent to be paid and the method of payment before the tenant moves into the property. These arrangements should be written into the tenancy agreement.

The landlord must give the tenant rent receipts showing the landlord or agent's name, the tenant's name, the address of the property, the period for which the rent is paid, the date the rent is received and the amount paid.

However, the landlord does not have to give their tenant a receipt if the rent is paid direct into a bank or building society account or where the rent is paid by automatic deduction.

Rent collection service

A collection agent is usually a person or organisation who collects rent on behalf of a managing agent.

If a tenant agrees to pay their rent through a collection agent, they enter into a contract with the collection agent. The collection agent may charge a fee for this service and if there are direct debits from a tenant's bank account for rent payment, bank fees may also be charged.

Tenants should be aware that the collection agent and the bank can charge additional fees if there are insufficient funds in the bank account at the time the collection agent attempts to debit their account.

Before agreeing to use the services of a collection agent, it is important that tenants read and understand the terms of the contract they would be entering into.

Electronic rent payments

The landlord/agent 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.

Security

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

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.

If the tenant considers the property to not be 'reasonably' secure, they can request the landlord to install door and/or window locks and other security measures before they sign the agreement. The tenant should make a note of the landlord's promises on the Condition Report.

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, so 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.

Keys

All tenants listed on the agreement are entitled to receive a set of keys free of charge. This includes keys to all doors, window locks, the garage, letterbox and any other security keys or remote control devices.

The tenant pays for the cost of replacing any keys that are lost.

The landlord/agent is not permitted to request a deposit/bond for any keys, security tags or remote control devices.

Water and sewerage charges

From 5 December 2005 the following information does not apply to public housing tenants.

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

A tenant can be asked to pay water usage as a part of the bill if all the following conditions are met:

- the rented premises is individually metered
- the tenant has signed a residential tenancy agreement with an additional term about 'water usage' usually under clause 29 of the standard form of residential tenancy agreement) and
- the local water supply authority does not have a minimum amount payable for all properties.

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

A tenant can only be charged for the metered amount of water that they use. For this reason, it is important that the water meter is read and the figure noted on the Condition Report before the start of the tenancy, ensuring that a new tenant does not pay for the water of any previous tenants.

Tenancy advisory services

Free tenancy advice, information and advocacy services for private and public tenants are provided by community organisations throughout NSW.

Tenants Union

Hotline: 9251 6590 or 1800 251 101

<http://www.tenants.org.au/>

Fair Trading enquiries 13 32 20

TTY 1300 723 404

Language assistance 13 14 50

www.fairtrading.nsw.gov.au

Tenants' Advice and Advocacy Services (TAAS)

Inner Sydney	9698 5975
Inner Western Sydney	9559 2899
Eastern Sydney	9386 9147
Northern Sydney	9884 9605
Southern Sydney	9787 4679
Western Sydney	9891 6377
South Western Sydney	4628 1678
Central Coast	4353 5515
Hunter	4969 7666
Mid North Coast	1800 777 722
Northern Rivers	1800 649 135
Illawarra/South Coast	1800 807 225
New England and Western NSW	1800 836 268
South West NSW	1800 642 609
Aged Tenants Service	9281 9804 1800 451 488

Aboriginal tenancy advisory services

Greater Sydney – servicing Sydney Metro, Hawkesbury, Wyong, Gosford, Blue Mountains and Wollondilly	9564 5367 1800 772 721
Southern NSW	1800 672 185
Western NSW	1800 810 233
Northern NSW	1800 248 913

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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