



OFFICE OF **FAIR TRADING**

*NSW Consumer Protection Agency*

**Department of Commerce**

# The tenancy handbook

A reference manual for agents, self-managing landlords and tenancy advisers

*FT254*

*December 2004*



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

## Role of the Office of Fair Trading

The Office of Fair Trading administers the laws governing residential tenancies in NSW. Besides this handbook, Fair Trading produces a range of other publications to help inform landlords, agents and tenants, about their rights and responsibilities. These publications are available in print and on the Fair Trading website.

Sometimes print information alone is not enough. When problems arise, a pro-active approach may be more appropriate to prevent disputes from escalating. Minor tenancy problems can become major issues if not dealt with early enough. This can create stress and financial loss for both tenant and landlord.

The Office of Fair Trading encourages landlords and agents to intervene earlier when tenancy problems first emerge. This can be achieved in a number of ways. For instance, a tenant may be experiencing a temporary personal crisis that affects their tenancy. Rather than taking immediate disciplinary action, a landlord or agent could choose to provide tenants with information on where they can go for help.

The Office of Fair Trading will be working with tenancy advisers, agents and landlords at the local level to maximise our combined efforts to reduce the incidences of escalation in tenancy matters. When problems occur, resolving them quickly is not only good for tenants, it also benefits landlords by minimising the possibility of financial loss.

Contact details of information services that can assist landlords, agents and their tenants are listed in this handbook.

### Additional copies

#### **This publication is not available for re-ordering.**

It is distributed bi-annually by the Office of Fair Trading to real estate agents, self-managing landlords, housing providers and organisations providing advice and assistance to tenants.

Organisations wishing to receive a copy bi-annually should register their details through our website:

[www.fairtrading.nsw.gov.au/realestaterenting.html](http://www.fairtrading.nsw.gov.au/realestaterenting.html)  
or by fax on 9619 8618.

**This publication can be viewed or printed from the Publications page of our website at:**  
**[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)**

### Disclaimer

This publication is a plain language guide to your rights and responsibilities. It must not be relied on as legal advice. For more information please refer to the appropriate legislation or seek independent legal advice.

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## Introduction

### Purpose of this booklet

This handbook is intended to be used as a reference manual for real estate agents, landlords, housing providers and organisations involved in providing advice and assistance to tenants occupying residential premises in NSW. It explains in simple language the rights and responsibilities of landlords and tenants under tenancy law.

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

### The Act

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

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.



*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.*

### Exemptions

The Act does not apply to:


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

This is not the complete list of exemptions, others apply. If there is uncertainty as to whether the Act applies please contact an information service (see next page).

# 1 Resolving problems

## First step

The first step in resolving any problem or dispute is to carefully read the term/s of the tenancy agreement and get information as soon as possible about the matter.

 *It is always best for a landlord/agent and a tenant 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 Office of Fair Trading has specialist Customer Service Officers from whom landlords, agents, tenants 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 and Strata Services Branch of the Office of Fair Trading or your nearest Fair Trading Centre (see back page).

## Renting and Strata Services Branch of the Office of Fair Trading

Level 4, 234 Sussex Street, Sydney NSW 2000

Postal Address

Locked Bag 19, Darlinghurst NSW 1300

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

### • Tenancy information

Tel: 9377 9100 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 9283 1508 1800 807 028 (outside Sydney)

Fax: claim forms 9283 1490 1800 803 655 (outside Sydney)

### • Aboriginal tenancy information

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

Tenants also have the option of contacting their local Tenants' Advice and Advocacy Service for more information about their rights and obligations. See page 6 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 and Tenancy Tribunal. See page 7 for further details.

## Financial assistance for tenants

Financial or other assistance may also be obtained from charities, churches and other local non-government organisations. To find out where to obtain such assistance, tenants should contact the nearest Tenants' Advice and Advocacy Service (see page 6 for details).

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

### The Department of Housing

23-31 Moore Street

Liverpool NSW 2170

Tel: 9821 6111

Fax: 9821 6900

## Discrimination

Some forms of discrimination are prohibited under the *NSW Anti-Discrimination Act*. For further information on discrimination contact the New South Wales Anti-Discrimination board.

### NSW Anti-Discrimination Board

Tel: 9268 5555

Freecall: 1800 670 812 (outside Sydney)

TTY: 9268 5522

Fax: 9268 5500

## Information services for tenants

Tenants' Advice and Advocacy Services are independent community based organisations, providing tenants with 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	4628 1678
Central Coast	Gosford & Wyong	4353 5515
Hunter	Greater Newcastle & Hunter Valley	1800 654 504
Mid North Coast	Greater Taree, Hastings, Kempsey, Nambucca, Bellingen, Coffs Harbour	1800 777 722
Northern Rivers	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 836 268
SouthWestern NSW	South West of the Great Dividing Range	1800 642 609
Aged Tenants Service		9281 9804 1800 451 488
Tenants' Union Hotline	website: <a href="http://www.tenants.org.au">www.tenants.org.au</a>	9251 6590 1800 251 101

### There are also four Services specifically assisting Aboriginal tenants

Greater Sydney	Includes Sydney metropolitan area, Hawkesbury, Wyong, Gosford, Blue Mountains & Wollondilly	9564 5367 1800 772 721
Southern NSW	Southern NSW	1800 672 185
Western NSW	Western NSW	1800 836 268
Northern NSW	Northern NSW	1800 248 913

## 2 The Consumer, Trader and Tenancy Tribunal

### General

The Consumer, Trader and Tenancy Tribunal (CTTT) is an independent decision making body which hears and decides applications for orders from landlords and tenants. The Tribunal is a quick, inexpensive, and relatively informal way of resolving disputes.

Applications may be obtained from any CTTT Registry, the CTTT website, [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au) or any Fair Trading Centre. Applications may be lodged by post, online or at any CTTT Registry, Fair Trading Centre or Local Court. See below for Registry office locations and back page for Fair Trading Centres.

### Consumer, Trader and Tenancy Tribunal

Postal address:

GPO Box 4005, Sydney NSW 2001

Tel: 1300 135 399 TTY: 9641 6521

Fax: 1300 135 247

### Consumer, Trader and Tenancy Tribunal Registry locations

#### Hurstville Registry

Level 3, 4-8 Woodville St

#### Liverpool Registry

Level 3, 33 Moore St

#### Newcastle Registry

Level 1, 175 Scott St

#### Penrith Registry

Level 1, 308 High St

#### Parramatta Registry

Level 2, 10 Valentine Ave

#### Sydney Registry

Level 12, 175 Castlereagh St

#### Tamworth Registry

Cnr Kable Ave and Darling St

#### Wollongong Registry

Level 3, 43 Burelli St

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

### Costs

Fees apply. Check with the Tribunal on 1300 135 399 or their website [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au)

Hearings are usually held within one month and are conducted at a venue as close as possible to the rented premises.



*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.*

## 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 be sought within 30 days of becoming aware of the event. The application time limits are included in the Tribunal's Tenancy Division application form.

## Orders

The Tribunal can make orders, among others that:

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

## Hearings

The Member will first ask the parties to try and reach a settlement if possible with the assistance of a Tribunal conciliator. All evidence should be exchanged at this time. If settlement 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 under oath. Witnesses can be called if necessary although the hearing may have to be adjourned to another day to enable this to occur.

# 3 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, in duplicate), filled out where appropriate in the space provided
- a written statement as to the costs payable by the tenant on signing the agreement
- a copy of the *Renting guide* brochure.



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

## Tenancy agreement

The law requires that there must be a written tenancy agreement between all landlords and tenants. The agreement must be provided by the landlord or the landlord's agent. Agreements can be purchased from most newsagencies and stationery stores. They are not available from Fair Trading Centres.

The *Act* contains a standard form of tenancy agreement that must be used in all circumstances. Each tenancy agreement must consist of two 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. 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 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 information service. See page 4.*

## 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 unless it is terminated by either the landlord or the tenant. If it is not terminated, the agreement becomes a continuing agreement with the same terms and conditions.

# 4 Tenancy databases

**Many real estate agents use tenant databases to identify potentially unreliable tenants. The Property, Stock and Business Agents Amendment (Tenant Databases) Regulation 2004, which commenced on 15 September 2004, introduced new rules of conduct in relation to listing people on tenant databases for real estate agents to follow.**

## Who does the Regulation apply to?

Real estate agents who manage property and on-site residential property managers and their registered employees.

## When does the Regulation come into effect?

The Regulation applies to any listing made on or after 15 September 2004. The Regulation does not apply to listings made prior to 15 September 2004.

## What are the agent's responsibilities under the Regulation?

An agent must not use the services of a database operator unless the database is operated in accordance with the Regulation.

## Before a residential tenancy agreement has been signed

An agent must advise the tenant, verbally or in writing, that if they breach the agreement their personal information could be listed on a tenant database.

It is recommended that the agent keep a written record of such notification as proof of compliance.

## Before a tenant is listed

The following conditions must be met:

- The agent must have provided property management services in respect of the tenant's residential tenancy agreement.
- The residential tenancy agreement must be terminated.
- An agent must:
  - notify the tenant/former tenant, in writing, of their intention to list them on a tenant database and the reason for doing so
  - give the tenant a reasonable opportunity to respond and review or correct any personal information to be listed.

However, an agent does not have to notify a tenant or give a tenant that opportunity, if the agent cannot locate the tenant after making reasonable

inquiries. The agent must keep a written record of the notification and any response by the tenant, or attempts to locate the tenant, for at least five years.

If the agent and tenant cannot agree about the personal information to be listed, the agent must note the tenant's objection on the database.

### Reasons for listing a tenant

An agent cannot list a tenant for a trivial or subjective reason – a tenant can only be listed for specific reasons, as explained below:

- The tenant owes the landlord money for rent and/or damage caused intentionally or recklessly to the residential premises (but only if the amount owing exceeds the amount of the rental bond).
- Failure to pay an amount of money to the landlord in accordance with an order of the Consumer, Trader & Tenancy Tribunal (Tribunal).
- Where the Tribunal has issued a termination and possession order for breach of the residential tenancy agreement.
- Where the Tribunal has issued a termination and possession order for serious or persistent breach of the residential tenancy agreement.
- Where the Tribunal has issued a termination and possession order where the tenant causes serious damage or injury.

### Listing a tenant for money owed due to damage to the residential property

Before listing a tenant for this reason, the agent must:

- complete a condition report
- note the damage on the condition report
- report the damage to the police and be given the corresponding incident number; and
- check whether the tenant has made an application to the Tribunal regarding the residential tenancy agreement. An agent cannot list a tenant for money owed due to damage unless the Tribunal has determined such an application.



*It is recommended that agents keep a written record of correspondence with the tenant/former tenant as proof of compliance. See clause 4(6) of the Regulation – some records have to be kept for five years.*

### After a listing has been made

It is recommended that an agent tries to send a copy of the listing to the tenant after a listing has been made on a tenant database.

### How long can a listing stay on a tenant database?

It varies, depending on why the tenant is listed and whether a debt is involved. For listings made after 15 September 2004, agents must abide by the following rules.

#### For non payment of a debt

If a tenant owes the landlord money, and the debt is paid **within** three months, then within seven days of becoming aware that the payment has been made, the agent must notify the database operator who must then delete reference to that debt from the database within seven days of being notified.

If this is the only listing for a tenant, the operator must remove the tenant altogether from the database when the debt is deleted.

If a tenant owes the landlord money, and the debt is paid **after** three months, then within seven days of becoming aware that the payment has been made, the agent must notify the database operator who must then record the payment on the database within seven days of being notified. The database operator must delete all reference to that debt after three years.

Once again, if this is the only listing for a tenant, the operator must remove the tenant altogether from the database when the debt is deleted.

#### For other allowable reasons

If a tenant is listed for an allowable reason other than non-payment of a debt (see 'Reasons for listing a tenant' above), the database operator must delete any reference to that listing after three years.


In cases of non-payment of a debt and other allowable reasons, the tenant would not be removed from the database altogether if any other listings for them were still current or if they had been listed prior to 15 September 2004.

### What to look for in a compliant tenant database operator

Under the Regulation, an agent must only contract with tenant database operators who:

- ensure that listed tenants have cost-free access to their listed personal information

- amend listed information that the tenant claims is incorrect, inaccurate or incomplete at no cost to the tenant (unless the agent disputes the claim)
- make a note on the database of the tenant's objection to the listed information, or if an agent disputes a tenant's request for amendment of listed information, and
- delete listings within the timeframes specified by the Regulation.


 *It is the agent's responsibility to use a database that is operated in accordance with the Regulation – if in any doubt, the agent should discontinue using the operator.*

### Penalties and disciplinary matters

Fines of up to \$4,400 for corporations and \$2,200 for individuals and partnerships apply for non-compliance with the Regulation. A breach of a rule of conduct can also lead to disciplinary action being taken under the Regulation, which can result in cancellation or disqualification of a licensee.

## 5 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. three 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 two 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 seven days and keep the other copy for themselves.

### Promised repairs


 *If the landlord or agent agrees, 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.*

## 6 Entry costs

The following entry costs may be incurred before or at the time of signing a tenancy agreement:

### Reservation fee

A reservation (deposit) fee is an amount of money (no more than one 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 one 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. 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:

- four weeks rent, for unfurnished premises, or
- six 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 and Strata Services Branch of the Office 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 and Strata Services Branch of the Office of Fair Trading or from any branch of the Commonwealth Bank. The tenant will receive a receipt for the bond from Fair Trading. The Department of Housing has a separate lodgement form, where they pay bonds on behalf of tenants.

 *It is an offence not to lodge the rental bond and may mean the landlord is liable to a financial penalty.*


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:

- two weeks rent in advance, if the weekly rent is \$300 or less, or
- one 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.

Rent is the main charge that tenants have to pay on a regular basis. The level of rent and the method of rent payment should be agreed upon before the tenancy begins. Both should be written into the tenancy.

### 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.*

# 7 Rent


Rent is the main charge that tenants have to pay on a regular basis. The level of rent and the method of rent payment should be agreed upon before the tenancy begins. Both should be written into the tenancy agreement in the spaces provided. Rent payments are GST free. The method of rent payment cannot be changed during the agreement period unless the tenant agrees.

## 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 amount of rent paid
- the date the rent was paid
- the name of the tenant
- the name of the landlord or agent
- 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.


## Use of collection agents to collect rent

A collection agent is a person or organisation who collects rent on behalf of an agent who is managing the property for the owner.

To operate the service the collection agent enters into an agreement with both the tenant and the landlord. The collection agent may charge a fee to both the tenant and the landlord for this service. The rent is automatically deducted from the tenant's bank account and deposited into the agent's trust account. The agent is responsible for remitting the rent (less any commission or expenses) to the landlord.

## How can rent be increased?

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 be given at least 60 days notice in writing. The notice must show the amount of the increased rent and the day from which it is to be paid. This also applies where an existing agreement is to be renewed.

 *For rent to increase during a fixed term tenancy the agreement must have an additional term showing the amount of increase or the method of calculating it. A 60-day rent increase notice must be given.*

If the notice is sent by post, at least four working days (not including the day the notice was sent) should be added to the amount of the notice, to allow time for the notice to be delivered. 'Working days' excludes Saturdays, public holidays and bank holidays.


## Challenging rent increases

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

### 1. Negotiate with the landlord or agent


Based on the reasons given by the tenant, the landlord or agent may agree to reduce the amount of the increase or withdraw it altogether. The landlord/agent may be persuaded by evidence of market rents in the area or what the tenant has done to improve the premises.

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

 *If the condition of the premises is the reason the tenant thinks the increase is too high they may raise this with the agent or landlord. For instance, the tenant may agree to pay the rent increase if the landlord is prepared to paint the premises. It is up to the landlord to consider the costs involved in any such proposal.*

### 2. Apply to the Consumer, Trader and 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. Department of Housing tenants receiving a rent rebate cannot do this.

 *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.*

## 8 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 and at the end of each tenancy. Otherwise there will be no way of dividing the first account between a new tenant and a former occupant.*

If there is no individual meter for the rented premises, as is the case with some 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 should be provided with 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.

## 9 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 and inspections

The landlord, agent or any person authorised by the landlord 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 four inspections in any 12-month period.
- to carry out **necessary repairs** if the tenant is given at least two 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.*

# 10 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.

For an important safety alert about gas water heaters, see page 24.

Tenants can spend up to \$500 on urgent repairs and should be reimbursed within 14 days by the landlord (see page 22 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, the tenant should use any properly qualified tradesperson nominated in the agreement. Refer to the 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 include a yard, lawns and gardens, they 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.

## Removing fixtures

When removing fixtures the following conditions apply:

- Fixtures added by tenants cannot be removed without the landlord's permission.
- If removing a fixture causes damage, the tenant is responsible for repairing the damage or compensating the landlord.
- If the landlord refuses to allow the fixture to be removed, the landlord must compensate the tenant for the value of the fixture.



### Safety alert – gas water heaters

Gas water heaters that have not been properly maintained have been responsible for deaths and serious injuries. If your property has a gas bath heater or flued instantaneous water heater in the bathroom, or a flueless water heater in the kitchen, it could be a source of danger.

The Australian Gas Association and the Office of Fair Trading recommend that all gas water heaters are serviced regularly by approved service agents and when replaced are installed externally to reduce the risk of an accident.

Landlords are obliged to ensure that fixed appliances are safe.

#### *Important tips – always ensure:*

- *an authorised gas service agent regularly services the water heater*
- *the bathroom and kitchen heaters have unobstructed ventilation*
- *heater flue pipes are free from all restrictions and holes*
- *there is no evidence of the heater burner creating soot deposits*
- *look for signs of discolouration on or around the heater and flue*
- *all new and replacement gas water heaters are installed externally to the building.*

*For further information please contact the gas retailer, or the Master Plumbers Association of NSW on toll free 1800 424 181, or the Office of Fair Trading on 13 32 20.*

# 11

## 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 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.

# 12 Ending the tenancy

## Notice

A tenancy will usually be terminated by either the landlord or the tenant giving notice to the other party.

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 actual date **on** which the tenant is requested, or intends, to move out (**NB: do not use words such as 'by' or 'on or before' or 'within 14 days' in the notice**)
- give full details of all breaches (if any) or reasons for ending the agreement
- and, when 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.

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



*If the notice is sent by post at least four 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. 'Working days' excludes Saturdays, public holidays and bank holidays.*

## 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 are 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 exchanged). This is only applicable to continuing tenancy agreements.

## 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.

## What if the tenant doesn't vacate the premises?

It is important to realise that if a tenant does not vacate after a notice of termination is given that an order from the Tribunal must be obtained before possession can be taken. There are very heavy penalties for not obeying this part of the law.

## 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 giving the date they intend to leave and ask for the landlord (or agent) to help find a new tenant.

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 and make a reasonable effort to find a new tenant, otherwise any claim they later make may be reduced by the Consumer, Trader and Tenancy Tribunal. For example, a landlord who uses the opportunity to lease the premises at a higher rental may not be entitled to claim any compensation.


## Undue hardship

A landlord or tenant can at any stage of the tenancy apply to the Consumer, Trader and 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 landlord/agent and tenant must carry out a final inspection of the premises. The original condition reports should then be completed by both parties. A reasonable opportunity must be given to the other party to attend the final inspection. 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 at the start of the tenancy by the landlord or agent. A tenant may be charged for rent up until the keys are returned.


### Bond refunds

During the tenancy, the rental bond is held by the Office 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. A tenant should not be asked to sign an incomplete claim form. Claim forms can be obtained from any Fair Trading Centre, Renting and Strata Services Branch of the Office of Fair Trading, Commonwealth Bank branches or the Office's website – **[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)** Alternatively, property managers registered for the Rental Bond Internet Service (RBIS) can submit claims online. Contact Renting and Strata Services Branch of the Office of Fair Trading for further information about RBIS.

If agreement cannot be reached, either party may send a claim form to Renting and Strata Services Branch of the Office 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.

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


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

# 13 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 and 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.

## Abandoned or 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 two 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.

A landlord may then lodge an application with the Tribunal seeking an order as to the disposal or sale of the stored goods. Such an order will protect the landlord against any future claims. Alternatively the landlord may follow the procedures outlined in 'Auctioning of goods'.

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 (eg. 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 32 20

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

## Fair Trading Centre locations

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

## Fair Trading Centres – call 13 32 20 for general enquiries

### Specialist services

Rental bond .....	9377 9000 ..1800 422 021	(outside Sydney)
Tenancy .....	9377 9100 ..1800 451 301	(outside Sydney)
Strata schemes .....	9338 7900 ..1800 451 431	(outside Sydney)
Aboriginal tenancy.....	9377 9200 ..1800 500 330	(outside Sydney)
.....	9377 9099	(*TTY)
REVS .....	9633 6333 ..1800 424 988	(outside Sydney)
.....	1300 369 889	(*TTY)
Business licences.....	9619 8722 ..1800 463 976	(outside Sydney)
Registry of Co-operatives and Associations .....	6333 1400 ..1800 502 042	(outside Bathurst)
Consumer, Trader and Tenancy Tribunal (CTTT) .....	1300 135 399	

TTY .....9338 4943 \* Telephone service for the hearing impaired.

### Language assistance

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

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

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