

Residential Tenancies Act 2010

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019*. This factsheet briefly outlines NSW residential tenancies law – including coverage of the Act, your rights and obligations, and certain terms of the standard tenancy agreement.

What the Act means for tenants

- Most residential tenancies in NSW are covered by the *Residential Tenancies Act 2010* ('the Act').
- The Act and the regulations set out a standard residential tenancy agreement that gives rights and obligations to landlords and tenants.
- The Act gives the NSW Civil and Administrative Tribunal (NCAT) power to hear and settle disputes about residential tenancies, including bond disputes.

Who the Act covers

- private tenants who have a written or oral residential tenancy agreement
- social housing tenants, including tenants of DCJ Housing, community housing providers and the Aboriginal Housing Office. Social housing providers have certain specific rights and obligations under the Act
- people who *rent a home* in a land lease community

Who/what the Act does not cover

- people who *own a home and rent a site* in a land lease community are covered by the *Residential (Land Lease) Communities Act 2013*. (see tenants.org.au/noticeboard)
- 'protected' tenants living in premises covered by the former *Landlord and Tenant (Amendment) Act 1948*
- residential aged-care or respite-care premises
- serviced apartments, hotels, motels and backpackers hostels
- hospitals and nursing homes
- club premises used to provide temporary accommodation
- premises used mostly for the purpose of trade, profession, business or agriculture
- holiday parks occupation agreements
- retirement village residence contracts
- refuge or crisis accommodation agreements
- boarding and lodging agreements (see Factsheet 14: *Boarders and lodgers*)
- agreements giving the right to occupy residential premises for no more than 3 months for a holiday
- other short term (no more than 3 months) rental accommodation that is not your principal place of residence. This includes accommodation booked through online services like Stayz, Airbnb and competitors. See more information on Short-Term Rental Accommodation at <https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation>

more information on Short-Term Rental Accommodation at <https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation>

The Act also does not apply:

- where a tenant made an agreement in good faith for the sale, purchase or mortgage of the residential premises
- where a tenant is a shareholder living in company title premises
- where a tenancy agreement is part of an equity purchase agreement which gives the tenant an option to buy
- to most family arrangements.

Your rights under the Act

- to be given a copy of the residential tenancy agreement, a condition report completed by the landlord/agent and the NSW Fair Trading *New tenant checklist*
- to have premises rented to you in a reasonable state of cleanliness and fit to live in
- to be given rent receipts (unless you pay rent into a nominated bank account)
- to be offered at least one means of paying the rent for which you do not incur a cost
- rent increases no more than once every 12 months, during a periodic (continuing) lease
- to be given 60 days written notice of a rent increase
- to have quiet enjoyment and use of the premises – the landlord/agent must not interfere with your possession of the premises
- to have reasonable peace, comfort and privacy
- to have reasonable locks and security
- to have reasonable repairs and maintenance done
- to be given permission to make changes of a minor nature, e.g. installing curtains or child safety measures
- to be repaid for any urgent repairs that you have paid for – up to \$1000
- to apply to the Tribunal for orders if the landlord has broken the tenancy agreement
- to be given written notice of the landlord wanting to end the tenancy agreement
- to be notified of the change of name and address of the landlord or their agent
- to refuse the landlord access except in certain circumstances and with proper notice
- not to be unlawfully evicted.

- The landlord/agent must state a fixed amount of rent in the advertisement or offer for the property and must not solicit or otherwise invite a higher offer than the advertised amount.

Your obligations under the Act

- to fill out the condition report and give the landlord/agent a copy within 7 days
- to pay rent on time
- to pay water usage and utility charges (electricity, gas or oil) on time, if the premises are separately metered and have prescribed water efficiency measures installed
- to care for the premises
- to pay for any damage caused by you or your guests
- to report the need for any repairs or maintenance
- not to make alterations or additions without the landlord's permission (the landlord must not unreasonably withhold consent for changes of a minor nature)
- not to alter, remove or add a lock or security device without the landlord's consent (except in certain domestic violence situations)
- not to use or permit the premises to be used for an illegal purpose
- not to cause or permit a nuisance
- not to interfere with the peace, comfort or privacy of neighbours
- to give correct written notice when you leave
- to leave the premises in a similar condition to when you rented them, except for normal wear and tear.

Terms of the standard tenancy agreement

The Act says that landlords must use the standard terms set out in the *Residential Tenancies Regulation 2019*. Many of the terms are the same as those listed above.

The terms of the standard residential tenancy agreement cannot be varied (except for tenancy agreements that are for a fixed term of 20 years or more – contact your local Tenants' Advice and Advocacy Service for more information).

If you do not carry out your responsibilities you can be said to have 'breached' (broken) term/s of the agreement.

Prohibited terms

Section 19(2) of the Act says: "Terms having the following effects must not be included in a residential tenancy agreement:

- that the tenant must have the carpet professionally cleaned, or pay the cost of such cleaning, at the end of the tenancy [unless the cleaning is required because animals have been kept on the premises during the tenancy],
- that the tenant must take out a specified, or any, form of insurance,
- exempting the landlord from liability for any act or omission by the landlord, the landlord's agent or any person acting on behalf of the landlord or landlord's agent,
- that, if the tenant breaches the agreement, the tenant is liable to pay all or any part of the remaining rent under the agreement, increased rent, a penalty or liquidated damages,
- that, if the tenant does not breach the agreement, the rent is or may be reduced or the tenant is to be or may be paid a rebate of rent or other benefit."

In addition, the Regulation says:

"A residential tenancy agreement must not contain a term having the effect that the tenant must use the services of a specified person or business to carry out any of the tenant's obligations under the agreement."

Inconsistent and prohibited terms are void

A term is void if it is:

- inconsistent with any term of the standard residential tenancy agreement, or
- prohibited by the Act or regulations.

Additional terms

Additional terms may be included in the standard residential tenancy agreement if:

- both you and the landlord agree to them
- they do not conflict with the *Residential Tenancies Act 2010* or any other legislation
- they do not conflict with the terms of the standard agreement.

If you are unsure about an additional term, get advice from your local Tenants' Advice and Advocacy Service or apply to the Tribunal for an order that the term is invalid.

See also

- New Renters Kit: tenants.org.au/resource/nrk
- Podcast: Getting a foot in the door: tenants.org.au/resource/renting-matters#ep1
- Easy Read factsheets: tenants.org.au/resource/easy-read

Factsheet updated October 2023

For free advice, call your local Tenants Advice & Advocacy Service:

SYDNEY:

- Eastern 9386 9147
- Inner 9698 5975
- Inner West 9559 2899
- Northern 9559 2899
- Southern 9787 4679
- South West 4628 1678
- Western 8833 0933

REGIONAL:

- Blue Mountains 4704 0201
- Central Coast 4353 5515
- Hunter 4969 7666
- Illawarra Sth Coast 4274 3475
- Mid Coast 6583 9866
- Northern Rivers 6621 1022
- Northwest NSW 1800 836 268
- Southwest NSW 1300 483 786

ABORIGINAL:

- Sydney 9833 3314
- West NSW 6881 5700
- South NSW 1800 672 185
- North NSW 1800 248 913

This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia. ©Tenants' Union of NSW

WEBSITE: tenants.org.au

NSW FAIR TRADING: 13 32 20

