

Starting a tenancy

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019*. This factsheet outlines the law in NSW about starting a tenancy – including the form of the residential tenancies agreement, what information you can expect the landlord or agent to provide, what costs you can be asked to pay, and the rules about the condition report.

The residential tenancy agreement

The residential tenancy agreement is a contract. It has standard 'terms' that are the tenant's and landlord's rights and obligations.

Tenancy agreements are usually in written form. They can also be oral (e.g. a conversation with the landlord), or partly written–partly oral. All agreements must follow the *Residential Tenancies Act 2010* ('the Act').

A landlord should provide the tenancy agreement in writing. If not, then during the first 6 months of the tenancy, they cannot increase the rent and cannot end the tenancy without a legally specified reason.

There are two types of agreement:

- fixed term – for a specified period (e.g. 12 months)
- periodic – ongoing, no fixed term is specified

Additional terms

The landlord may include additional terms in the standard tenancy agreement if:

- both you and the landlord agree to them
- they do not conflict with the Act 2010 or any other laws
- they don't conflict with the terms of the standard agreement

Also see Factsheet 01: *Residential Tenancies Act*.

Tenancy agreements in share housing

If you rent part of the premises from another tenant, it is in your interest to have a written tenancy agreement with them. See Factsheet 15: *Share Housing* and Factsheet 18: *Transfer and sub-letting*.

Landlord/agent to provide information

Before signing a tenancy agreement

If a landlord decides to enter into a tenancy agreement with you, they (or their agent) must not knowingly hide any of these 'material facts' from you:

- the premises have been subject to serious flooding or bushfire in the last 5 years
- the premises have significant health/safety risks that are not apparent on inspection
- the premises have been the scene of a serious violent crime in the last 5 years
- council waste services will be different from others in the council area
- you cannot get a free residential parking permit (in an area where only paid parking is available)
- the premises have a driveway or walkway that others can legally use
- the premises was the scene of a drug offence under the *Drug Misuse and Trafficking Act 1985* in the last 2 years
- the premises is listed on the Loose-fill Asbestos

Insulation (LFAI) Register maintained under the *Home Building Act 1989*

- if you are renting in a strata scheme – any scheduled repairs to common property during your fixed term

If your premises is in a building where a rectification of the building's external combustible cladding is required, the landlord/agent must tell you if any of the following have been issued in relation to this:

- fire safety order / notice of intention to issue a fire safety order
- a building rectification order or notice of intention to issue a building rectification order
- a development application or complying development certificate application for rectification of the building

The landlord (or their agent, if the agent is aware) must also tell you if either of the following apply:

- they propose to sell the premises (if they have prepared a contract for sale of the premises)
- a mortgagee has started court proceedings to enforce a mortgage over the premises.

You may be able to terminate your tenancy if your landlord fails to disclose any of these material facts to you. See Factsheet 09: *You want to leave*.

Landlord's information statement

A landlord must sign an acknowledgment on the tenancy agreement that they have read and understood the contents of an information statement which sets out the landlord's rights and obligations under the law.

Real estate agents signing this acknowledgement must first obtain a written statement from the landlord that the landlord has read and understood their rights and obligations as set out in the information statement.

Social housing providers (including NSW Land and Housing Corporation, community housing providers & the Aboriginal Housing Office) are exempt from signing this acknowledgment.

On signing a tenancy agreement

The landlord/agent must give you a NSW Fair Trading *New tenant checklist*. If you are renting in a strata scheme, they must give you a copy of the strata by-laws within 7 days, and inform you if a strata renewal committee is currently established for the scheme.

Landlord's/agent's contact details

Before or when you sign the tenancy agreement, the landlord/agent must give you these contact details in writing (or include them in the tenancy agreement):

- the name, phone number and business address of the landlord's agent (if any) and the name and phone number or other contact details of the landlord
- (if there is no agent) the business or residential address

and phone number of the landlord

- (if the landlord is a corporation) the name and business address of the corporation.

Costs at the start of a tenancy

A landlord/agent can only ask you to pay:

- a holding fee • rent in advance • a bond.

Get a detailed receipt for any payments you make.

Financial help

The Rentstart loan scheme helps disadvantaged tenants in the private rental market with money for bond and rent in advance. Apply through DCJ Housing (call 1300 468 746).

Holding fees

A landlord/agent may ask you to pay a holding fee on approval of your application for a tenancy. The most they can ask for is one week's rent.

The landlord/agent can hold only one fee at a time. On receiving a holding fee, they can't enter into an agreement with another prospective tenant for 7 days (or longer, if you both agree).

Upon signing the tenancy agreement, the fee goes toward the rent from the first day of your tenancy.

The landlord/agent must refund the fee if:

- they decline to enter into the tenancy agreement, or
- you refuse to enter into the tenancy agreement because the landlord/agent made any false or misleading statement, or they failed to tell you any 'material facts'.

If you otherwise decide not to enter into the tenancy agreement, the landlord/agent can keep the fee.

Rent in advance

The landlord/agent or the tenancy agreement cannot require you to pay more than 2 weeks rent in advance (you may choose to pay more). They cannot demand further rent until it falls due and cannot ask for a post-dated cheque.

Bond

The bond is money you pay at the start as security in case you don't follow the terms of the tenancy agreement.

- The bond must only be in the form of money.
- The landlord/agent must take only one bond for a tenancy agreement.
- The bond must not be more than an amount of 4 weeks rent.
- The landlord/agent must not require that you pay a bond before you sign a tenancy agreement.
- The landlord/agent must deposit the bond with Fair Trading
- The landlord/agent must give you the option of using the voluntary NSW Fair Trading Rental Bonds Online system, however they may not require you to use this system.

See Factsheet 03: *Bond* for more information.

The condition report

The landlord/agent must fill in a condition report and provide this to you when you move in. The report describes the condition of the premises. The landlord/agent must give you 2 copies –one for you to keep and one for you to return to them. You must complete your condition report and return one copy to the landlord or agent within 7 days of moving in. If the landlord/agent does not give you a condition report, write a detailed report on the condition of the premises yourself and have a witness sign and date it.

Completing the report

Inspect the premises and complete the report carefully. The report will be used as evidence if the landlord/agent disputes the return of your bond at the end of the tenancy. It is also a good idea to take photographs at the start (and the end) of the tenancy, and store them in a safe place.

If the landlord undertakes to do cleaning, repairs, additions or other work, write details in the section 'Landlord's promise to undertake work'.

Keys for each tenant

The landlord/agent must give each tenant named in the tenancy agreement a free copy of the keys (or other opening devices) for the premises and for common property that the tenants are entitled to access.

Disputes and complaints

Get advice from your local Tenants' Advice Service about applying to the Tribunal or complaining to Fair Trading.

You can apply to the Tribunal for order/s that:

- the landlord prepares and enters into a written tenancy agreement
- a term of the tenancy agreement is invalid because it is inconsistent with the law
- a holding fee is refunded to you (whether or not you enter into a tenancy agreement)
- the condition report is amended

You can complain to Fair Trading if a landlord/agent, for example:

- charges extra (other than holding fee, rent in advance and bond) before you enter into an agreement, or for preparing a written agreement
- withholds any 'material facts', proposed sale or mortgagee action, or makes any false/misleading statement before you enter into an agreement
- includes prohibited terms in the tenancy agreement (see Factsheet 01: *Residential Tenancies Act*).
- asks for a bond of more than 4 weeks rent

Factsheet updated: March 2020

For free tenancy advice, call your local Tenants' Advice and 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

WEBSITE: tenants.org.au

NSW FAIR TRADING: 13 32 20

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