

Repairs and maintenance

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019*. This factsheet summarises the law in NSW about repairs and maintenance for rented premises – including the obligations of landlord and tenant, and how to get repairs done, whether they are ‘urgent’ or ‘non-urgent’.

Your obligations as a tenant

Under the terms of the standard residential tenancy agreement (your lease), you agree to:

- keep the premises ‘reasonably’ clean
- tell the landlord of any damage/disrepair as soon as possible
- leave the premises as near as possible to the condition they were in at the start of the tenancy, except for ‘fair wear & tear’
- not damage or permit damage to the premises deliberately or negligently – you are responsible for damage by anyone who you have allowed onto the premises
- not add or remove any fixtures or do any renovations or alterations to the premises without the landlord’s written consent (unless permitted under the tenancy agreement)

If you do not meet these obligations, the landlord may apply to the NSW Civil and Administrative Tribunal (NCAT) for order/s that you comply with your tenancy agreement, or to end your tenancy or for compensation.

The landlord’s obligations

The landlord agrees to:

- provide the premises in a ‘reasonably’ clean state and fit for you to live in
 - provide & maintain the premises in ‘reasonable’ repair, even if they told you about any disrepair before you moved in
 - make any repairs referred to in the original condition report
- ‘Reasonable’ repair depends on the age of the premises, the amount of rent you pay and the potential life of the premises. The landlord is not required to fix any damage that you cause. However, if they later want to claim compensation from you for that damage they must try to limit the cost of any repair or replacement. Contact your local Tenants’ Advice and Advocacy Service for advice about this.

Urgent repairs

Urgent repairs means work needed to repair any of the following:

- failure or breakdown of the gas, electricity or water supply
- failure or breakdown of any essential service for hot water, cooking, heating, cooling or laundering
- fault or damage that makes the premises unsafe or insecure
- serious damage from a natural disaster

Examples of damage include:

- a burst water pipe
- a gas leak
- an appliance or fixture (such as a tap) that is not working or broken and is causing a substantial waste of water
- a blocked or broken toilet
- a serious roof leak
- a dangerous electrical fault
- serious damage by flood, storm or fire
(see also Factsheet 22: *Disaster damage*)

For smoke alarm repairs, see Factsheet 20: *Smoke alarms*

Getting urgent repairs done

Tell the landlord/agent – in writing if possible – about what needs fixing. Follow up any conversations with a letter. Keep a copy of the letter and a record of any conversations as evidence that you told the landlord/agent.

If there is no electricity or water it may be up to the service provider to fix the problem (if it is outside the boundary of the premises). See also Factsheet 23: *Utilities*.

If the landlord/agent cannot be contacted or is unwilling to do any urgent repairs, or if they are taking too long to do them, you can arrange for the repairs to be done. Do not pay any more than \$1,000 or you may not get your money back – the landlord is only required to pay you for any reasonable costs up to \$1,000. They are obliged to pay within 14 days of your notice.

You must be able to show that:

- the problem was not your fault
- you made a ‘reasonable’ attempt to contact the landlord/agent
- you gave them a ‘reasonable’ chance to do the repairs
- the repairs were carried out by a repair person named in your tenancy agreement (if possible) or by a licensed or qualified tradesperson

You must give the landlord/agent written notice about the repairs, costs and copies of receipts.

If the landlord does not pay, apply to the Tribunal within 3 months from the end of that 14 days for an order that they do.

If you cannot afford to pay for urgent repairs, apply to the Tribunal for an urgent hearing for the repairs to be done. You can also apply for a rent reduction until the repairs are done. See ‘Applying to the Tribunal’ below.

Getting ‘non-urgent’ repairs done

Tell the landlord/agent in writing what work needs to be done and by when – give a clear deadline. Keep a copy of the letter and a record of any conversations as evidence that you told the landlord/agent. If you deal with an agent, you can also:

- write details of the problem in the agency’s complaint book
- contact the agency licence holder (the principal or manager)
- contact your landlord directly.

Doing non-urgent repairs yourself

You must have the landlord’s prior consent before undertaking non-urgent repairs or maintenance. Ask the landlord to pay you for any costs. Get their consent and agreement to pay in writing.

If the landlord does not do repairs

Keep paying your rent. A ‘rent strike’ is a breach of your tenancy agreement, and the landlord may take steps to end your tenancy.

Apply to the Tribunal for order/s – see below.

Applying to the Tribunal

You can apply for one or more of the following orders if you are having difficulties regarding a non-urgent repair (see above for how to deal with an urgent repair):

- that the landlord do the repairs you have specified
- that the landlord compensate you for losses you suffered because they did not do the repairs
- that all or part of the rent is paid to the Tribunal until the repairs are done
- that the rent is reduced for the period that the premises are/were in disrepair

For (a), (b) and (c) you must apply within 3 months of the landlord failing to meet your deadline for repairs. For (d) you must apply before the end of the tenancy.

See Factsheet 11: *NSW Civil and Administrative Tribunal* and contact your local Tenants' Advice and Advocacy Service for help to make an application.

What you must be able to prove to the Tribunal

For the Tribunal to make orders for repairs, you must be able to show that:

- the premises were not in reasonable repair
- you told the landlord/agent about the need for the repairs (e.g. you wrote to them) or they ought to have reasonably known about it (e.g. they inspected the premises)
- the landlord/agent did not make a reasonable effort to have the repairs done

Compensation

You can apply for an order that the landlord compensate you for economic loss. For example:

- You had to spend money on take-away food because the landlord failed to fix the stove.
- Your belongings were destroyed or damaged because the landlord failed to fix a leaking roof.

You must be able to show that your loss was caused by the landlord's failure to do the repairs.

You also need to show that you attempted to limit the cost to you of the damage (e.g. reducing water damage to your furniture by moving it from under a leak) otherwise the Tribunal may not order compensation.

The Tribunal can order up to \$15,000 compensation.

Rent to be paid to Tribunal

The Tribunal will usually only consider this order when the landlord has not complied with a previous Tribunal repairs order. You can include it in your application, in case you have to return to the Tribunal later.

Rent reduction

The Tribunal may make an order that the rent is, or was, excessive due to a reduction or withdrawal by the landlord of any goods, services or facilities provided with the premises. For example: The landlord fails to repair a broken-down hot-water system. Apply for an order that the rent was excessive for the time you were without hot water.

If the Tribunal finds the rent is excessive, it can order:

- the amount that the rent must not exceed
- the day from which this maximum rent applies – for a period of up to of 12 months

See Factsheet 04: *Rent increases* for how to prepare an excessive-rent case.

Minimum habitability standards

From 23 March 2020, seven standards have been added to the Residential Tenancies Act. They are for:

- structurally soundness
- adequate lighting
- adequate ventilation
- adequate utilities
- adequate plumbing and drainage
- adequate water (including hot) for drinking, washing, and cleaning
- bathroom facilities, including toilet, and washing facilities with privacy

These standards are to assist understanding of the landlord's obligation to provide premises "fit for habitation".

Rectification Orders (from 23 March 2020)

NSW Fair Trading (the government department) will have power to make orders for repairs by landlords and tenants. This is intended to assist in resolution of disputes about repairs. It is intended to be an alternative to Tribunal application, but does not preclude such application. The legislation considers application, fees, investigation, orders and penalties. Written request for the repairs must be made by a landlord or tenant before they can apply for a rectification order. More detail and forms are available on the Fair Trading website at fairtrading.nsw.gov.au

See also

Factsheets on *Locks and security, Privacy and access, Smoke alarms, Disaster damage, Utilities, Mould, Asbestos and lead* – at tenants.org.au

Pests and vermin: see <https://www.fairtrading.nsw.gov.au/housing-and-property/renting/during-a-tenancy/health,-safety-and-security>

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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