

Strata renting

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019*. If you rent in a strata scheme you are also covered by the *Strata Schemes Management Act 2015*. This factsheet summarises some of the key issues for tenants, such as the owners corporation, repairs to common property, by-laws, resolving disputes, and pets.

The owners corporation

The owners corporation (once called the 'body corporate') is the company of all the individual owners of the flats in a strata title building.

Decisions about the management of the whole building are made by meetings of the owners corporation. The owners corporation will likely contract an agent to deal with day-to-day management.

Strata committee meetings

Owners corporations where 50% or more of the lots are occupied by tenants, and those tenancies have been reported to the owners corporation, must arrange for a meeting at which a tenant representative can be elected at least 7 days before each Annual General Meeting (AGM).

Tenant representatives may participate in meetings of the strata committee only by speaking – they are not permitted to make motions or vote on motions. Any tenant is permitted to attend the AGM but is not permitted to speak or vote without permission of the meeting.

Consider speaking or writing to those who can vote at these meetings to gain support for things like getting repairs done. You might attend a meeting & speak about a problem you have.

Older strata schemes may have a noticeboard displaying strata committee meeting minutes. Schemes started after 1 July 1997 will generally not have a noticeboard.

Repairs to common property

The owners corporation is required to properly maintain all areas of common property. This includes outside walls, shared laundries, stairwells, foyers, lifts and common parking and garden areas.

Repairs to individual flats are the landlord's responsibility – see Factsheet 06: Repairs and maintenance.

If a problem is clearly on common property, write to the owners corporation or their managing agent and ask for repairs to be done immediately. Send a copy of the letter to your landlord (or their real estate agent). Ask the landlord to take action to make sure the owners corporation does the repairs. Keep copies of all letters.

If the landlord does not chase up the owners corporation to do common-property repairs, you can apply to the NSW Civil and Administrative Tribunal (NCAT) for an order to have the repairs done. In your application you should argue that your landlord's obligation to do repairs includes getting the owners corporation to do repairs.

By-laws and rules

By-laws are the rules for managing the strata scheme. They are registered with NSW Land Registry Services. The landlord/agent must give you a copy of the owners corporation by-laws before entering into the tenancy agreement. This is a disclosure requirement that informs you about the by-laws that will apply should you take up the tenancy.

Your landlord/agent must also inform you of the strata renewal committee, which usually considers selling or redeveloping the strata scheme.

If your landlord/agent fails to disclose these facts to you, they can be fined up to \$2,200. In some cases, you could also seek to end your tenancy. Talk to your local Tenants' Advice Service about the actions you can take.

Examples of by-laws: 'no pets on the premises', 'no access to rooftop after 10pm', 'no bicycles to be chained in the stairwell', 'all floors to have some form of carpet or floor covering'.

Some owners corporations make 'house rules' which they expect all occupants to follow. However, if such rules are not registered as by-laws, they are not lawful.

Under the *Strata Schemes Management Act 2015*, the owners corporation can serve notices on owners or tenants to comply with a by-law. If the notice to comply is not followed, the owners corporation can apply for an order from the NSW Civil and Administrative Tribunal for a fine of \$1,100 to be paid by the owner or tenant.

By-laws are also terms of your agreement with your landlord. Breaches of the by-laws can be treated by your landlord as breaches of your agreement.

Resolving disputes

The *Strata Schemes Management Act 2015* sets out a process for resolving disputes between occupants of strata schemes, or between the owners corporation and an occupant.

Step 1: Mediation

If speaking or writing to each other does not resolve the dispute, apply to the NSW Civil and Administrative Tribunal for mediation (this is required for most disputes under the Act). Get an application for mediation from NSW Fair Trading. Mediation is free.

You can also use a Community Justice Centre, where mediation is also free.

An attempt at mediation is required before some disputes can go to the NSW Civil and Administrative Tribunal.

Step 2: Order by the Tribunal

The Tribunal can hear certain applications by tenants against the owners corporation or other occupants of the strata scheme. Applications cost \$101 (\$25 for a full-time student or pensioner).

If an order is not followed, the matter may go back to the Tribunal. The Tribunal can also award money to the applicant to cover the legal costs but will not order compensation for any losses.

If you want compensation, get advice from a Community Legal Centre about going to court.

You can ask the Tribunal Registrar to waive application fees at any stage of the proceedings, but you will need to show special circumstances.

Keeping pets

Some tenancy agreements have an additional term that says you must have the landlord's consent before you can keep a pet. In strata schemes, some by-laws state that you also need to have written consent of the owners corporation.

In some circumstances, the Tribunal can make an order that the owners corporation has unreasonably withheld its approval to keep a pet.

A by-law imposing a blanket ban on keeping pets has been found to be "harsh, unconscionable and oppressive" for the purposes of section 139(1) of the *Strata Scheme Management Act 2015*. See *Roden v The Owners-Strata Plan No 55773* [2019] NSWCATCD 61 (the Roden case) and *Cooper v The Owners – Strata Plan No 58068* [2020] NSWCA 250 (Coopers case).

If your landlord has agreed to you keeping a pet, but the by-law prohibits the keeping of pets, you should ask your

landlord to challenge the by-law (a tenant does not currently have standing to invalidate the by-law under s150 of the *Strata Scheme Management Act 2015*) for the same reasons as in the *Roden* and *Cooper* cases. Note however, that even if you have the consent of the landlord and the owners corporation, any other occupier can apply for an order to remove a pet on the grounds that it is causing a nuisance.

By-laws cannot prevent you having a guide dog or hearing dog.

If the strata scheme has charged or is proposing to charge a 'Pet License Fee' (or something similar), this is unlawful and you should make a complaint to NSW Fair Trading.

For more detailed information, see *Keeping pets in strata schemes* by NSW Young Lawyers – www.bit.ly/2x4t2sc

No eviction by the owners corporation

The owners corporation cannot evict a tenant – only the NSW Civil and Administrative Tribunal can if it makes a termination order on application by the landlord/agent. The provisions of the *Residential Tenancies Act 2010* must be followed when ending a tenancy in a strata scheme.

Further Information and contacts

NSW Land Registry Services: phone 1300 052 637, nswlrs.com.au

NSW Fair Trading website: fairtrading.nsw.gov.au (under 'Tenants & home owners' > 'Strata schemes')

Mediation Services Unit (NSW Fair Trading): phone 13 32 20

Marrickville Legal Centre, Strata Collective Sales Advocacy Service mlc.org.au/services/strata/

Community Justice Centres: free call 1800 990 777 or TTY 1800 671 964

Community Legal Centres: phone 9212 7333, clcnsw.org.au

Keeping pets in strata schemes: www.bit.ly/2x4t2sc (PDF) or phone NSW Young Lawyers 9926 0270

Seniors Rights Service Strata Collective Sales Advocacy Service: phone (02) 9281 3600 or 1800 424 079. Email info@seniorsrightsservice.org.au

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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

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