

Transfer and sub-letting

As a tenant in NSW, you are covered by the *Residential Tenancies Act 2010* and Regulation. This factsheet explains legal issues for tenants in private rental who want to transfer their tenancy or to sub-let to another person.

Transfer or sub-letting with landlord's consent

With the landlord's written consent, you can:

- *transfer* your tenancy under a tenancy agreement to another person, or
- *sub-let* the premises (or part) to another person.

The landlord must not unreasonably withhold consent when:

- you ask to transfer and one of the original tenants under the current tenancy agreement will remain as a tenant, or
- you ask to sub-let and you will still occupy the premises.

The landlord must not charge for giving consent other than for the reasonable costs of giving consent.

Landlord may withhold consent

The landlord may reasonably withhold consent if:

- the number of proposed occupants is more than allowed by the tenancy agreement or planning laws
- the proposed tenant or sub-tenant is listed on a tenant database (see Factsheet 19: *Tenant databases*)
- the landlord reasonably thinks that the premises will become overcrowded.

If the proposed transfer or sub-letting is for the whole tenancy or the whole premises, the landlord can withhold consent – whether or not it is reasonable.

Asking consent to transfer/sub-let

Write to the landlord asking for their consent to transfer or sub-let. Provide them with a draft transfer or sub-letting document that specifies by name the proposed tenant or sub-tenant. (See the sample documents below.)

Enclose evidence that the proposed tenant/sub-tenant:

- can pay the rent (e.g. a copy of a payslip or statement from Centrelink)
- is of good character (e.g. a reference from a former landlord or a personal reference).

Ask the landlord to sign and return the consent document to you.

If landlord withholds consent

You can apply to the NSW Civil and Administrative Tribunal (NCAT) for an order that allows the transfer or

sub-let. NCAT will decide if the landlord's withholding consent is reasonable.

You must apply to the NCAT within 3 months of becoming aware that the landlord has withheld consent – do not delay.

See Factsheet 11: *NSW Civil and Administrative Tribunal*.

Rights and obligations

Transfer

Upon transferring your tenancy to another person and vacating the premises, your legal liability for the tenancy ends.

Sub-letting

A tenant who rents part of the premises to another person under a separate written tenancy agreement is a *head-tenant*. They have the rights and obligations of a landlord in relation to the other person.

For information about your rights and obligations as a head-tenant, contact NSW Fair Trading (phone 133 220, www.fairtrading.nsw.gov.au) or LawAccess NSW (phone 1300 888 529).

The person who rents part of the premises from a head-tenant under a written tenancy agreement is a *sub-tenant*. They have the rights and obligations of a tenant in relation to the head-tenant, who is their landlord.

Written tenancy agreements – sub-letting

Having a written tenancy agreement is in the interest of both the head-tenant and sub-tenant:

- the rules are clear – residential tenancies law applies
- NCAT is available to resolve disputes.

See below for a sample agreement or download one from www.tenants.org.au/resource/share-housing-agreement.

Bond money

Also see Factsheet 03: *Bond*.

Transfer

You can change the names of the tenants registered for the bond by using a 'Change of Shared Tenancy Arrangement' form (from NSW Fair Trading – NSWFT).

Have the form signed by the outgoing tenants, the incoming tenants and the landlord/agent. Return it to NSWFT.

TENANTS RIGHTS FACTSHEET 18: Transfer and sub-letting

Sub-letting

If it is agreed that the sub-tenant will pay a bond, the head-tenant must:

- give the sub-tenant a receipt on payment
- deposit the money with NSWFT within 10 working days (unless the bond is paid in instalments – contact NSWFT for more information about this).

The most bond that a sub-tenant can be required to pay is an amount equal to 4 weeks of their rent.

December 2017

Transfer of tenancy

I/We (the transferor/s) hereby transfer all of my/our rights and obligations under the residential tenancy agreement as tenant/s of the premises to the transferee/s from the transfer date.

The other tenant/s consent/s to this transfer and acknowledge/s the transferee/s as tenant/s from the transfer date.

The landlord/s consent/s to this transfer and acknowledge/s the transferee/s as tenant/s from the transfer date.

Agreement (include the following details from the existing residential tenancy agreement:)

Landlord/s	(name/s)
Tenant/s	(name/s)
Premises	(address)
Total rent	(\$ per week)
Start date	(day, month, year)
Term	(years/months/weeks)
Transfer date	(day, month, year)
Transferor/s	(name/s, sign and date)
Transferee/s	(name/s, sign and date)
Other tenant/s	(name/s, sign and date)
Landlord/s (or agent)	(name/s, sign and date)

The standard terms of residential tenancy in New South Wales are implied by law. They can be viewed at: www.legislation.nsw.gov.au/fragview/inforce/subordleg+664+2010+sch.1+0+N

Agreement to sub-let

I, _____ (head-tenant's name)
agree to rent room _____ (describe which room)
at _____ (address)
to _____ (sub-tenant's name)

and share the common areas cooperatively (bathroom, kitchen, laundry, living room, dining room, yard, parking etc.)

for \$ _____ per week (rent)
from _____ (start date)
to _____ (end date – optional)

Bond paid in full _____ (bond amount – if applicable)
\$ _____

Signatures

Head-tenant _____ (name, sign and date)

Sub-tenant _____ (name, sign and date)

I consent to the above sub-letting:
Landlord/agent _____ (name, sign and date)

The standard terms of residential tenancy in New South Wales are implied by law. They may be viewed at: www.legislation.nsw.gov.au/fragview/inforce/subordleg+664+2010+sch.1+0+N

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

SYDNEY:

• Eastern	9386 9147
• Inner	9698 5975
• Inner West	9559 2899
• Northern	8198 8650
• 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