

# Disaster damage

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019*. This factsheet is about damage to rented premises that is **neither the fault of the landlord nor the tenant** – the result of a storm, fire, flood, or other causes of such damage (e.g. a car crashes into the premises).

For short answers to common answers, see also [Tips: Renting after a disaster](#).

This factsheet applies to renters, including renters in **residential land lease communities** (sometimes called residential or caravan parks). However if you own a home in a land lease community, please see our [land lease communities factsheet on natural disasters](#).

## Your safety is important

Following a disaster it is important to keep out of unsafe premises and obey directions of emergency services. If the local council finds that the premises are unsafe, you may have to leave (see 'If the premises are uninhabitable' below).

## If the premises are uninhabitable

If the premises are destroyed or are wholly or partly uninhabitable, you or the landlord can give the other an **immediate termination notice** (see 'If the landlord wants you to leave' below).

If you want to dispute a council finding of uninhabitability, you should get legal advice. Start by contacting LawAccess NSW, a free service run by [Legal Aid NSW](#), on 1300 888 529. See also the Legal Aid Disaster Response Legal Service factsheet [The council wants to condemn my home – what are my rights?](#)

## If you want to leave

If you want to end the tenancy, you can give a termination notice for immediate possession of the premises. **Your notice must be in writing and say that the premises are wholly, or partly, uninhabitable.** Send or deliver the notice to the landlord/agent. Give **vacant possession** of the premises by moving out and returning the keys.

Be aware that the landlord may dispute your termination notice and apply to the NSW Civil and Administrative Tribunal (NCAT) for an order that you have abandoned the premises. If the Tribunal makes the order, it may also order you to compensate the landlord.

See also:

- [Factsheet 09: You want to leave](#) for what is needed in a termination notice
- 'Can I leave if the property is uninhabitable?' in [Tips: Renting after a disaster](#)
- Contact your [local Tenants Advice & Advocacy Service](#)

## If the landlord wants you to leave

The landlord/agent may seek to end your tenancy on the grounds that the property has become wholly or partially uninhabitable. They may give you a termination notice for immediate possession of the premises.

**However a termination notice does not itself end your tenancy.** If you do not leave according to the notice, the landlord/agent can apply to the NSW Civil and Administrative Tribunal (NCAT) for an order to terminate your agreement.

The Tribunal will have to decide whether the premises being uninhabitable and other circumstances justify termination of the agreement. You cannot be evicted without a termination order by the Tribunal.

See also:

- [Factsheet 10: Landlord ends agreement](#)
- 'If I receive a notice of termination because the property is 'uninhabitable' do I have to leave?' in [Tips: Renting after a disaster](#)
- Get advice from your [local Tenants Advice and Advocacy Service](#)

## Overpaid rent

When a tenancy agreement ends, you are no longer required to pay rent. The landlord must repay any overpaid rent within 14 days of your written request.

## If it is safe and you want to stay

If it is safe and you are not prevented by council orders or emergency services, it is your home and your tenancy has not legally ended, so you can return home after a disaster. The following steps may help:

- Protect your possessions from further damage.
- Immediately tell the landlord/agent of the damage to the premises.
- Tell the landlord/agent that you intend to stay.

- Tell the landlord/agent in writing about what repairs are needed, including temporary repairs.
- Ask the landlord/agent for an immediate inspection and a written schedule of work to be done.
- Confirm your conversations with the landlord/agent in writing. This avoids confusion about what has been said and what will be done.

## Rent reduction/abatement

It is important to understand that you have to pay the rent unless there is a written agreement between you and the landlord that the rent amount has changed or there are orders from the NSW Civil and Administrative Tribunal (NCAT) in place.

There are two ways rent can be decreased if you can't live in the property or use parts of it: rent abatement or rent reduction. A **rent reduction** claim requires the landlord to have done something or failed to do something and as a result services and facilities of the property have been withdrawn. In contrast, a **rent abatement** claim is made when the property becomes fully or partially uninhabitable but it is not the landlord or the tenant's fault.

Start by **negotiating with the landlord/agent in writing**. If you do not reach an agreement promptly, apply to the Tribunal for an order for that the rent reduces or abates (see 'Applying to the Tribunal' below). The Tribunal can order the landlord to repay you any overpaid rent.

The landlord is not obliged to provide or pay for other accommodation.

See also:

- 'Do I have to pay rent if I can't live at the property or if there are parts of the property I can't use?' in [Tips: Renting after a disaster](#)
- [Tips: Negotiating with the landlord](#)

## Repairs

The landlord must maintain the premises in a **reasonable state of repair** – see [Factsheet 06: Repairs and maintenance](#). You are responsible for keeping the premises 'reasonably clean.'

Arguably the cleanup after a disaster is beyond the 'reasonable' standard of cleanliness required of you and will more likely fit into the category of repair – and therefore it is the landlord's responsibility.

### Urgent repairs

Urgent repairs include: serious storm, flood or fire damage, serious roof leaks, electrical faults or other damage that makes the premises unsafe or not secure. The landlord/agent should attend to urgent repairs as soon as possible. Temporary repairs can be urgent repairs (e.g. a tarpaulin over the roof).

If the landlord/agent cannot be contacted or is unwilling to do the urgent repairs, you can arrange for them to be done.

You must give the landlord/agent **written notice about the repairs, costs and copies of receipts**. They must pay you for any reasonable costs up to \$1,000 within 14 days of your notice. However, you may not be repaid if the repairs are not defined as urgent in the Residential Tenancies Act, or if you do not follow the correct process – see [Factsheet 06: Repairs and maintenance](#).

If the landlord does not pay, apply to the NSW Civil and Administrative Tribunal (NCAT) within 3 months for an order that they do so.

For urgent repairs, the landlord, agent or tradespeople may need immediate access to the premises without your consent – see [Factsheet 08: Privacy and access](#).

See also 'Surely these repairs are urgent?' in [Tips: Renting after a disaster](#).

### Other repairs

You are entitled to be given **2 days notice** before the landlord/agent or their tradespeople access the premises to make repairs. Consider waiving this notice and consenting to immediate access. If the landlord/agent does not promptly attend to the repairs, apply to the Tribunal for an order (see 'Applying to the Tribunal' below).

### Moving out temporarily

If you are going to move out while repairs are done, make a clear agreement in writing about:

- rent reduction (or abatement)
- how long you will be away
- who will be responsible for goods at the premises or how the goods will be stored.

## Applying to the Tribunal

You can apply to the NSW Civil and Administrative Tribunal (NCAT) for one or more of the following orders:

1. that the landlord do the repairs you have specified
2. that the landlord compensate you for losses you suffered because they did not do the repairs
3. that all or part of the rent is paid to the Tribunal until the repairs are done
4. that the rent is reduced for the period that the premises are/were in disrepair
5. that the rent abates for the period the premises were (at least partially) uninhabitable

For (1), (2) and (3) you must apply within 3 months of the landlord failing to meet your deadline for repairs.

For (4) apply at any time before the end of the tenancy.

For (5) apply within 28 days of the uninhabitability occurring.

See [Factsheet 11: NSW Civil and Administrative Tribunal](#) and contact your [local Tenants Advice and Advocacy Service](#) for help to make an application.

## 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 should 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 (they 'failed to act with reasonable diligence').

## 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 kitchen was damaged and the landlord failed to fix it.
- Your belongings are destroyed or damaged because the landlord failed to fix a leaking roof.

You may also apply for an order that the landlord compensate you for the 'loss of enjoyment' you have suffered. Before you include this in your application, discuss your case with your [local Tenants Advice and Advocacy Service](#).

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

The Tribunal may not order compensation for loss you could have **avoided** (e.g. limiting water damage to your furniture by moving it from under a leak).

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

## Rent paid to Tribunal

The Tribunal will usually only consider this order when the landlord has not complied with a previous repairs order. You may include it in your application anyway.

## Rent reduction and rent abatement

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: Due to storm damage, one of the rooms in the premises is unusable. The landlord fails to do repairs in a reasonable time. Apply for an order that the rent was excessive for the time you were without use of the room. Apply for both rent reduction and abatement.

If the Tribunal finds that the rent is or was excessive, it will make an excessive rent order. The order will specify:

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

A rent reduction claim requires the landlord to have done something or failed to do something and as a result services and facilities of the property have been withdrawn. In contrast, a rent abatement claim is made when the property becomes fully or partially uninhabitable but it is not the landlord or the tenant's fault.

See also [Factsheet 04: Rent increases](#) for how to prepare an excessive-rent case.

## See also

- Tips: [Renting after a disaster](#), [Negotiating with the landlord](#), [Preparing for disasters as a renter](#)
- Podcast episodes: [Tenants rights and obligations after a disaster](#) and [Negotiation for renters](#)
- Factsheets: [Land lease communities factsheet on natural disasters](#), [You want to leave](#), [Landlord ends agreement](#), [Repairs and maintenance](#), [NSW Civil & Administrative Tribunal](#)
- [Disaster Response Legal Service](#) (Legal Aid NSW), which publishes the [Tenancy and housing after a disaster handbook](#)
- [List of legal help for flood-affected communities](#) (Community Legal Centres NSW)
- [Natural disaster support](#) (Services Australia)
- [Disaster assistance finder](#) (Service NSW),
- Phone advice: contact your [local Tenants Advice and Advocacy Service](#), or the Tenants' Union Flood Hotline on 1800 566 101.

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**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

**WEB:** [tenants.org.au](http://tenants.org.au)

**NSW FAIR TRADING:** 13 32 20

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