

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 or flood, or other causes of such damage (e.g. a car crashes into the premises). This factsheet also applies if you **rent** a home in a residential land lease community (sometimes called a residential or caravan park). However if you **own** a home in a land lease community, please see our land lease communities factsheet on natural disasters at tenants.org.au/thenoticeboard/factsheet/natural-disasters.

Immediate action

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. (If you want to dispute a council finding, get legal advice.)

Uninhabitable premises

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

Rent reduction/abatement

Negotiate with the landlord/agent in writing. If you do not reach an agreement promptly, apply to the NSW Civil and Administrative Tribunal (NCAT) for an order for that the rent reduces or abates (see 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.

Overpaid rent

Once your tenancy agreement is terminated, you no longer owe rent. The landlord must repay any overpaid rent within 14 days of your written request.

If it is safe and you want to stay

- Protect your property 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 by letter. This avoids confusion about what has been said and what will be done.

Repairs

The landlord must maintain the premises in a reasonable state of repair – see Factsheet 06: *Repairs and maintenance*.

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 (see Factsheet 6: *Repairs and maintenance*).

If the landlord does not pay, apply to the Tribunal 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*).

Other repairs

You are entitled to 2 days notice for access. 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 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.

If you want to leave

Give a termination notice for immediate possession of the premises. Your notice must 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 Tribunal 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 Factsheet 09: *You want to leave* for what is needed in a termination notice and consult your local Tenants Advice and Advocacy Service.

If the landlord wants you to leave

The landlord/agent may give you a termination notice which could be for immediate possession of the premises.

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 for an order to terminate your agreement (see Factsheet 10: *Landlord ends agreement* and Factsheet 11: *NSW Civil and Administrative Tribunal*).

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.

Applying to the NSW Civil and Administrative Tribunal

You can apply for one or more of the following orders:

- 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.
- that the rent abates for the period the premises were (at least partially) uninhabitable.

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

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. Apply for an order that the rent was excessive for the time you were without use of the room.

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 of 12 months.

"Rent abatement" is for (partial) uninhabitability that is not the fault of the landlord or tenant.

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

Other resources

- Legal Aid NSW Disaster Response Service:
<https://disasterhelp.legalaid.nsw.gov.au>

Factsheet updated: September 2021

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

SYDNEY:

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| • Eastern | 9386 9147 |
| • Inner | 9698 5975 |
| • Inner West | 9559 2899 |
| • Northern | 9559 2899 |
| • Southern | 9787 4679 |
| • South West | 4628 1678 |
| • Western | 8833 0933 |

REGIONAL:

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| • 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:

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| • 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