

Asbestos and lead

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2010*. This factsheet discusses asbestos and lead in rented premises.

About asbestos and lead

Asbestos is a mineral commonly used in building materials in the 1940s–1980s. It was used in walls, drains, flues, roofing and guttering. It is usually safe if not disturbed. If asbestos materials are damaged and fibres are freed, they pose a health risk.

Lead is a metal found in old paint (before 1970), dust in the roof and soil. Lead can be harmful, especially to small children and pregnant women.

The mere presence of asbestos/lead at the premises does not cause them to be in a state of disrepair.

Rights and obligations

You must:

- keep the premises ‘reasonably’ clean
- tell the landlord about any damage to the premises as soon as possible
- mitigate loss – take reasonable steps to limit or avoid loss (see below).

The landlord must:

- provide the premises ‘reasonably’ clean and fit to live in
- keep the premises in ‘reasonable’ repair (except where the disrepair is caused by the tenant breaching the tenancy agreement)
- mitigate loss.

Mitigation of loss Examples include:

- a tenant stopping use of a room where asbestos fibres have been exposed
- a landlord promptly fixing damage to reduce risk.

Decide what to do

You may want to stay at the rented premises and have them repaired or to end your tenancy and leave.

If you want to stay

Tell the landlord/agent that they need to arrange for repairs. Write them a letter telling them what needs fixing and by when. Give a clear deadline. Keep a copy of the letter and a record of any conversations as evidence that you have notified them. Also see Factsheet 06: *Repairs and maintenance*.

If the landlord does not promptly arrange for repairs, you can apply to the NSW Civil and Administrative Tribunal (NCAT) for orders (see below).

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

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

Applying to the NSW Civil and Administrative Tribunal for orders

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

- that the landlord do the repairs you have specified – apply within 3 months of the landlord failing to do repairs by your deadline
- that the rent is reduced from when you told the landlord/agent about the need for the repairs until repairs are done (not for social housing tenants who get a rent rebate) – apply at any time before the end of the tenancy
- that the landlord compensate you for losses you suffered because they did not do the repairs – apply within 3 months of the landlord failing to do repairs by your deadline
- that all or part of the rent is paid to the tribunal until the repairs are done

People who are not named on the tenancy agreement as tenants (e.g. children) cannot apply to the tribunal.

See Factsheet 11: *NSW Civil and Administrative Tribunal* and contact your local Tenants Advice and Advocacy Service for advice about applying.

Applying for an order for repairs You must be able to show that:

- the premises are not in ‘reasonable’ repair
- it is not your fault
- the landlord/agent knew about the need for repairs
 - you told them about it (e.g. you wrote them a letter), or
 - they ought reasonably to have known about it (e.g. they inspected the premises)
- the landlord/agent did not get the repairs done in a reasonable time.

Applying for a 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 (e.g.

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part of the premises becomes unusable due to the presence of asbestos fibres or lead).

If the tribunal finds that the rent is excessive, it will make an excessive rent order. It 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.

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

Applying for compensation You can apply for order/s that the landlord compensate you for 'economic loss' such as the destruction of or damage to your belongings.

You may also apply for an order that the landlord compensate you for physical inconvenience you have suffered. Discuss your case with your local Tenants Advice and Advocacy Service first.

You must be able to show that your loss was caused by the landlord's failure to do repairs. The tribunal may not order compensation if you have not mitigated your losses.

Evidence You must back up your claims with evidence. This may include expert reports on the presence of asbestos/lead in the premises (e.g. from a scientist, council building/health inspector, builder). Such reports can be costly, so you may need to rely on other evidence.

The condition report is important evidence of the state of the premises at the start of the tenancy. Other evidence may include:

- your tenancy agreement
- correspondence with the landlord/agent
- photos and drawings of the premises
- receipts for expenses
- printed materials such as factsheets about asbestos/lead and its effects.

Outcomes of tribunal cases

In *Gannon v Department of Transport & Regional Services* (Tenancy) [2008] NSWCTTT 793, the tribunal found that the landlord breached the tenancy

agreement but did not order compensation due to lack of independent evidence and a delayed application.

In *Symonds v Duncan* (Tenancy) [2004] NSWCTTT 499, the tribunal accepted evidence of lead levels from the local council, found that the premises were unlivable for a time and ordered the landlord to compensate the tenant for some of her claimed losses.

Safe work practices

The landlord should use workers with the appropriate licence or training to do repairs. In any case, workers should follow safe work practices. Call WorkCover NSW (phone 13 10 50) for advice about safe work practices. See these publications for what to look for:

- Working with asbestos (from www.workcover.nsw.gov.au or 1300 799 003), or
- *Lead alert – six step guide to painting your home* (from www.environment.gov.au or 1800 803 772).

If the work practices used are unsafe, contact:

- WorkCover NSW – phone 13 10 50 (when a business or worker is being paid to do the work), or
- an environmental health officer from the local council (when the work is unpaid).

If you want to leave

See Factsheet 09: *You want to leave* for how to end your tenancy agreement.

Personal injury

If someone in your household has been made ill by lead/asbestos, seek medical advice. Consult a solicitor or your local Community Legal Centre (02 9212 7333, www.nswclc.org.au) about whether to take legal action.

The NSW Civil and Administrative Tribunal is not the best place to take a personal injury claim – the maximum compensation it can order is \$15,000.

Further information

Global Lead Advice and Support Service:
1800 626 086, www.lead.org.au

Mesothelioma Cancer Alliance (information on asbestos-related illness): mesothelioma.com

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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 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 6884 0969
- 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

