

Asbestos and lead

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019*. This factsheet discusses asbestos and lead in rented premises.

About asbestos and lead

Asbestos is a mineral that was 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. In NSW, premises with *loose filled asbestos insulation* are kept on a publicly available register on NSW Fair Trading website. Also known as the “LFAI Register”, you can look up if your home is listed on the register. Your landlord/agent must disclose to you if the premises are listed on this Register. This requirement is ongoing, meaning the landlord/agent must let you know of this fact prior to signing the agreement with you, or if at any time during the tenancy when the premises become listed on the LFAI Register.

Rights and obligations

You must:

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

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:

- tenant stops use of a room where asbestos fibres have been exposed
- landlord promptly remediates affected areas 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. There may be situations where it is not safe for you to remain in the premises. You should check with your local GP for advice on health risks. You can also request from your landlord/agent

a copy of the air and dust reports which provides readings on the level of asbestos or lead in the premises.

If you want to stay

You have an obligation to report any damage to the premises as soon as possible after becoming aware of the damage. For example, if there was storm damage and you noticed part of the ceiling is coming apart, exposing asbestos, write to the landlord/agent and insist that they arrange for repairs. Write them a letter (attaching photos where possible) 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.

If the landlord agrees to carry out the necessary repairs while you temporarily move out of the home, 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

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

Preparing for the Tribunal: Types of orders and what you need to show

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 (up to a period of 12 months) due to a reduction or withdrawal by the landlord of any goods, services or facilities provided with the premises (e.g. part of the premises becomes unusable due to the presence of asbestos fibres or lead).

See also 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 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 place 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

See Factsheet 06: *Repairs and maintenance*; and Factsheet 11: *NSW Civil and Administrative Tribunal*; and contact your local Tenants' Advice and Advocacy Service for advice about applying.

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 unliveable 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 SafeWork NSW (phone 13 10 50) for advice about safe work practices. See these publications for

what to look for:

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

If the work practices used are unsafe, contact: SafeWork 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* and Factsheet 16: *Ending fixed-term tenancy early* for how to end your tenancy agreement.

For premises on the LFAI Register

From 23 March 2020, if prior to signing the tenancy agreement, your landlord/agent failed to disclose the fact that the premises are on the LFAI Register; or if during the tenancy you are notified that the premises are listed on the LFAI Register, you may end the tenancy before the end of the fixed term without compensation to the landlord by giving a 14-day termination notice. However, if you are in a periodic agreement, you still have to give a 21-day termination notice.

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, clcnsw.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.

More information

Factsheet 06: *Repairs and maintenance*

Podcast episode: Cracks Emerge at tenants.org.au/resource/renting-matters#ep2

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

mesothelioma.com – information on asbestos-related illness

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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