

Sale of rented premises

As a tenant you have rights under the *Residential Tenancies Act 2010* and the *Residential Tenancies Regulation 2019*. If your landlord is selling the premises, there are rules they must follow in relation to accessing the premises, notice requirements, and what happens to your tenancy agreement. This factsheet summarises those rules.

If your landlord wants to sell the property, they can at any time. However, there are a number of provisions that govern how they can do this. Some landlords may hire a different agent just for the sale. All agents are subject to the same laws as the landlord.

You want to leave?

You may be able to leave, even in a fixed term, if the landlord is selling. More information below.

Also see Factsheet 09: You want to leave and Factsheet 16: Ending fixed-term tenancy early.

Showing the premises to prospective buyers

The landlord/agent has the right to access premises to show them to prospective buyers. However, they must:

- give you written notice at least 14 days before the premises are first made available for showing
- make all reasonable efforts to agree with you as to the days and times for showing.

You must not unreasonably refuse to agree to days and times for showing the premises. You do not need to agree to more than 2 showings per week.

If you and the landlord/agent fail to agree about inspection times, they may show the premises not more than twice a week and must give you at least 48 hours notice each time.

Open house inspections

Many real estate agents insist that open house inspections are within the landlord's right to show the premises to prospective purchasers. The Tenants' Union does not agree. An open house brings more than prospective purchasers to your home. It is an open invitation to the world, anyone including passers-by, nosy neighbours, and prospective burglars can enter. You may write to the landlord/agent to offer set times for inspection and importantly seek an undertaking that the people who enter are registered prospective purchasers.

Time restrictions on access

The landlord/agent or third parties must not:

- enter before 8am or after 8pm,
- enter on a Sunday or public holiday or
- stay longer than necessary unless you consent

Condition of the premises during showings

You must keep the premises 'in a reasonable state of cleanliness' during your tenancy. You do not need to do more than this. If you agree to do more, ask for a rent reduction.

Asking for a rent reduction

You can ask the landlord/agent to reduce the rent for the

period that the premises are being shown. However, there is no requirement for them to agree; if they do agree, have them confirm it in writing.

Being there when the premises are shown

You have the right to be at the premises when they are shown, or have someone else there on your behalf. The landlord/agent or a prospective buyer may also want a tradesperson or architect to inspect the premises. The law has no specific provision for this, the landlord/agent must use standard access provisions.

People entering the premises when you are not there may also be a problem for your insurance. Ask your insurance company about this.

If your goods are stolen or damaged, apply to The NSW Civil and Administrative Tribunal (NCAT) for compensation. You must be able to show that your loss was due to the conduct of the landlord/agent or some other authorised person. For example a tradesperson.

See Factsheet 08: Privacy and Access

If there is a dispute: Applying to the Tribunal

If the landlord/agent or a third party doesn't comply with:

- the maximum (or agreed) number of times they can access the premises
- correct notice periods
- restrictions on access times

then you can apply to the Tribunal for orders:

- to stop the landlord/agent entering the premises (apply within 3 months of becoming aware of them doing so)
- to specify or limit the days and times, and purposes for which, the landlord/agent or other authorised person can enter (apply within 3 months of becoming aware of the problem)

Application by landlord

If you refuse the landlord/agent access to the premises when they are legally allowed, you are in breach of your tenancy agreement.

They may apply to the Tribunal for an order authorising them or any other person to enter the premises.

Landlord taking photographs/videos

The landlord/agent can photograph the outside of the premises. They can also take photos or videos inside the premises to market the property (for sale or rent). However, they can only do this once in the 28 days before marketing starts or the agreement ends. The landlord agent must also:

- give you reasonable notice of the access; and
- give you a reasonable opportunity to move your

possessions out of frame of the photo or video

The landlord/agent must obtain your written consent to publish photos or visual recordings showing any of your belongings, however you cannot unreasonably withhold consent. It is reasonable for tenants to withhold consent where they are in circumstances of domestic violence.

The landlord and their agent can share the images with each other for the purposes of inspection, maintenance or repairs without your consent.

If photos are published without your consent, you can apply to the Tribunal for order/s:

- that the landlord destroy the photos or give them to you
- that the landlord/agent not use the photos in advertising
- for compensation for financial loss you suffered as a result.

You must apply within 3 months of the breach.

See also Factsheet 08: Privacy and access.

'For sale' signs

If the property is a house, the landlord/agent needs your consent to put a 'for sale' sign on the premises. If they do so without your consent, you can remove the sign and apply to the Tribunal for an order that they do not do it again as it is a breach of the access rules and your right to peace, comfort and privacy in your use of the premises.

On-site auctions

If the property is a house, the landlord/agent cannot hold an auction on site unless you consent.

Strata Schemes

If the property is in a strata scheme, the landlord/agent can put a for-sale sign or hold an auction on the common property without your consent.

If you want to leave

You will need to end ('terminate') your residential tenancy agreement. How you do this depends on which type of agreement you have. If you are in a periodic agreement, there is no special termination notice; you can serve a no reason notice of 21 days. If you are in a fixed-term agreement you may still be able to leave early, if:

- the landlord/agent did not disclose the proposed sale before entering into the agreement; and;
- the landlord has now told you of their intention to sell

In that case, you may give the landlord/agent a 14-day termination notice. You will not need to pay compensation or any other amount for ending the agreement early. Make sure you have the landlord/agent's intention to sell in writing.

If the landlord failed to disclose: Applying to NCAT

If the landlord did not disclose the proposed sale before entering into the agreement and had already prepared a contract for sale, you can also apply to the Tribunal for a termination order, without giving the landlord a termination notice. You may also seek compensation for any costs incurred as a result of the termination.

If the landlord wants you to leave

What the landlord can do depends on which type of agreement you have.

Fixed-term agreement

The landlord cannot terminate your agreement for sale of the premises.

Periodic agreement

The landlord can issue a 30-day notice of termination but only if both the following conditions are met:

- they have exchanged a contract for sale with a buyer, and;
- the contract requires them to give 'vacant possession' of the premises to the buyer

See Factsheet 10: Landlord Ends Agreement.

Your tenancy agreement after the sale

If you or the landlord have not terminated the agreement, then the buyer becomes your landlord from the settlement date. Your tenancy agreement carries on as it was before with the same terms. If you are in a fixed term, the buyer must honour the fixed term.

Fixed-term agreement of over 3 years

If the agreement is registered with the Registrar General (NSW Land Registry Services), the new landlord is subject to the whole agreement.

If the agreement is not registered, it ceases to be a fixed-term agreement – it becomes periodic.

The new landlord

The old landlord/agent should write to you with the new landlord's name & the date from which you pay rent to them. You don't have to sign a new agreement with the new landlord if you do not want to, your old agreement is still in force.

See also

- Factsheets: 08: Privacy and access, 09: You want to leave, 10: Landlord Ends Agreement, 16: Ending fixed-term tenancy early
 - Tips: Negotiating with the landlord
 - Podcast episodes: Hit the road Jack, Don't make me leave, and Get me outta here.
- tenants.org.au

Factsheet updated July 2023

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

SYDNEY:

• Eastern	9386 9147
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• Inner West	9559 2899
• Northern	9559 2899
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• South NSW	1800 672 185
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WEBSITE: tenants.org.au

NSW FAIR TRADING: 13 32 20

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