

Mould

Tenants have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019*. This factsheet discusses mould in rented homes.

Deciding what to do

If there's a mould problem in your rented home, you may want to:

- stay and have it repaired and/or ask for a rent reduction (see below) or
- end your tenancy and leave – see [Factsheet: How do I end my tenancy?](#)

About mould

Moulds are fungi that need moisture and organic material to grow. When conditions are right in an environment, mould can thrive. Those conditions include rising damp, water damage, wet weather, moisture and inadequate ventilation. Mould can cause a state of disrepair in rented homes. Mould may even cause structural damage if left untreated.

Tenant and landlord responsibilities

As a tenant, you are responsible for:

- keeping the rental property (or 'premises') '**reasonably**' clean
- **telling the landlord** about any damage/disrepair as soon as possible
- taking reasonable steps to **avoid or limit** ('mitigate') your losses. For example, removing clothes from a wardrobe where mould is growing.

The landlord is responsible for:

- providing the property in a '**reasonably**' clean state
- complying with minimum standards and ensuring the home is '**fit for habitation**' – including having adequate ventilation, plumbing and drainage
- ensuring that the property is **structurally sound** – floors, ceilings, walls & supporting structures shouldn't be subject to significant dampness; the roof, ceilings and windows should be properly sealed so water cannot get inside
- providing and maintaining the property in '**reasonable**' repair (except where the disrepair is caused by the tenant breaching the tenancy agreement)
- taking steps to **avoid or limit** ('mitigate') their losses, for example by promptly treating mould before it can 'set in' and create a larger problem

Sometimes a dispute arises over who is responsible for mould.

If the mould was **already present** when the tenant moved in, or it is caused by **structural problems** in the property, then it is likely to be the landlord's responsibility.

The landlord is not required to fix any damage **caused by the tenant**. However, if they later want to claim compensation from the tenant for that damage, they must try to **limit the cost** of any repair or replacement.

See also Factsheets: [Repairs and maintenance](#) and [Disaster damage](#).

Treating mould

Treatment methods vary, so you should do your own research on how to best treat mould. General advice from [NSW Health](#) is to:

- **Maintain ventilation** by opening windows (when weather permits), using a fan and an exhaust fan (if available) when bathing, showering, cooking, or drying clothes
- **Reduce humidity** in your home where possible
- **Seek repairs** for all leaks and plumbing problems
- If water enters your home, **dry any affected materials**; absorbent materials, such as carpet, may need to be professionally cleaned or replaced
- If mould appears, try to **treat it as soon as possible**:
 - Safely clean mouldy surfaces using a mild detergent, diluted vinegar, or diluted bleach
 - Ensure the surface is dried completely once cleaned

The condition report

At the start of the tenancy, the landlord/agent must note on the condition report if there are any signs of mould and dampness. Add your comments relating to mould or dampness under 'Additional comments on health issues', attaching photographs to the condition report if possible.

If mould was present when the tenant moved in, then it is more likely to be the landlord's responsibility.

Regardless of the condition report, the landlord cannot avoid their responsibility to keep the rental home in reasonable repair during the tenancy.

Requesting action from the landlord

Try to work with the landlord to resolve the issue. If the landlord acts early to address the mould, it is likely to save them much higher repair costs in the future.

Requesting repairs

You have a responsibility to notify the landlord/agent if repairs are needed. If you do not report the repair issue it could get worse and you may be in breach of your tenancy agreement.

Tell the landlord/agent **in writing** what needs to be fixed. If possible, provide evidence (such as photographs) of the issue. Give a clear deadline. You can use our [Sample letter: Repairs](#). Keep a copy of the letter or email, and a record of any conversations you have with the landlord, as evidence that you have reported the mould.

A written request for repairs may not always work, but it is an important first step to resolve the problem. If the landlord ignores your request, you can apply to the NSW Civil and Administrative Tribunal (NCAT) for orders (see below).

See also [Factsheet: Repairs and maintenance](#).

Asking for a rent reduction

You might be able to reach an agreement with the landlord to reduce the rent. There is no formula for working out how much the rent should be reduced – it is something that you and the landlord can discuss and agree on together. See also [Tips: Negotiating with the landlord](#) and [Sample letter: Rent reduction](#).

Moving out temporarily

If you want 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 your belongings left at the rental home or how your belongings will be stored

If the landlord does not do repairs I have requested

If the landlord fails to do repairs you have requested you can escalate the matter to the **NSW Civil and Administrative Tribunal (NCAT)**, or the **NSW Fair Trading complaints service**.

The Tribunal has the power to make orders to resolve disputes between tenants and landlords. You can apply to the Tribunal for one or more orders, including:

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

For (1), (2) and (3) you must apply within 3 months of the landlord failing to meet your deadline for repairs. For (4) you must apply before the end of the tenancy.

See also [Factsheet: NSW Civil & Administrative Tribunal](#).

The **NSW Fair Trading complaints service** offers a free way for tenants, residents, landlords, and agents to get help with disputes. If the dispute cannot be resolved through the complaints service, NSW Fair Trading can investigate further and may decide to issue a **rectification order**. A rectification order will list the reasons for making the order, including relevant investigation results, and set a date for the work to be completed. This process is intended to assist in resolution of disputes about repairs, particularly in relation to habitability. It is intended to be an alternative to a Tribunal application, but does not preclude such applications.

It is a good idea to get advice from your [local Tenants' Advice and Advocacy Service](#) about applying to the Tribunal or the NSW Fair Trading complaints service.

Evidence

Evidence is important in any discussion with the landlord, and it is vital if you go to the Tribunal. Evidence can include:

- the **condition report** (noting whether there was any signs of mould or dampness at the state of the tenancy)
- your **tenancy agreement**
- **correspondence** with the landlord/agent
- **drawings** of the rental home
- dated **photos** of the mould
- **samples** of the mould (safely gathered and contained)
- dated records setting out of what you have done to **ventilate** the area
- dated records of what you have done to **treat or clean** the mould
- **receipts for expenses** (such as cleaning products)
- **printed materials** (such as factsheets) about mould and its effects

If you are developing a case to take to the Tribunal, think about creating a **timeline**. A timeline will help you create a full picture of the issue with all the relevant evidence. The timeline can show:

- the initial mould problem
- your actions to treat it and ventilate the area
- the progression of the mould developing; and
- your landlord's response.

In complex cases, **expert evidence** may be the only way to establish responsibility for mould. Expert evidence may include expert reports on the presence of mould in the rental home (e.g. from a scientist, council building/health inspector, builder). However, expert reports can be expensive and

costly. The Tribunal is a 'no costs jurisdiction.' This means if you pay for an expert report you will probably not be able to get your money back – even if you win your case.

Applying to the Tribunal

The NSW Civil and Administrative Tribunal (NCAT) is an independent body which deals with certain kinds of disputes between landlords and tenants. Most cases at the Tribunal come down to evidence (see above). See also [Factsheet: NSW Civil and Administrative Tribunal](#).

An order for repairs

You can ask the Tribunal to make an order that the landlord do repairs. You must be able to show that:

- the property is not in 'reasonable' repair and/or it does not reach minimum standards to be 'fit for habitation' (see [Factsheet: Repairs and maintenance](#) for more information on minimum habitability standards),
- the mould is not your fault (e.g. you ventilated appropriately and kept the home reasonably clean),
- you told the landlord/agent about the need for repairs (e.g. you wrote them an email) or they should reasonably have known about it (e.g. they inspected the property), and
- the landlord/agent has not made a reasonable effort to have the repairs done.

An order for rent reduction

You can ask the Tribunal to make an order that the rent is, or was, **excessive** because the landlord has **withdrawn part of the amenity** you were supposed to be provided with under the tenancy agreement. For example: a room has become unusable due to mould growth.

If the Tribunal finds that the rent is excessive, it can order:

- 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 (the Tribunal can back-date a rent reduction to when the issue emerged)

It is important to note that you must make an application for rent reduction **before the tenancy comes to an end**.

See [Factsheet: Rent increases](#) for how to prepare an excessive rent case, and our [Rent Increase Negotiation Kit](#).

If property becomes fully or partially uninhabitable but it is not the landlord or the tenant's fault, you may apply to the Tribunal for rent **abatement**. See [Factsheet: Disaster damage](#).

Compensation

If the landlord fails to meet your deadline for repairs, you have three months to apply for compensation.

You can apply for a Tribunal order that the landlord **compensate you for economic loss**, such as destruction of or

damage to your belongings. You must show that the damage is the result of the landlord failing to remedy the issue, and as a result you've suffered **financial losses**. An example of financial losses could include the cost of cleaning or replacing your belongings.

It is important to show you have taken steps to **minimise the amount of loss** you have experienced (called 'mitigation of loss'). If you failed to do something to prevent or reduce the loss being suffered, it could affect your case.

You can also apply for a Tribunal order that the landlord **compensate you for loss of enjoyment** of the rental home. The landlord is not to interfere with your peace, comfort and privacy. If the landlord fails to carry out a repair, you are not able to enjoy your property. If that is the case, there could be a claim for compensation because you are not getting the enjoyment you are entitled to. This kind of compensation is called '**non-economic loss**.' It's a good idea to discuss this sort of case with your [local Tenants' Advice and Advocacy Service](#).

A claim for non-economic loss should be kept separate from claims about injury or illness. In a non-economic loss claim you could give evidence of the discomfort you have suffered, the inconvenience of cleaning or the stress of having to deal with the issue. But health issues and mental health impacts (like depression and anxiety) fall under the umbrella of **personal injury**. The Tribunal is **not** the best place to pursue a personal injury claim.

If you or someone in your household has **medical expenses** due to mould exposure, seek advice from a legal professional specialising in personal injury law. Consult a solicitor or your local [Community Legal Centre](#) about whether to take legal action.

An order that rent be paid to the Tribunal

In some circumstances, the Tribunal may order that some or all of the rent be paid to the Tribunal (rather than the landlord). In mould cases, this might mean the tenant pays rent to the Tribunal until:

- the landlord has properly addressed the mould issue; and/or
- the Tribunal determines an application for compensation.

The Tribunal will usually only consider this order when the landlord has not complied with a previous Tribunal repairs order. You can include it in your application, in case you have to return to the Tribunal later.

Noteworthy Tribunal cases

In *Bunbury v Fletcher* [2015] NSWCATAP 194 (9/9/15) the Tribunal found that the landlord had breached the obligation to maintain the premises in reasonable condition. The Tribunal ordered 25% rent reduction and the maximum \$15,000 compensation to the tenants for their losses. Including the cost of expert evidence, the tenants' losses were greater than \$15,000.

In another case the Tribunal found that the landlord did not breach their responsibility to provide habitable premises. The

tenants had claimed more than \$13,000 in compensation, but were only awarded \$480. The Tribunal gave no weight to evidence of mould by unqualified witnesses. The Tribunal also found that the tenants had not 'mitigated their loss' (taken steps to avoid their losses).

More info

- Factsheets [Repairs and maintenance; How do I end my tenancy?](#), [Disaster damage](#); [NSW Civil & Administrative Tribunal](#)
- Tips: [Negotiating with the landlord](#)
- Podcast episodes: [Cracks emerge](#), [Negotiation for renters](#)
- [Rent Increase Negotiation Kit](#)
- Easy Read fact sheet: [Your rights about repairs, access, and privacy](#)
- Sample letters: [Repairs before tenancy](#), [Repairs](#), [Repairs to be carried out by owners corp](#), [Rent reduction](#)
- [Mould](#) (NSW Health)
- [Mould in a rental property](#) (NSW government)
- Your local Public Health Unit: phone 1300 066 055

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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	4276 1939
• 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

NSW FAIR TRADING: 13 32 20

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