Starting a tenancy

As a tenant you have rights under the *Residential Tenancies Act 2010* and Residential Tenancies Regulation 2019. This factsheet outlines the law in NSW about starting a tenancy – including the form of the residential tenancies agreement, what information you can expect the landlord or agent to provide, what costs you can be asked to pay, and the rules about the condition report.

When starting a tenancy, also keep a look out for **scammers** who try to trick people – see **Tips: Avoiding rental scams**.

What is a residential tenancy agreement?

A residential tenancy agreement is a contract. It sets out the tenant's and landlord's rights and obligations. It is also commonly known as a **lease**.

Tenancy agreements are usually in written form. They can also be oral (e.g. a conversation with the landlord), or partly written – partly oral. All agreements must follow the *Residential Tenancies Act 2010* ('the Act').

A landlord should provide the tenancy agreement in writing. If not, then during the first 6 months of the tenancy, they cannot increase the rent and cannot end the tenancy without a legally specified reason.

There are two types of agreement:

- **fixed term** – for a specified period (e.g. 12 months)
- **periodic** – ongoing, no fixed term is specified

At the end of the fixed-term, a residential tenancy agreement automatically becomes periodic (ongoing), unless it is ended by one of the parties.

Additional terms

The landlord may include additional terms in the **standard residential tenancy agreement** but they are only valid if:

- both you and the landlord agree to them
- they do not conflict with the Act or any other laws
- they don't conflict with the terms of the standard residential tenancy agreement

If there is a conflict between additional terms and the Act, other laws or the terms of the standard agreement, the additional terms are invalid.

Tenancy agreements in share housing

If you rent part of the premises from another tenant, it is in your interest to have a written tenancy agreement with them. See **Factsheet: Share Housing** and **Factsheet: Transfer and sub-letting**.

What information does the landlord/agent have to provide?

Before signing a tenancy agreement

A landlord/agent must **state a fixed amount of rent in the advertisement or offer** for the rental property. Any attempt to solicit a higher amount than the advertised amount is prohibited.

If a landlord decides to enter into a tenancy agreement with you, they (or their agent) must not knowingly hide any of these **'material facts'** from you:

- the premises have been subject to serious flooding or bushfire in the last 5 years
- the premises have significant health/safety risks that are not apparent on inspection
- the premises have been the scene of a serious violent crime in the last 5 years
- council waste services will be different from others in the council area
- you cannot get a free residential parking permit (in an area where only paid parking is available)
- the premises have a driveway or walkway that others can legally use
- the premises was the scene of a drug offence under the *Drug Misuse and Trafficking Act 1985* in the last 2 years
- the premises is listed on the Loose-fill Asbestos Insulation (LFAI) Register maintained under the *Home Building Act 1989*
- if you are renting in a strata scheme – any scheduled repairs to common property during your fixed term

If your rented home is in a building where the building's external combustible cladding needs rectification, the landlord/agent must tell you if any of the following have been issued:

- fire safety order / notice of intention to issue a fire safety order
- a building rectification order or notice of intention to issue a building rectification order
- a development application or complying development certificate application for rectification of the building

The landlord (or their agent, if the agent is aware) must also tell you if either of the following apply:

- they propose to sell the premises (if they have prepared a contract for sale of the premises)
- a mortgagee has started court proceedings to enforce a mortgage over the premises

You may be able to terminate your tenancy if your landlord fails to disclose any of these material facts to you. See also **Factsheet: How do I end my tenancy?**, **Resource: Mortgagee repossession**, **Factsheet: Mould**, and **Factsheet: Asbestos and lead**.

Landlord's information statement

A landlord must sign an acknowledgment on the tenancy agreement that they have read and understood the contents of the NSW Fair Trading **landlord information statement** which sets out the landlord's rights and obligations under the law.

Real estate agents signing this acknowledgement must first obtain a written statement from the landlord that the landlord has read and understood their rights and obligations as set out in the information statement.

Social housing providers (including Homes NSW, community housing providers and the Aboriginal Housing Office) are exempt from signing this acknowledgment.

On signing a tenancy agreement

The landlord/agent must give you a NSW Fair Trading **Tenant information statement**. If you are renting in a strata scheme, they must give you a copy of the strata by-laws within 7 days, and inform you if a strata renewal committee is currently established for the scheme.

Landlord's/agent's contact details

Before or when you sign the tenancy agreement, the landlord/agent must give you these contact details in writing (or include them in the tenancy agreement):

- the name, phone number and business address of the landlord's agent (if any) and the name and phone number or other contact details of the landlord, or
- (if there is no agent) the business or residential address and phone number of the landlord, or
- (if the landlord is a corporation) the name and business address of the corporation.

What do I have to pay at the start of a tenancy?

A landlord/agent can only ask applicants to pay:

- a holding fee
- rent in advance
- a bond

Get a detailed written receipt for any payments you make.

A landlord/agent **cannot** ask you to pay for:

- a background check
- preparing a written residential tenancy agreement

Holding fees

A landlord/agent may ask you to pay a holding fee on approval of your application for a tenancy. The most they can ask for is **one week's rent**.

The landlord/agent can hold only one fee at a time. On receiving a holding fee, they can't enter into an agreement with another prospective tenant for 7 days (or longer, if you both agree).

Upon signing the tenancy agreement, **the fee goes toward the rent from the first day of your tenancy**.

The landlord/agent must refund the fee if:

- they decline to enter into the tenancy agreement, or
- you refuse to enter into the tenancy agreement because the landlord/agent made any false or misleading statement, or they failed to tell you any 'material facts' (listed above).

If you otherwise decide not to enter into the tenancy agreement, the landlord/agent can keep the fee.

Rent in advance

You must pay rent **in advance**. If you do not pay rent by the due date, you are in breach of your tenancy agreement. See **Factsheet: Overdue Rent**. In NSW you do not have to pay more than **2 weeks rent in advance**. Each time you pay rent you should pay at least 2 weeks in advance (or more if you choose). Your rent in advance will then diminish until you next pay rent. In other words, you do not need to be 2 weeks in front at all times, only on the due date. The landlord/agent must provide a **fee-free and accessible option** for paying your rent. This must include bank transfer and the Australian government's Centrepay. See more in **Factsheet: Rent payment**.

The landlord cannot demand further rent until it falls due and cannot ask for a post-dated cheque.

A common way tenants can find themselves with overdue rent is when they choose to pay rent monthly. If you calculate the monthly payment at 4 weeks worth of rent your rent payment may be incorrect. You can use our **Rent Converter** tool to check the way your rent has been calculated, and compare daily/weekly/monthly amounts etc. If in any doubt, confirm the exact monthly figure with the landlord or real estate agent in writing.

Bond

The bond is money you pay at the start as security in case you don't follow the terms of the tenancy agreement.

- The bond must not be more than an amount of **4 weeks rent.**
- The landlord/agent must deposit the bond with NSW Fair Trading.

- The landlord/agent must give you the option of using the voluntary NSW Fair Trading Rental Bonds Online, however they cannot require you to use this system.
- The bond must only be in the form of money.
- The landlord/agent must take only one bond for a tenancy agreement.
- The landlord/agent must not require that you pay a bond to them before you sign a tenancy agreement.

See Factsheet: Bond for more information.

Financial help

The **Rentstart Bond Loan** scheme helps disadvantaged tenants in the private rental market with money for bond and rent in advance – Apply for housing assistance. (NSW Government.) See also Financial assistance for renters.

The condition report

The landlord/agent must fill in a condition report and provide this to you when you move in. The report describes the condition of the premises. The landlord/agent must give you 2 copies – one for you to keep and one for you to return to them. You must complete your condition report and return one copy to the landlord or agent within 7 days of moving in.

If the landlord/agent does not give you a condition report, write a detailed report on the condition of the premises yourself, include photos, and have a witness sign and date it.

Completing the report

Inspect the premises and complete the report carefully. The report will be used as evidence if the landlord/agent disputes the return of your bond at the end of the tenancy. It is also a good idea to take photographs at the start (and the end) of the tenancy, and store them in a safe place.

If the landlord/agent tells you they will do cleaning, repairs, additions or other work, write details in the section 'Landlord's promise to undertake work'.

Keys at the start of the tenancy

The landlord/agent must give each tenant named in the tenancy agreement a free copy of the keys (or other opening devices) for the premises and for common property that the tenants are entitled to access.

Disputes and complaints

If there is a dispute, it is a good idea to try to **negotiate** – see Tips: Negotiating with the landlord. If you are unable to reach agreement, get advice from your local Tenants' Advice Service about applying to the **NSW Civil and Administrative Tribunal (NCAT)** or making a complaint to NSW Fair Trading. See also Factsheet: NSW Civil and Administrative Tribunal.

You can apply to the Tribunal for order/s that:

- the landlord prepares and enters into a written tenancy agreement
- a term of the tenancy agreement is invalid because it is inconsistent with the law
- a holding fee is refunded to you (whether or not you enter into a tenancy agreement)
- the condition report is amended

You can complain to NSW Fair Trading if a landlord/agent, for example:

- charges extra fees (other than holding fee, rent in advance and bond) before you enter into an agreement, and specifically if they charge you for a background check or for preparing a written agreement
- withholds any 'material facts', proposed sale or mortgagee action, or makes any false/misleading statement before you enter into an agreement
- includes prohibited terms in the tenancy agreement
- asks for a bond of more than 4 weeks rent

More info

- Factsheets: Bond, Rent payment, Repairs and maintenance, Utilities – water, energy, internet
- New Renters Kit– which also includes tips on **finding a property** and **applying to rent**
- Podcast episode: Getting a foot in the door
- Easy read fact sheet: When you start to rent
- Tips: Negotiating with the landlord, Avoiding rental scams
- NSW Government: Apply for housing assistance, Starting a tenancy

Factsheet updated August 2025

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

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

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