

The Bond Kit

How to Secure your Bond: A Guide for NSW Tenants

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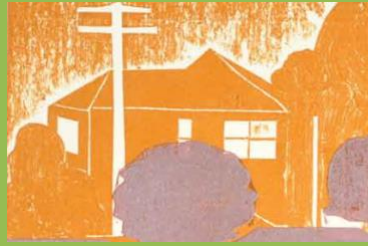


The contents of this kit do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such.



Still have questions?

Contact the Illawarra & South Coast Tenants Service
Phone: 02 4274 3475
Freecall: 1800 807 225



INTRODUCTION

What is a Bond?

Technically the bond is money you pay at the very beginning of your tenancy as security for any departures from your tenancy agreement.

At the end of your tenancy, you are expected to leave the property in the same condition as when you first entered it (but general wear and tear is acceptable). If you are able to leave the house in the same condition as when your lease began, you are entitled to get the full amount of bond money back.

Most importantly, from the beginning until the end the bond is **your** money. Think of it like a savings account that you can cash out as soon as you are at the end of the tenancy.

How much bond can the Landlord ask for?

The Landlord can only ask for:

- An amount equal to 4 weeks rent.
- One bond per tenancy agreement.

They cannot ask for you to pay the bond *before* you sign a tenancy agreement unless you agree to pay the bond directly to NSW Fair Trading “Rental Bonds Online”.

It is a one off payment. The Landlord therefore cannot require you to pay more if the rent increases, or if another tenant moves in.

Moving In

Paying the Bond

You can pay the bond in its entirety (lump sum) or, if the Landlord agrees, by instalments.

The Landlord must then provide you with:

- A receipt for any payment you make, and
- A 'Bond Lodgement' form for you to sign (unless you pay direct to NSW Fair Trading).

Depositing the Bond

The Landlord or their Agent must deposit the bond with NSW Fair Trading.

They must do so within certain timeframes. The exact time will depend on how and/or who you paid the bond to.

You will receive a deposit notice from Fair Trading. If you don't receive this notice, contact Fair Trading.

If the Landlord/Agent has not deposited the bond properly, they can be fined.

Below are the requirements for depositing a bond:

Lump Sum Bond

- If paid to the Landlord's Agent, they must deposit the bond within 10 working days after the end of the month
- If paid directly to the

Landlord, they must deposit the bond with NSW Fair Trading within 10 working days after payment.

Bond by Instalments

- Contact NSW Fair Trading to confirm deadlines for deposit as they will change according to when the payments are made.

Completing the Initial Condition Report

When you move in you should be provided with an ingoing condition report that you must complete.

Take your time with this as condition reports are considered as evidence of the state of the property at the time you moved in.

Be sure to take notes of any marks on walls, inoperative locks, missing keys, broken plumbing or other issues that you notice around the property, even if you think

they are small or the Landlord/Agent has promised to fix them.

It would also be in your best interest to take pictures of the property and particular issues (make sure the date is in the corner) to support your comments.

Rental Bonds Online

NSW Fair Trading provides a voluntary online rental bond system that allows tenants and landlords to manage their bonds. Rental Bonds Online allows payments of bonds through Bpay and bank transfer.

A landlord who requires you to use Rental Bonds Online when you do not want to, may be fined \$2,200.

You can find out more about Rental Bonds Online at: fairtrading.nsw.gov.au/rentalbondsonline





Your Ingoing Condition Report and Evidence

In case of any issues, remember to keep your ingoing condition report as well as any dated photos that you took of the property to show the condition of the property when you moved in.



Contact NSW Fair Trading

If you are not sure that your Landlord or Agent properly deposited the bond, you can contact NSW Fair Trading to confirm that they received it.

Rental Bonds Online:
1800 990 724

Moving Out

So, you're ready to leave your tenancy, but how can you best protect yourself and ensure that you get your bond back?

Outgoing Inspection

When you decide to move out the Landlord/Agent **must** invite you to a final inspection where they will complete the outgoing condition report. You do not need to attend but it would be a good decision to be there to make sure they are completing it accurately.

How to Protect your Bond

The Landlord can only claim from the bond in certain situations so be sure you:

- Don't damage the property,
- Keep the place clean,
- Get the Landlord's consent before making any alterations to the home,
- Pay your rent.

If you do all of the above your bond should be safe! We understand that it is nearly impossible to live in a home without some bumps and scrapes. This is where the concept of 'fair wear and tear' comes into play. Fair wear and tear ensures that as long as you are respectful to the property, you do not have to walk on eggshells around your home.

Fair Wear And Tear:

"Fair wear and tear" is deterioration that occurs due to exposure, time or normal use, despite care and maintenance. You are **not** liable for this.

Examples:

- Faded curtains/cords.
- Furniture indents on carpet.
- Scuffed wooden floors.
- Faded, or cracked paint.
- Worn kitchen bench top.
- Loose hinges/door handles.
- Worn window tracks.
- Water stains from leaking roof or bad plumbing.
- Worn paint at light switch.

Damage:

You **are** liable for damage caused by intentional, irresponsible or negligent actions.

Examples:

- Damage to paint caused by blu tack or sticky tape.
- Water stains caused by overflowing bath or plants.
- Holes in walls left by picture hooks/shelves you installed.
- Broken glass caused by you or your children.
- Burns or cuts in bench top.
- Unapproved paint job or approved but bad quality.
- Scratched/gouged floors.
- Stains/burn marks on carpet.
- Missing or torn curtains.

IMPORTANT:

Check before you sign!

If you do not agree with the Landlord's claims on the bond form do not sign it. You are not obligated to under any circumstances.

If the Landlord asks you to sign a blank form (with either the amount and/or the list of claims empty) do not sign it.

This is the equivalent of handing someone a blank cheque.

Check the items are worth what the Landlord is claiming!

Some goods, like carpet and paint deteriorate over time, regardless of your actions.

This means that even if you have damaged the carpet, the Landlord may not be able to claim the bond to replace it after a certain point in time.

Check the value of certain goods online by searching 'ATO Effective Life Table 2020. Click on 'Accommodation and food services' to search the items claimed.

Claiming your Bond

When your tenancy comes to an end you can claim the bond. There are a number of different ways you can do this, depending on whether you and the Landlord agree or disagree on the issues.

AGREE?

If you both agree on the amount that is to be returned then make sure the 'Claim for Refund of Bond Money' has been completed and signed by both you and the Landlord or Agent.

Once it has been lodged with Fair Trading they will transfer you the agreed amount shortly.

Keep in mind that either of you can begin this process so you don't have to wait for the Landlord/Agent to get in touch before you get the ball rolling.

DISAGREE?

You

You do not need to reach an agreement before the bond return form is lodged with Fair Trading. You can download a bond claim form at the Fair Trading website. If your Landlord/Agent is refusing to sign, you can just complete it and lodge with Fair Trading. The Landlord will then have 14 days to dispute your claim by applying to the NSW Civil and Administrative Tribunal (NCAT). If they do not apply within the 14 days then your

money should appear in your bank account shortly.

Them

If the Landlord lodges the form without your agreement, please keep in mind that they **must** provide you with:

- A copy of the final condition report,
- Invoices, receipts, quotes or estimates to accompany all their claims.

They must give you these documents **within 7 days** of making their claim.

If they do not give them to you, they are committing an offence under the Act and are liable for a fine of up to **\$2200**.

You will be sent a written notice from Fair Trading notifying you of the claim.

You then have **14 days** to apply to the Tribunal, otherwise the bond will be paid out according to the Landlord's claim. If you lodge an application at the Tribunal, be sure to complete and return the Notice of Claim slip to Fair Trading.



Applying to the Tribunal

Hopefully it does not reach this stage, but if there are still disputes over the bond, here are some tips on how to deal with them through the NSW Civil and Administrative Tribunal.

Step One: Apply to the Tribunal

If the Landlord/Agent claims the bond first and you do not respond in 14 days, the bond will be paid out according to the claim.

Thankfully, you still have **6 months** to apply to the Tribunal if you wish to challenge the claim, but the sooner you apply the better.

There is a fee for applying to Tribunal. If you are on a pension, benefit or hold a Senior's Card there is a concession fee.

You can check the fee that will apply to your application and apply online via the website at www.ncat.nsw.gov.au.

Step Two: Negotiate

You do not have to wait until the Tribunal Hearing to have the matter resolved.

It is well worth having a conversation with the Landlord/Agent to see if you can negotiate an agreement – you will be asked to do this anyway when attending the Hearing, and an early agreement may save a lot of stress and lost time.

It is up to you how you approach the conversation but here are some handy hints:

- Be ready to compromise. If there are repairs that you are willing to cover, highlight these from the start and the Landlord may make some concessions of their own.
- Regardless of who applies to the Tribunal the bond is **your** money. If the Landlord wants to claim it, **they** need to **prove** their claim.
- It is the responsibility of the Landlord/Agent to collate the required **evidence** that what they are asking for is justified. Remind them that if they don't have this evidence then it may not be worth it.
- If they do have sufficient evidence, remember to prepare your own response. For example, if they are claiming that you made a hole in the wall, it would be helpful to bring any ingoing photos you have to show it was already there when you moved in.
- If they haven't provided you with the documents described above in the required timeframe, bring to their attention that the fine is \$2200. In some cases this may be more than the bond itself, so it would be more economical for them to return your bond then run the risk of paying this fine.

Step Three: Preparing for the Hearing

After the application is lodged, you will receive a notice that outlines the date, time and place of the Hearing.

The idea of going to Tribunal can be intimidating. If you feel nervous, and you have the time, familiarise yourself by attending a few hearings before your own and simply watch. This will allow you to be more comfortable with the process and what is expected from you.

Outlining your Case

Have an outline of your case written down as a helpful reminder of the points you would like to make. This can be done in the form of a *submission* that you can hand over to the Tribunal Member for them to read in case you don't get an opportunity to make all of your arguments.

Also bring a calculator, notepad, calendar and pen! Don't rely on your phone, you will be asked to switch it off.

Evidence

- A copy of your lease.
- Copies of letters between you and the Landlord, including any notices.
- Copies of both the ingoing and outgoing condition reports.
- A timeline of events and discussions relating to the matter (doesn't have to be exact, just give the Member an idea of the issue).
- Statutory declarations from anyone who is aware of the matter.

Step Four: Attend Hearing

What time?

The date and time for the hearing will be listed on the notice you received. The time will usually be for a group of matters so your hearing will not necessarily be heard at the exact time provided. This means you should be prepared to wait.

What should I wear?

While it is informal, you should still look neat and tidy.

Who can I bring?

You can bring a family member or friend for support to make you more comfortable. Please keep in mind that solicitors are not usually allowed to represent either party in the Tribunal.

What do I call the Member?

You can call them by their surname (usually displayed in front of them) or 'Member.'

Conciliation

If both parties attend, you will be asked to come to an agreement before going into the Hearing. If you have tried negotiating earlier and this did not work it is still worth trying again.

A practical benefit of coming to an agreement is that matters that have reached an agreement will usually go first so you won't have to wait as long. But again, keep in mind that if the Landlord does not have evidence to back up their claims (invoices, dated photos etc) then you do not have to compromise.

What if I Cannot Attend the Hearing?

1. Ask for the Hearing to be rescheduled to a later date (*adjournment*).

Call the Landlord and ask if they would agree to moving the Hearing back to a more suitable date.

If they agree, get it in writing and write to the Tribunal saying that you have agreed to an adjournment. Make sure you provide reasons. If the Landlord does not agree, you can still write to the Tribunal requesting the adjournment and outline the reasons for your request – try to include evidence to support your request. Note that normal work and study commitments are not considered a valid reason to adjourn a Hearing. Until you receive written confirmation **from the Tribunal** that the adjournment has been accepted assume that the Hearing is still the **original** date.

2. Have someone represent you.

Ask someone that you trust to represent you. Make sure that you write a letter of authority for them to give to the Tribunal Member and provide them with clear instructions in how to approach your case. They must take all the evidence for you.



Contacts for Further Information

If you still need help or want to clarify any of the information you read here, please contact any of the services below to find out more.

General Contacts and Useful Links

Fair Trading Renting Services (incl. Rental Bonds Online).....	13 32 20
Tenants Union NSW	8117 3700
Tenancy Factsheets and Sample Letters.....	www.tenants.org.au
NSW Civil & Administrative Tribunal (incl. applications).....	www.ncat.nsw.gov.au

Tenants Advice and Advocacy Services

Inner Sydney.....	9698 5975
Eastern Area.....	9386 9147
Inner West.....	9559 2899
Northern Sydney Area	8918 8650
Southern Sydney.....	9787 4679
South West Sydney.....	4628 1678
Western Sydney	8833 0933
Illawarra & South Coast	4274 3475
Blue Mountains	4704 0201
Central Coast	4353 5515
Hunter.....	4969 7666
Mid Coast.....	6583 9866
Northern Rivers.....	6621 1022
New England & Western Area.....	1800 836 268
VERTO South West.....	1300 483 786

Aboriginal Tenants' Services

Greater Sydney Aboriginal Tenants Service.....	9833 3314
Northern NSW Aboriginal Tenants Service.....	1800 248 913
Southern NSW Aboriginal Tenants Service (Murra Mia).....	4472 9363
Western Aboriginal Tenants Service.....	1800 810 233
Dtarawarra Aboriginal Resource Unit.....	9589 1839



The Tenants Advice & Advocacy Program is funded by NSW Fair Trading, using a small portion of the interest on tenants' bonds.