

For information and help on fair trading issues call the Office of Fair Trading

General enquiries
13 32 20

Language assistance
13 14 50

TTY for hearing impaired
1300 723 404

Aboriginal enquiry officer
1800 500 330

Consumer, Trader & Tenancy Tribunal
1300 135 399

Registry of Co-operatives & Associations
1800 502 042

Or visit a Fair Trading Centre at:

- Albury • Armidale • Bathurst • Blacktown • Broken Hill • Coffs Harbour
- Dubbo • Gosford • Goulburn • Grafton • Hurstville • Lismore • Liverpool
- Newcastle • Orange • Parramatta • Penrith • Port Macquarie • Queanbeyan
- Sydney • Tamworth • Tweed Heads • Wagga Wagga • Wollongong

Visit our website for details
www.fairtrading.nsw.gov.au

13 32 20



Office of Fair Trading
1 Fitzwilliam St Parramatta NSW 2150
PO Box 972 Parramatta NSW 2124
9895 0111



The tenancy handbook

A reference manual for agents,
self-managing landlords and
tenancy advisers

www.fairtrading.nsw.gov.au

ISBN 0 7347 6094 9

This publication can be viewed or printed from the Publications page of our website at www.fairtrading.nsw.gov.au

Disclaimer

This publication is a plain language guide to your rights and responsibilities. It must not be relied on as legal advice. For more information please refer to the appropriate legislation or seek independent legal advice.

Copyright

You may copy, distribute, display, download and otherwise freely deal with this information provided you attribute the Office of Fair Trading as the owner. However, you must obtain permission from the Office of Fair Trading if you wish to 1) modify, 2) charge others for access, 3) include in advertising or a product for sale, or 4) obtain profit, from the information.

Important: For full details, see the Office of Fair Trading's copyright policy at <http://www.fairtrading.nsw.gov.au/copyright.html> or email publications@oft.commerce.nsw.gov.au

© State of New South Wales through the Office of Fair Trading

Revised August 2008



New South Wales
Government

Foreword

Role of the Office of Fair Trading

The Office of Fair Trading administers the laws governing residential tenancies in NSW. Besides this handbook, Fair Trading produces a range of other publications to help inform landlords, agents and tenants, about their rights and responsibilities. These publications are available in print and on the Fair Trading website.

Sometimes print information alone is not enough. When problems arise, a pro-active approach may be more appropriate to prevent disputes from escalating. Minor tenancy problems can become major issues if not dealt with early enough. This can create stress and financial loss for both tenant and landlord.

The Office of Fair Trading encourages landlords and agents to intervene earlier when tenancy problems first emerge. This can be achieved in a number of ways. For instance, a tenant may be experiencing a temporary personal crisis that affects their tenancy. Rather than taking immediate disciplinary action, a landlord or agent could choose to provide tenants with information on where they can go for help.

When problems occur, resolving them quickly is not only good for tenants, it also benefits landlords by minimising the possibility of financial loss.

Contact details of information services that can assist landlords, agents and their tenants are listed in this handbook.

Contents

Foreword	1	Use of collection agents to collect rent	20
Introduction	3	How can rent be increased?	21
Purpose of this booklet	3	Challenging rent increases	21
The Act	3	7. Water and sewerage charges	23
Exemptions	3	Service charges	23
1. Resolving problems	4	Water usage	23
Obtaining information	4	Sewerage charges	23
The Consumer, Trader		8. Privacy and access	24
and Tenancy Tribunal (CTTT)	5	Privacy	24
CTTT Registry locations	5	Access and inspections	24
Costs	6	9. Repairs	25
Time limits	6	Landlord's general responsibilities	25
Orders	6	Urgent repairs	25
Hearings	6	Responsibilities of tenants over	
Information services for tenants	7	the premises	26
Financial assistance for tenants	8	Removing fixtures	26
Discrimination	8	Safety alert - gas water heaters	27
Information for landlords	8	Smoke alarms	28
2. Beginning the tenancy	9	10. Locks and security	29
Disclosure	9	Reasonable security	29
Tenancy agreement	9	What if the premises are not reasonably	
Additional terms	10	secure?	29
Length of tenancy	10	Added security	29
3. Tenancy databases	11	11. Ending the tenancy	30
Who does the Regulation apply to?	11	Notice	30
When did the Regulation come		Notice periods	30
into effect?	11	Notice on sale of premises	31
What are the agent's responsibilities		Notice of breach	31
under the Regulation?	11	What if the tenant does not vacate the	
How long can a listing last?	14	premises?	31
Use of compliant tenant database		Breaking an agreement early	31
operators	15	Undue hardship	32
Penalties and disciplinary matters	15	Fair wear and tear	32
4. Condition report	16	Final inspection	32
What is involved	16	Returning keys	33
Promised repairs	16	Bond refunds	33
5. Entry costs	17	12. Abandoned premises and	
Reservation fee	17	uncollected goods	34
Rental bond	17	Abandoned premises	34
Advance rent	18	Compensation	34
Agreement costs	18	Abandoned or uncollected goods	34
Keys	19	Notice to tenant required	35
6. Rent	20	Auctioning of goods	36
Rent receipts	20	Claiming uncollected goods	36
Electronic rent payments	20		

Introduction

Purpose of this booklet

This handbook is intended to be used as a reference manual for real estate agents, landlords, housing providers and organisations involved in providing advice and assistance to tenants occupying residential premises in NSW. It explains in simple language the rights and responsibilities of landlords and tenants under tenancy law.

The agreement entered into at the beginning of every tenancy outlines the legal rights and responsibilities of the landlord and tenant. This booklet contains practical advice on what many of the terms of the agreement mean in common situations.

The Act

The Residential Tenancies Act commenced on 30 October 1989. It sets out a balanced set of rules by which landlords and tenants must operate.

Exemptions

The Act does not apply to:

- nursing homes, hostels and retirement villages
- hotels and motels
- boarders and lodgers
- protected tenancies
- residential parks
- commercial or predominantly commercial tenancies.

This is not the complete list of exemptions, others apply. If there is uncertainty as to whether the Act applies please contact Fair Trading.

Important

The Act applies whenever a house, a unit, part of a house or unit, or any other property is rented and intended to be used as someone's place of residence. All residential tenancies are covered by the Act, including those that existed when the Act began.

1. Resolving problems

First step

The first step in resolving any problem or dispute is to carefully read the term/s of the tenancy agreement and get information as soon as possible about the matter.

Obtaining information

Fair Trading can help landlords, agents and tenants resolve tenancy problems and disputes. Customer service officers provide assistance over the phone (see below) or in person at any Fair Trading Centre (see back cover).

Tenancy information

Tel: 13 32 20

Rental bond information

Tel: 13 32 20

Fax: claim forms 9283 1490 or
1800 803 655 (outside Sydney)

Aboriginal tenancy information

Tel: 13 32 20

Freecall: 1800 500 330 (outside Sydney)

Tenants also have the option of contacting their local Tenants' Advice and Advocacy Service for more information about their rights and obligations (see page 7 for more details).

It is recognised that information will not resolve every problem or dispute. Some matters may need to be taken to the Consumer, Trader and Tenancy Tribunal (see page 5 for further details).

Important

It is always best for a landlord/agent and a tenant to try and solve any problems between themselves.

To avoid possible problems later, any agreement reached should be put in writing.

The Consumer, Trader and Tenancy Tribunal

The Consumer, Trader and Tenancy Tribunal (CTTT) provides a quick and low cost dispute resolution service for tenants, landlords, traders and consumers.

Application forms are available online at www.cttt.nsw.gov.au and at Fair Trading Centres. You can lodge your completed form online, at Fair Trading Centres, at CTTT registries or your Local Court.

Tel: 1300 135 399

TTY: 9641 6521

Fax: 1300 135 247

Web: www.cttt.nsw.gov.au

CTTT Registry locations

Application forms are also available at CTTT registries. After you have lodged an application, you may contact the CTTT for information relating to it.

Hurstville Registry

Level 3, 4-8 Woodville St
PO Box 148 Hurstville BC 1481

Liverpool Registry

Level 3, 33 Moore St
PO Box 723 Liverpool BC 1871

Newcastle Registry

Level 1, 175 Scott St
PO Box 792 Newcastle

Parramatta Registry

Level 2, 10 Valentine Ave
PO Box 4117
Parramatta NSW 2124

Penrith Registry

Level 1, 308 High St
PO Box 988 Penrith NSW 2751

Sydney Registry

Level 12, 175 Castlereagh St
GPO Box 4005
Sydney NSW 2001

Tamworth Registry

Suite 3-5 Kable Korner Complex
Cnr Kable Ave and Darling St
PO Box 1033
Tamworth NSW 2340

Wollongong Registry

Level 3, 43 Burelli St
PO Box 319
Wollongong NSW 2520

Costs

Application fees apply. Call the CTTT on 1300 135 399 or visit www.cttt.nsw.gov.au for information. Cheques and money orders should be made payable to the Consumer, Trader and Tenancy Tribunal.

Time limits

There are prescribed time limits for making applications to the CTTT for certain orders. Application time limits are included in the CTTT Tenancy Division application form.

Hearings

Hearings are usually held within 1 month and are conducted at a venue as close as possible to the rented premises. The Tribunal member will first ask the parties to try and reach a settlement with the assistance of a Tribunal conciliator. There are dedicated conciliators available at major hearing venues to assist parties during their discussions. All evidence should be exchanged at this time. If settlement cannot be achieved, the case will then be heard by a Tribunal member. The Tribunal member will allow both parties, in turn, to tell their side of the events and present any evidence. Witnesses can be called if necessary although the hearing may have to be adjourned to another day if this happens. Translators can be organised by the CTTT at no cost to the parties. This service must be requested when the application is lodged.

Orders

The CTTT can make orders, such as:

- a term of the agreement be complied with
- compensation be paid to a landlord or tenant
- a rent increase is excessive
- the agreement be ended.

Important

It is up to the person who made the application to provide enough evidence to convince the Tribunal member, on the balance of probabilities, that the orders they are seeking should be given. Any orders made are binding.

Information services for tenants

Tenants Advice and Advocacy Services are independent community based organisations, providing tenants with advice, information and advocacy.



Tenants Advice and Advocacy Services		Contact
Inner Sydney	Inner Sydney, South Sydney, Botany, Leichhardt	9698 5975
Inner Western Sydney	Ashfield, Burwood, Concord, Drummoyne, Marrickville, Strathfield	9559 2899
Eastern Sydney	Randwick, Waverley, Woollahra	9386 9147
Northern Sydney	Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Manly, Mosman, North Sydney, Ryde, Pittwater, Warringah, Willoughby	9884 9605
Southern Sydney	Bankstown, Canterbury, Hurstville, Kogarah, Rockdale, Sutherland	9787 4679
Western Sydney	Auburn, Baulkham Hills, Blacktown, Blue Mountains, Hawkesbury, Holroyd, Parramatta, Penrith	9413 2677 8833 0911
South Western Sydney	Camden, Campbelltown, Fairfield, Liverpool, Wollondilly	4628 1678
Central Coast	Gosford, Wyong	4353 5515
Hunter	Greater Newcastle, Hunter Valley	1800 654 504
Mid North Coast	Greater Taree, Hastings, Kempsey, Nambucca, Bellingen, Coffs Harbour	1800 777 722
Northern Rivers	North Coast council areas	1800 649 135
Illawarra/South Coast	Illawarra, South Coast	1800 807 225
North Western NSW	North West of the Great Dividing Range	1800 836 268
South Western NSW	South West of the Great Dividing Range	1800 642 609
Older Persons Tenants Service	State-wide service	9566 1120 1800 131 310
Tenants Union Hotline	website: www.tenants.org.au	8117 3750 1800 251 101

There are also four services specifically assisting Aboriginal tenants

Greater Sydney	Includes Sydney metropolitan area, Hawkesbury, Wyong, Gosford, Blue Mountains, Wollondilly	9282 6729
Southern NSW	Southern NSW	1800 672 185
Western NSW	Western NSW	1800 810 233
Northern NSW	Northern NSW	1800 248 913

Financial assistance for tenants

Financial or other assistance may also be obtained from charities, churches and other local non-government organisations. To find out where to obtain such assistance, tenants should contact the nearest Tenants' Advice and Advocacy Service (see page 7 for details).

Some low income tenants may be eligible for financial assistance under the Housing NSW Rentstart Scheme. For more information on Rentstart, tenants should contact:

Housing NSW

www.housing.nsw.gov.au

Tel: 1800 629 212

Aboriginal Enquiry Line: 1800 355 740

TTY: 1800 628 310

Discrimination

Some forms of discrimination are prohibited under the NSW Anti-Discrimination Act. For further information on discrimination contact the New South Wales Anti-Discrimination Board.

NSW Anti-Discrimination Board

www.lawlink.nsw.gov.au/adb

Tel: 9268 5544

Freecall: 1800 670 812 (outside Sydney)

TTY: 9268 5522

Fax: 9268 5500

Information for landlords

The Property Owners' Association is a non-profit organisation that provides information and assistance to property owners. Go to www.poansw.com.au for further information.

2. Beginning the tenancy

Disclosure

Before a tenant enters into an agreement or moves into the property, the landlord or the landlord's agent must give them:

- a copy of the proposed tenancy agreement (including a premises condition report, in duplicate), filled out where appropriate in the space provided
- a written statement as to the costs payable by the tenant on signing the agreement
- a copy of the *Renting guide* fact sheet.

Tenancy agreement

The law requires that there must be a written tenancy agreement between all landlords and tenants. The agreement must be provided by the landlord or the landlord's agent. Agreements can be purchased from most newsagencies and stationery stores or the Real Estate Institute. They are not available from Fair Trading.

The Act contains a standard form of tenancy agreement that must be used in all circumstances. Each tenancy agreement must consist of two parts:

- Part 1 – the terms of the agreement (ie. what the landlord and tenant agree to do during the tenancy)
- Part 2 – a premises condition report, setting out the state of the premises at the beginning of the tenancy.

The standard terms of the agreement (terms 1 to 28) apply to all landlords and tenants and cannot be altered or deleted.

Important

The tenant must be given time to read and understand the tenancy agreement before being asked to sign.

Additional terms may be added to the agreement. It is essential that all parties read the tenancy agreement before signing it.

Additional terms

There need not be any additional terms added to a tenancy agreement. Additional terms may however, be added to the agreement so long as they:

- expand on one of the standard terms of the agreement, or
- cover a matter which is not already dealt with under the Act.

All additional terms, including any which may be printed on the agreement, are negotiable. The parties can agree to alter the wording or delete an additional term altogether.

Examples of additional terms which are not binding or enforceable include:

- the tenant agrees to have the carpet professionally cleaned when they vacate, or
- the tenant agrees to replace tap washers, stove elements or to be responsible for any other repairs to the premises.

Length of tenancy

The length of the fixed-term period of the tenancy is agreed between the tenant and the landlord. The most common fixed-term periods are 6 months or 12 months, though the parties can agree to have a tenancy agreement for any other length of time.

Once the fixed-term period of the tenancy ends the tenancy agreement itself does not end unless it is terminated by either the landlord or the tenant. If it is not terminated, the agreement becomes a continuing agreement with the same terms and conditions.

Important

It is a breach of tenancy law to add an additional term which conflicts with either the Act or one of the standard terms of the agreement. Any such terms are not binding or enforceable, even though the tenant may sign the agreement.

Important

If there is any doubt about the validity of an additional term, tenants may obtain further information from an information service.

See page 7.

3. Tenancy databases

Many real estate agents use tenant databases to identify potentially unreliable tenants. The Property, Stock and Business Agents Amendment (Tenant Databases) Regulation 2004, commenced on 15 September 2004 and introduced new rules of conduct in relation to listing people on tenant databases for real estate agents to follow.

Who does the Regulation apply to?

Real estate agents who manage property and on-site residential property managers and their registered employees.

When did the Regulation come into effect?

The Regulation applies to any listing made on or after 15 September 2004. The Regulation does not apply to listings made prior to 15 September 2004.

What are the agent's responsibilities under the Regulation?

An agent must not use the services of a database operator unless the database is operated in accordance with the Regulation.

Before a residential tenancy agreement has been signed

An agent must advise the tenant, verbally or in writing, that if they breach the agreement their personal information could be listed on a tenant database.

It is recommended that the agent keep a written record of such notification as proof of compliance.

Before a tenant is listed

The following conditions must be met:

- The agent must have provided property management services in respect of the tenant's residential tenancy agreement.
- The residential tenancy agreement must be terminated.
- An agent must:
 - notify the tenant/former tenant, in writing, of their intention to list them on a tenant database and the reason for doing so
 - give the tenant a reasonable opportunity to respond and review or correct any personal information to be listed.

However, an agent does not have to notify a tenant or give a tenant that opportunity, if the agent cannot locate the tenant after making reasonable inquiries. The agent must keep a written record of the notification and any response by the tenant, or attempts to locate the tenant, for at least 5 years.

If the agent and tenant cannot agree about the personal information to be listed, the agent must note the tenant's objection on the database.

Reasons for listing a tenant

An agent cannot list a tenant for a trivial or subjective reason. A tenant can only be listed for specific reasons, as explained below:

- The tenant owes the landlord money for rent and/or damage caused intentionally or recklessly to the residential premises (but only if the amount owing exceeds the amount of the rental bond).

- Failure to pay an amount of money to the landlord in accordance with an order of the Consumer, Trader and Tenancy Tribunal (CTTT).
- Where the CTTT has issued a termination and possession order for serious or persistent breach of the residential tenancy agreement.
- Where the CTTT has issued a termination and possession order where the tenant causes serious damage or injury.

Listing a tenant for money owed due to damage to the residential property

Before listing a tenant for this reason, the agent must:

- complete a condition report
- note the damage on the condition report
- report the damage to the police and be given the corresponding incident number, and
- check whether the tenant has made an application to the CTTT regarding the residential tenancy agreement.

An agent cannot list a tenant for money owed due to damage unless the CTTT has determined such an application.

After a listing has been made

It is recommended that an agent tries to send a copy of the listing to the tenant after a listing has been made on a tenant database.

How long can a listing last?

It varies, depending on why the tenant is listed and whether a debt is involved. The following rules apply to listings made on or after 15 September 2004.

For non payment of a debt

If a tenant owes the landlord money, and the debt is paid within 3 months, then within 7 days of becoming aware that the payment has been made, the agent must notify the database operator who must then delete all reference to that debt from the database within 7 days of being notified.

If a tenant owes the landlord money, and the debt is paid after 3 months, within 7 days of becoming aware that the payment has been made, the agent must notify the database operator who must record the payment on the database within 7 days of being notified. The database operator must delete all reference to that debt after 3 years.

For other allowable reasons

If a tenant is listed for an allowable reason other than non-payment of a debt (see 'Reasons for listing a tenant', page 12), the database operator must delete any reference to that listing after 3 years.

In cases of non-payment of a debt and other allowable reasons, the tenant would not be removed from the database altogether if any other listings for them were still current or if they had been listed prior to 15 September 2004.

Important

It is recommended that agents keep a written record of correspondence with the tenant/former tenant as proof of compliance. See clause 4(6) of the Regulation – some records have to be kept for 5 years.

Important

It is the agent's responsibility to use a database that is operated in accordance with the Regulation – if in any doubt, the agent should discontinue using the operator.

Use of compliant database operators

Under the Regulation, an agent must only contract with tenant database operators who:

- ensure that listed tenants have cost-free access to their listed personal information
- amend listed information that the tenant claims is incorrect, inaccurate or incomplete at no cost to the tenant (unless the agent disputes the claim)
- make a note on the database of the tenant's objection to the listed information, or if an agent disputes a tenant's request for amendment of listed information, and
- delete listings within the timeframes specified by the Regulation.

Penalties and disciplinary matters

Fines of up to \$2,200 for corporations and \$1,100 for individuals and partnerships apply for non-compliance with the Regulation. A breach of a rule of conduct can also lead to disciplinary action being taken under the Regulation, which can result in cancellation or disqualification of a licensee.

4. Condition report

What is involved

The steps taken to complete a condition report are:

- The landlord or agent must fill out and sign the condition report in triplicate (ie. three copies) noting the cleanliness, general condition and working order of each applicable item on the report. Any comments should be written in the space provided, or on a separate page if there is not enough room.
- If the property is furnished a list of all the furniture and the condition of each item should be attached to the report.
- The tenant should then be given two copies of the filled out condition report at or before the time the tenancy begins.
- The tenant should take the report away and fill out the 'tenant agrees' column with a Y (for yes) or an N (for no). If the tenant does not agree they should write a reason in the comments area of the report.
- The tenant should sign and return a copy to the landlord or agent within 7 days and keep the other copy for themselves.

Promised repairs

If the landlord or agent agrees, prior to the start of the tenancy, to fix anything or do other work (eg. cleaning or painting), this should be noted in the space provided at the end of the condition report.

Important

Whenever a tenancy begins a premises condition report must be filled out. It should be a true and accurate account of the condition of the premises. The condition report may become the most important piece of evidence if a dispute arises over the condition of the premises at the end of the tenancy.

Important

If the landlord or agent decides not to go ahead with the tenancy, on the agreed terms, or makes no decision within 1 week of the fee being paid, the full amount must be refunded. Should the tenancy go ahead the reservation fee is applied to the first week's rent.

Important

The amount of bond that is to be paid (if any) must be written on the agreement.

5. Entry costs

The following entry costs may be incurred before or at the time of signing a tenancy agreement:

Reservation fee

A reservation (deposit) fee is an amount of money (no more than 1 week's rent) that is sometimes paid to reserve the premises while an application for tenancy is being considered. A reservation fee is a sign of good faith, but does not guarantee that the tenancy will go ahead.

If the applicant withdraws, the landlord may retain the reservation fee for the days the premises were reserved. The landlord may do this provided that:

- the premises were not let or occupied during the period of reservation
- no more than one reservation fee was held at the same time, and
- a proper receipt and written acknowledgment were given to the prospective tenant when the fee was paid.

Rental bond

A rental bond is an amount of money paid by a tenant as a form of security for the landlord against any future breaches of the tenancy agreement. The maximum rental bond that can be asked for is:

- 4 weeks rent, for unfurnished premises, or
- 6 weeks rent, for fully furnished premises with a rent of \$250 or less per week, or
- unlimited, if the rent for fully furnished premises is more than \$250 per week.

The landlord or agent must send any bond paid to Renting Services Branch of the Office of Fair Trading, within 7 days.

A lodgement form is needed and can be ordered online at www.shop.nsw.gov.au—they are also available from any Fair Trading Centre. Both the landlord/agent and the tenant will receive an advice of lodgement for the bond from Fair Trading. The Department of Housing has a separate lodgement form, where they contribute part or all of a bond on behalf of tenants. Demanding or receiving a written guarantee from a tenant, or somebody on their behalf, is not permitted. A rental bond must be in the form of money and not as a guarantee.

Advance rent

A tenant must pay the rent in advance from the first day of the tenancy. The tenant can be required to pay:

- 2 weeks rent in advance, if the weekly rent is \$300 or less, or
- 1 month's rent in advance, if the weekly rent is more than \$300.

It is important to remember that a tenant cannot be required to pay the rent other than on a weekly or fortnightly basis if the weekly rent is \$300 or less.

For example: on the day the tenancy commences the tenant pays 2 weeks rent and is 14 days in advance. As each day passes the tenant becomes 1 day less in advance, so that when the rent next falls due (a fortnight later) the tenant is no longer in advance with the rent. By making their next fortnightly payment the tenant is again 14 days in advance and the cycle continues.

Important

It is an offence not to lodge the rental bond and may mean the landlord is liable to a financial penalty.

Important

Advance rent is not money that the landlord can keep in reserve as some form of extra rental bond. A tenant cannot be asked to make any more rent payments until the rent which they last paid has been used.

Important

Under no circumstances can any tenant be charged a separate fee, bond or deposit for keys.

Agreement costs

The landlord can ask the tenant to pay half the cost of preparation of the tenancy agreement, but only up to a maximum of \$15 (GST inclusive).

This means that if an agent or solicitor charges more than \$30 to prepare an agreement the landlord must pay the balance over \$15.

Keys

All tenants listed on the agreement must be given a set of keys and all other lock opening devices, swipe cards, remote controls, etc., so that they can enter and secure any part of the premises. This includes keys to any door, window, garage or letterbox locks.

6. Rent

Rent is the main charge that tenants have to pay on a regular basis. The level of rent and the method of rent payment should be agreed upon before the tenancy begins. Both should be written into the tenancy agreement in the spaces provided. Rent payments are GST free. The method of rent payment cannot be changed during the agreement period unless both parties agree.

Rent receipts

Receipts must always be given if the rent is paid in person. Receipts for rent must show:

- the address of the premises
- the name of the tenant
- the amount of rent paid
- the name of the landlord or agent
- the date the rent was paid
- the period of time which the rent covers.

If rent is posted, a receipt must still be filled out and either sent back to the tenant, or kept until the tenant wants to collect it. If the rent is paid into a bank account, no rent receipt need be given.

Electronic rent payments

A landlord cannot pass on the cost of providing a payment card or deposit book to the tenant for paying rent at a post office or bank.

Use of collection agents to collect rent

A collection agent is a person or organisation who collects rent on behalf of an agent who is managing the property for the owner.

Important

The landlord or agent must keep copies of all rent receipts and a separate rent record for at least 12 months. It is advisable that receipts be kept by both parties until after the end of the tenancy.

Important

If the condition of the premises is the reason the tenant thinks the increase is too high they may raise this with the agent or landlord. For instance, the tenant may agree to pay the rent increase if the landlord is prepared to paint the premises. It is up to the landlord to consider the costs involved in any such proposal.

To operate the service the collection agent enters into an agreement with both the tenant and the landlord. The collection agent may charge a fee to both the tenant and the landlord for this service. The rent is automatically deducted from the tenant's bank account and deposited into the agent's trust account. The agent is responsible for remitting the rent (less any commission or expenses) to the landlord.

How can rent be increased?

Rent increases usually happen after the fixed-term period of the agreement has expired. Rent can be increased however, during the fixed term if the agreement contains an additional term showing the amount of the increased rent or the exact method of calculating it and the date from which it is to be paid. Before a landlord can increase the rent the tenant must be given at least 60 days notice in writing. This notice must be given whether the rent is being increased during the fixed term or after the fixed term has expired.

If the notice is sent by post, at least 4 working days (not including the day the notice was sent) should be added to the amount of the notice, to allow time for the notice to be delivered. 'Working days' excludes Saturdays, Sundays, public holidays and bank holidays.

Challenging rent increases

If a tenant thinks that a proposed rent increase is too high they can:

1. Negotiate with the landlord or agent

Based on the reasons given by the tenant, the landlord or agent may agree to reduce the amount of the increase or withdraw it altogether. The landlord/agent may be persuaded by evidence of market rents in the area or what the tenant has done to improve the premises.

If a landlord agrees on a lower amount of increase this should be put in writing. Another 60 days notice is not necessary. The lower increase becomes due from the same date the original increase was payable.

2. Apply to the Consumer, Trader and Tenancy Tribunal (CTTT)

Tenants can apply to the CTTT to have a proposed increase reduced or withdrawn, if they believe that the increase is too high.

Applications must be made within 30 days of receiving the rent increase notice. Tenants have to prove that the increase is excessive. The main evidence the CTTT considers is comparable rents for similar properties in the same area.

Important

A tenant can only be charged for the metered amount of water which they use. For this reason it is important that the water meter be read and the figure noted on the premises condition report before the start and at the end of each tenancy. Otherwise there will be no way of dividing the first account between a new tenant and a former occupant.

7. Water and sewerage charges

Service charges

Landlords are responsible to pay for all service charges for water and sewerage issued by the local water supply authority.

Water usage

In some cases a tenant may be asked to pay the water usage part of the bill to the landlord. Under no circumstances can connection fees be passed on to the tenant.

The 'water usage' charge which appears on the landlord's bill for the rented premises is for the total amount of water which flows through the water meter on the property.

A tenant may only be charged for water usage when they have agreed to pay for water usage under the additional terms of the tenancy agreement.

If there is no individual meter for the rented premises, as is the case with some blocks of units, a tenant cannot be charged for water usage. If the supply authority has a minimum amount payable for all properties the tenant does not have to pay for water.

A tenant should be provided with a photocopy of the water account and should pay any amount owing before the due date on the bill.

Sewerage charges

Some water authorities also charge a fee for sewerage discharge or waste water. This fee is usually based on the amount of water supplied to the premises (eg. 75% of water consumption) and may be charged to the tenant.

8. Privacy and access

Privacy

The landlord must make sure they, or anybody else on their behalf, do not interrupt the tenant's reasonable peace, comfort and quiet enjoyment of the premises.

Access and inspections

The landlord, agent or any person authorised by the landlord may enter the premises only in the following circumstances:

- To carry out a general inspection of the premises if the tenant is given at least 7 days notice. There can be no more than four inspections in any 12-month period.
- To carry out necessary repairs or install a smoke alarm if the tenant is given at least 2 days prior notice. The repairs must be necessary and must not simply be improvements or renovations. For urgent repairs no notice is necessary.
- To show the premises to prospective tenants on a reasonable number of occasions if the tenant gets reasonable notice on each occasion. This access is only permitted during the final 14 days of the tenancy.
- To show the premises to prospective buyers, on a reasonable number of occasions if the tenant gets reasonable notice on each occasion. What is 'reasonable' is for the parties to agree upon. The Tribunal can settle any disputes if one party believes the other is being unreasonable. Access to show buyers can occur at any stage during the tenancy.
- If there is good reason for the landlord to believe that the premises have been abandoned by the tenant.
- In an emergency.
- If the Tribunal orders that access be allowed.
- If the tenant agrees.

Important

Unless the tenant agrees, access is not permitted on Sundays, public holidays or outside the hours of 8am to 8pm.

Important

Landlords are obliged to organise any urgent repair, as soon as reasonably possible, after having been notified by the tenant of the fault or damage.

9. Repairs

Landlord's general responsibilities

The landlord must make sure that premises are reasonably clean, and fit to live in at the start of the tenancy. The landlord must then maintain the premises in a reasonable state of repair considering:

- the age of the premises
- the amount of rent the tenant is paying, and
- the prospective life of the premises.

This does not mean that the premises must be let in perfect condition, or that the landlord must immediately attend to every small matter during the tenancy. The state of the property and level of repair expected should be in proportion to the premises' age and the amount of rent.

Urgent repairs

An urgent repair is any work needed to fix:

- a burst water service
- a blocked or broken lavatory system
- a serious roof leak
- a gas leak
- a dangerous electrical fault
- flooding or serious flood damage
- serious storm or fire damage
- a failure or breakdown of the gas, electricity or water supply to the premises
- a failure or breakdown of any essential service on the premises for hot water, cooking, heating or laundering
- any fault or damage that causes the premises to be unsafe or not secure.

For an important safety alert about gas water heaters, see page 27.

From 1 September 2006 tenants can spend up to \$1,000 on urgent repairs (up from \$500) and should be reimbursed within 14 days by the landlord (see page 25 for which repairs are urgent). The landlord or agent must first be given a reasonable opportunity to arrange the work, or if they cannot be reached, the tenant should use any properly qualified tradesperson nominated in the agreement. Refer to the tenancy agreement for more information.

Responsibilities of tenants over the premises

Under the law the tenant must keep the premises in a reasonable state of cleanliness, having regard to the condition of the premises at the start of the tenancy. If the premises include a yard, lawns and gardens, they must also be kept neat and tidy by the tenant.

The tenant must not intentionally or negligently cause or permit damage to the premises. Negligence means forgetting to do something which a reasonable person would usually do in the circumstances, or doing something which a reasonable person would not do. In simple terms, it is a lack of care or attention.

A tenant is also responsible for damage caused by other occupants of the premises or any person the tenant allows on the premises.

Removing fixtures

When removing fixtures the following conditions apply:

- Fixtures added by tenants cannot be removed without the landlord's permission.

Important

Tenants must notify the landlord or agent of any damage to the premises as soon as practicable, regardless of who or what caused the damage. It is recommended that this notice be put in writing.

Important

A tenant cannot, except with the landlord's written permission attach any fixture or make any renovation, alteration or addition to the premises. This ranges from small items such as putting picture hooks into the wall, adding locks or having a telephone installed, to larger matters like painting the whole premises.

- If removing a fixture causes damage, the tenant is responsible for repairing the damage or compensating the landlord.
- If the landlord refuses to allow the fixture to be removed, the landlord must compensate the tenant for the value of the fixture.

Safety alert – gas water heaters

Gas water heaters that have not been properly maintained have been responsible for deaths and serious injuries. If your property has a gas bath heater or flued instantaneous water heater in the bathroom, or a flueless water heater in the kitchen, it could be a source of danger.

The Australian Gas Association and the Office of Fair Trading recommend that all gas water heaters are serviced regularly by approved service agents and when replaced are installed externally to reduce the risk of an accident. Landlords are obliged to ensure that fixed appliances are safe.

Always ensure:

- an authorised gas service agent services the water heater once a year
- the bathroom and kitchen heaters have unobstructed ventilation
- heater flue pipes are free from all restrictions and holes
- there is no evidence of the heater creating soot deposits
- that signs of discolouration on or around the heater or flue are taken seriously and investigated
- all new and replacement gas water heaters are installed externally to the building.

For further information please contact the gas retailer, or the Master Plumbers Association of NSW on toll free 1800 424 181, or the Office of Fair Trading on 13 32 20.

Smoke alarms

Under the Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006, landlords are responsible for fitting smoke alarms to all residential premises. The landlord has the right of access to fit the required alarm/s (after giving at least 2 days notice to the tenant). The landlord must fit a new battery (if the alarm has a replaceable battery) at the beginning of the tenancy. During the tenancy the tenant is responsible for replacing batteries unless physically unable, in which case the landlord must be advised of the need for a battery replacement.

For more information about the type, location and number of smoke alarms that are required to be fitted to the various classes of residential premises, contact:

Department of Planning

www.planning.nsw.gov.au

Smoke alarms helpline

Tel: 1300 858 812

NSW Fire Brigades

www.nswfb.nsw.gov.au

For more information about the changes to Fair Trading laws as a result of the smoke alarms legislation, contact:

Office of Fair Trading

Tel: 13 32 20

Important

Should the landlord fail, within a reasonable time, to carry out the work, the tenant may apply to the CTTT. It is then up to the tenant to prove that the premises are not reasonably secure.

10. Locks and security

Reasonable security

The law states that a landlord must provide and maintain such locks or other security devices as are necessary to ensure that the premises are reasonably secure. What is 'reasonably secure' will vary in different situations.

The potential risk (ie. the likelihood the premises may be broken into) will have a bearing on the type and standard of locks needed to make a property reasonably secure. This will depend largely on the area in which the premises are located.

Even then, the same standard cannot be applied to all premises within an area. The ability of a thief to gain access to doors and windows can vary from one property to another. For instance, the level of security needed for a ground floor unit will usually be greater than for a unit on an upper level.

A landlord does not have to make the property so secure that the premises can never be broken into. The requirements of insurance companies are not the sole test of what is 'reasonable security', but are merely one factor to be taken into account in deciding what level of security is appropriate for the premises.

What if the premises are not reasonably secure?

A tenant who believes at any time that the premises are not reasonably secure should notify the landlord, preferably in writing, and request steps be taken to fix the problem.

Added security

If a tenant wishes to add locks or other security devices to make the premises more than reasonably secure, the tenant must obtain the landlord's prior written consent and pay all costs.

11. Ending the tenancy

Notice

A tenancy will usually be terminated by either the landlord or the tenant giving notice to the other party and the tenant vacates on or after the date specified.

A notice of termination must:

- be in writing
- state the address of the premises
- be signed and dated
- allow the required period of time
- give the actual date on which the tenant is requested, or intends, to move out (Note: do not use words such as 'by' or 'on or before' or 'within 14 days' in the notice)
- give full details of all breaches (if any) or reasons for ending the agreement
- when given to a tenant, include a statement that information about their rights and obligations can be found in the tenancy agreement.

The notice can be posted or given personally. A notice cannot be stuck to or put under a door by the person delivering the notice. The notice period is counted from the day after the notice is served.

Notice periods

In the last 14 days of the fixed-term period of the agreement, either party can give 14 days notice to end the tenancy. This notice can be served up to and including the last day of the fixed term.

Once the fixed-term period has ended, a tenant is required to give at least 21 days notice, and the landlord must give at least 60 days notice.

Important

If the notice is sent by post at least 4 working days (not including the day the notice was sent) should be added to the amount of notice, to allow time for the notice to be delivered. 'Working days' excludes Saturdays, Sundays, public holidays and bank holidays.

Notice on sale of premises

If the premises are sold and vacant possession is required in the contract of sale, the landlord must give the tenant at least 30 days written notice (after the contracts of sale have been exchanged). This is only applicable to continuing tenancy agreements.

Notice of breach

A notice of termination may be given at any time if either party seriously or persistently breaches a term of the agreement, or if the tenant is more than 14 days in arrears of rent. At least 14 days notice must be given in writing.

What if the tenant does not vacate the premises?

It is important to realise that if a tenant does not vacate after a notice of termination is given that an order from the Tribunal must be obtained before possession can be taken. There are very heavy penalties for not obeying this part of the law.

Breaking an agreement early

If a tenant wants to end their tenancy agreement early they should give as much notice as possible, preferably in writing giving the date they intend to leave and ask for the landlord (or agent) to help find a new tenant.

A landlord can claim compensation for any loss they suffer as a result of a tenant ending the agreement early. Some of the costs a tenant could be liable for include:

- rent until new tenants move in or the existing agreement runs out (whichever happens first)
- a reletting fee (usually 1 week's rent) when the property is let by an agent who charges the landlord a fee for finding new tenants

- advertising costs
- lease preparation fee.

For a landlord to successfully claim, they must be able to show that their loss was caused by the tenant breaking the agreement early, not by other factors. For example, if a tenant breaks the agreement just prior to the expiry date, the full amount of reletting and advertising charges may not be able to be passed on since the landlord would have incurred these expenses shortly anyway. The landlord also has a duty to keep their loss to a minimum and make a reasonable effort to find a new tenant, otherwise any claim they later make may be reduced by the Consumer, Trader and Tenancy Tribunal. For example, a landlord who uses the opportunity to lease the premises at a higher rental may not be entitled to claim any compensation.

Undue hardship

At any stage of the tenancy, a landlord or tenant can apply to the CTTT to end the agreement on hardship grounds. No prior notice is required. It is up to the party claiming hardship to satisfy the CTTT that there are grounds for ending the agreement. If the CTTT makes an order to end the tenancy, the party suffering hardship may be ordered to pay compensation to the other party.

Fair wear and tear

At the end of a tenancy the tenant is responsible for leaving the premises as nearly as possible in the same condition, fair wear and tear excepted, as set out in the original condition report.

Final inspection

At, or as soon as possible after, the end of the tenancy both the landlord/agent and tenant must carry out a final

Important

Fair wear and tear means the deterioration that occurs over time with the reasonable use of the premises by the tenant and the ordinary operation of natural elements, even though the premises receive reasonable care and maintenance.

Important

No matter who applies to the CTTT it is always up to the landlord to prove any claim on the bond.

inspection of the premises. The original condition reports should then be completed by both parties. A reasonable opportunity must be given to the other party to attend the final inspection. However, if a reasonable opportunity is given to the other party to be there and they do not show up, the report may be filled out in their absence.

Returning keys

A tenant is responsible to return all copies of keys given to them at the start of the tenancy by the landlord or agent. A tenant may be charged for rent up until the keys are returned.

Bond refunds

During the tenancy, the rental bond must be held by the Office of Fair Trading. At the end of the tenancy, after the final inspection, a claim form should be filled out by the landlord or agent and given to the tenant to sign. A tenant should not be asked to sign an incomplete claim form. Claim forms can be ordered online from www.shop.nsw.gov.au and are available from any Fair Trading Centre or may be downloaded at www.fairtrading.nsw.gov.au. Alternatively, property managers registered for the Rental Bond Internet Service (RBIS) can submit claims online. Contact the Renting Services Branch of the Office of Fair Trading for further information about RBIS.

If agreement cannot be reached, either party may send a claim form to Renting Services, without the signature of the other party. The bond will not be paid out straight away. A letter will be sent to the other party advising them of the claim and giving them 14 days to dispute the claim. If no reply is received within 14 days the bond will then be paid out.

12. Abandoned premises and uncollected goods

Abandoned premises

If the residential premises appear to have been abandoned by the tenant, a landlord may apply to the CTTT for an order to have the premises declared abandoned. Once such an order is given, the premises are considered abandoned from the date specified on the order.

The landlord or agent must present evidence to the CTTT to support their claim that the premises have been abandoned. This may include statements from witnesses, notices of disconnection of electricity, telephone or gas, empty premises etc.

Compensation

The tenant who abandons the residential premises is liable to pay compensation to the landlord for any loss (eg. loss of rent) caused by the abandonment. The landlord should take all reasonable steps to minimise any loss. If steps are not taken by the landlord to avoid the loss, compensation for that loss may not be recoverable.

Some of the costs the landlord may recover are the agent's reletting fee and reasonable advertising costs, if the abandonment occurs during the fixed term.

Abandoned or uncollected goods

Items that have been left in the residential premises by the tenant after vacating become 'uncollected goods'. If these goods remain in the premises for 2 working days after the tenant has vacated, they may be disposed of if their value is estimated not to be higher than the cost of removal and

Important

If there is sufficient information to be certain that the premises have been abandoned, the premises can be secured immediately without an order from the CTTT.

storage. Otherwise they must be stored in a safe place. If the goods are perishable foodstuffs, they may be disposed of immediately.

A landlord may then lodge an application with the CTTT seeking an order as to the disposal or sale of the stored goods. Such an order will protect the landlord against any future claims. Alternatively the landlord may follow the procedures outlined in 'Auctioning of goods'.

Tenants may apply to the CTTT for orders that the landlord deliver to them the goods left behind. Persons other than tenants and landlords who may have an interest in the goods also have the right to apply to the CTTT (eg. an appliance hire company).

Notice to tenant required

If the uncollected goods are stored, a landlord or their agent must take the following steps within 7 days of placing the goods into storage:

- provide the tenant with a written notice that the goods are in storage, and
- publish the notice in a statewide newspaper.

The notice may be given to the tenant by posting it to the last forwarding address known to the landlord. It may also be given to a person who was nominated by the tenant before the tenant vacated the premises.

The notice must contain the following:

- the landlord's name and address, or an address where the goods can be claimed
- the tenant's name
- the address of the rented premises
- a description of the goods

- a statement that, on or after a specified date, the goods will be sold by public auction unless they are first claimed, and the reasonable costs of removal and storage, but not other costs (eg. outstanding rent), are paid
- a statement that the landlord will retain the reasonable costs of removal, storage and sale from the proceeds of the auction.

Auctioning of goods

Once the uncollected goods have been stored for 30 days, they may be sold by public auction.

The landlord is required to account to the tenant for the balance of the proceeds of the sale after the deduction of the reasonable costs of removal, storage and sale of the goods.

Claiming uncollected goods

A person who is entitled to possession of the goods left in the premises may claim them at any time before they are disposed of or sold, provided the landlord is satisfied that the claim is genuine.

The landlord is entitled to require payment of the actual costs of removal and storage of the goods being claimed before allowing the goods to be collected.

If the claim is for some but not all of the uncollected goods, and the remaining goods are still worth enough to cover reasonable costs of removal and storage of all of the goods, the landlord must deliver up those claimed goods without requiring payment for the costs of removal and storage of those claimed goods.