

The pocket guide to tenants' rights

This booklet has been compiled by the Eastern Area Tenants' Service using information prepared by the Tenants' Union of NSW.

The pocket guide to tenants' rights was produced to give tenants in NSW a brief overview of their legal rights. Often, tenants will need far more information than is provided here to make informed decisions about their tenancies.

Throughout the booklet, you will be referred to either the Tenants NSW website or your local Tenants' Advice Service for more information. The logos below will alert you when more information is needed, or when the information presented is particularly important. The table of contents on the next page sets out the subject areas dealt with. We have also included an alphabetical subject list.

Once again, *The pocket guide to tenants' rights* has been developed to alert you to your rights and obligations. Follow the pointers when more detailed information is needed.

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New tenancy laws

On January 31 2011, a new tenancy law came into force in NSW. The Residential Tenancies Act 2010 sets out the rights and obligations of landlords and tenants in this state. The law covers landlords and tenants in the private rental market, and social housing tenants. The Act doesn't apply to people living in hostels, aged care accommodation, refuges, and those who the Act defines as boarders or lodgers.

The law includes standard terms for residential tenancy agreements (or leases). These terms are included in all existing and new tenancy agreements.

Some of the new aspects of the law are better for tenants, but some are not so good. This booklet aims to give tenants a brief overview of your rights under the new law. We hope we can alert you to some of the possible problems tenants could face and point to some solutions.

You can get more information by phoning your local Tenants' Advice Service or NSW Fair Trading, (phone 133 220) or by checking the Tenants NSW website at **www.tenants.org.au**.

Changes in tenancy laws

The Residential Tenancies Act 2010 is much bigger than the old Act, and it contains a lot of changes. The

major ones affecting tenants are:

- “No grounds” terminations issued by landlords during continuing leases: notice to tenants increased to 90 days from 60. See page 52.
- Terminations for rent arrears: the tenant will usually be able to stay in the premises if they pay what is owed before the Tribunal hearing. See page 30.
- Tenants who have received a termination notice from the landlord can leave at any time before the vacation date and only pay rent up to the date they leave. See page 52.
- Landlords must give potential tenants more information about the property before the lease is signed. See page 9.
- There are more restrictions on when and how landlords can put tenants' details onto “bad tenant” databases. See page 42.
- Share housing: co-tenants get more rights, subtenants potentially less. See page 34.

Starting a tenancy

Leases, (tenancy agreements), usually follow a standard format. Informal agreements can also be enforced.

Once a tenant has signed a lease, paid a bond or rent in advance, and been given keys, the lease is binding on the tenant and the landlord.

The lease must include the landlord or real estate agent's contact details. The agent must not misrepresent facts about the property. See page 9.

Holding fees

The landlord/agent can ask for a holding fee, when a tenant's application has been approved. The landlord cannot let the property to anybody else during the "holding" period.

A holding fee cannot be more than one weeks rent. If the tenant takes up the premises, the holding fee must go towards the first weeks rent. The landlord/agent can hold the property for only one tenant at a time.

If the landlord decides not to proceed with the letting, they must refund the holding fee to the tenant.



A tenant who changes their mind after paying a holding fee, and decides not to proceed with the tenancy, will not be able to get the holding fee refunded.

The Consumer, Trader and Tenancy Tribunal (CTTT) can deal with disputes about holding fees.

Signing the Lease

CHECK  Read the whole lease carefully, especially the “additional terms”.

Rent in advance

TIP  The landlord cannot demand more than two weeks rent in advance or demand that you pay rent before it is due.

Condition report

Your lease includes, or should include, a condition report which can be used as evidence in disputes about the bond. Check the items on the condition report carefully, fill in the report, keep a copy and send the original to the landlord within seven days. The tenant should note in the appropriate section of the report any work that the real estate agent or landlord has promised to do.

CHECK  If anything is wrong with the property, take photos, print and date them, and keep them with your copy of the condition report and lease. See “Bonds”, on page 10.

Keys

The landlord must give copies of keys to each tenant on the lease for all locks on the premises that the tenant is entitled to have access to. The landlord or agent cannot charge for keys, although they can charge for replacement keys. See page 20.



Lease preparation fee: Unlike before, the landlord cannot charge you a lease preparation fee.

Information – what the landlord must tell you

Before a lease is signed, a landlord must tell tenants if:

- the premises have been subject to floods or bushfires in the past five years;
- there are significant health or safety risks in the premises that are not obvious;
- the premises have been the scene of a violent crime in the past five years;
- that the tenant may not be able to obtain a residential parking permit;
- if other people are legally entitled to share a driveway or walkway on the premises.

It is an offence if a landlord or agent tries to induce a tenant to sign a lease by making statements or promises they know are false, misleading or deceptive.

Landlords can be fined up to \$2,200 and face action from tenants if they engage in deceptive conduct. The problem for tenants is proving that something untrue was said. Important communications



with landlords or real estate agents should be in writing.

Before the the agreement/lease is signed, the landlord or agent must tell the tenant if they are planning to sell the property during the tenancy. (If they don't, a tenant can leave without penalty by giving 14 days notice, if the landlord later puts the property on the market).

Bond – general information

The bond is money you pay at the start of the tenancy as a security in case you do not follow the terms of the residential tenancy agreement. The landlord/agent:

- cannot ask you for anything other than a bond in the form of money (you cannot be asked for a written guarantee, for example);
- can only ask for one bond for the one tenancy agreement;
- may only ask for bond of an amount equal to 4 weeks rent at the start of the tenancy.

Paying the bond

You can pay the bond:

- as a lump sum, or
- in instalments – if the landlord agrees. You must get receipts unless details are recorded in the agreement.

Help to pay the bond

The Rentstart scheme can help eligible people renting in the private market to pay the bond. Apply through your local Housing NSW office.

Depositing the bond

The landlord/agent must deposit the bond with NSW Fair Trading (NSWFT). For lump-sum payments:

- a landlord must deposit the bond within 10 working

days after it is paid, and

- an agent must deposit the bond within 10 working days after the end of the calendar month in which it is paid.

For bond paid in instalments, seek advice from NSWFT.

CHECK  Once the bond is deposited NSWFT will send you an advice slip and a rental bond number.

There are special forms available if you need to change a shared tenancy or transfer a bond. Seek the advice of NSWFT on 132 220 and read the forms carefully.

Avoiding problems with the bond

- Inspect and fill in the Condition Report thoroughly and take photos of any problems. Print the photos and date them.
- Keep up to date with your rent and keep all rent receipts.
- Give the correct notice in writing.
- Never sign a blank or incomplete bond form.
- Leave the premises in a similar or better condition than at the start of the tenancy.



Bond – claiming it back

At the end of the tenancy, fill in a 'Claim for Refund of Bond Money' form. If you agree with the landlord or agent, you should both sign the completed form and the tenant should return it to NSWFT. Do not leave the completed form with the landlord or agent.

If you disagree about returning the bond, the tenant may claim without the landlord/agent's signature. Seek the advice of your local Tenants' Advice Service.

Claim by landlord/agent

If the landlord/agent claims the bond without your agreement, they must, within 7 days, give you:

- a copy of the condition report completed at the end of the tenancy agreement, and
- copies of estimates, quotes, invoices or receipts for work for which they are making the claim.

NSWFT will notify you of the claim. To dispute it:

- apply to the CTTT for an order to pay all or part of the bond to you (within 14 days of receiving the claim notice) and
- give written notice to NSWFT that you have made the application.



For Bond repayment to former co-tenants moving out, contact your local Tenants' Advice Service. Also see page 34.

Consumer, Trader and Tenancy Tribunal

The Consumer Trader and Tenancy Tribunal (CTTT) deals with disputes between landlords and tenants. The CTTT mostly deals with bond disputes, disputes related to termination notices, or breaches of tenancy agreements.



If you are thinking about making an application to the CTTT, or the landlord has made an application against you, talk to your local Tenants' Advice Service as soon as you can.

The CTTT's orders are legally binding. They can be for a landlord or tenant to do something – such as paying the rent on time, carrying out repairs, or to vacate the premises by a certain time (termination). The CTTT can also order that money be paid, for example, by a landlord to a tenant, as compensation because the landlord did not carry out repairs.

The CTTT operates like an informal court. The people who hear cases are called "Members". Like courts, it bases its decisions on the law, the terms in the tenancy agreement, and the evidence provided by the landlords and tenants at a hearing.

Landlords are always allowed to have real estate agents represent them. It is harder for tenants to be represented. The CTTT discourages lawyers from

representing people. In special cases it may allow a tenant to be represented by a Tenants' Advice Service.



Tenants are always entitled to get advice and help from these services to prepare their case.

A tenant can make an application to the CTTT online, or by filling in a paper form. In the application, you say what you want the CTTT to order and your reasons. You do not include evidence with the application.

Once an application is made, the CTTT will set a hearing date. This could take a few weeks. You will be advised by mail. It is important that you attend the hearing and speak to a Tenants' Advice Service well beforehand.



You need to take evidence – photos, documents etc – to the first hearing. At that hearing, the landlord and tenant will be encouraged to reach agreement about how to fix problem. There are people called conciliators at major CTTT registries who can help you do this. If agreement can't be reached, the matter will be heard by the CTTT or adjourned to a later date.

Making an application to the CTTT costs \$35, or \$5 concession. However if a tenant is to succeed, they will need to put some time into preparing their case and attending the Tribunal. Speak to your local Tenants' Advice Service about what is needed.

Access and privacy

Your Rights: You are entitled to 'reasonable peace, comfort and privacy' in your tenancy. The landlord/agent must not interfere with, or cause or permit interference with your peace, comfort and privacy.

Interference with your privacy

Examples of this include:

- the landlord/agent coming to the premises for no reason and without notice;
- a tradesperson coming to do non-urgent repairs without proper notice.

If your privacy is interfered with:



Complain to the landlord/agent in writing and demand that they stop breaching the tenancy agreement. Keep a copy of the letter. You can also apply to the CTTT for orders to stop the landlord's interference.

Landlord's right to enter the premises

The landlord, agent or a person authorised by the landlord may only enter the premises in the circumstances and with the notice periods outlined below.

Entry with consent: The landlord/agent or another person authorised by the landlord can enter the

premises at any time with your consent. Otherwise, in most cases, notice periods will apply.

Required notice periods for landlord to enter

Purpose	Maximum Frequency	Minimum Notice
To inspect the premises	4 times in any 12 month period	7 days written notice each time
To carry out or assess the need for non urgent repairs/ maintenance or work to meet statutory health/ safety obligations	As required	2 days each time
To value the property	1 time in any 12 month period	7 days each time
To show the premises to prospective tenants	A 'reasonable' number of times in the 14 days before the tenancy agreement ends	'Reasonable' notice each time
To show the premises to prospective buyers	2 times in any period of a week	Before first showing: 14 days written notice of intention to sell, then before each showing: as agreed, or 48 hours each time

“Reasonable” is open to interpretation. If a tenant and landlord can't reach agreement, the tenant can refer

the matter to the CTTT. But its decision may go against the tenant.

- Any agreement made with the landlord/agent about days and times to show premises to prospective buyers should be in writing.
- The landlord or agent must be reasonable when negotiating times for showings.
- The tenant must not unreasonably refuse to agree to days and times for showings, but need not agree to more than 2 showings in any period of a week.

The landlord/agent or tenant may apply to the CTTT for an order specifying the days and times on which you must make the premises available.

Entry without notice

The landlord, or another person authorised by them, can enter the premises without your consent or notice, only:

- a. in an emergency;
- b. to carry out urgent repairs;
- c. if the landlord has reason to believe the premises have been abandoned;
- d. in accordance with an order of the CTTT;
- e. if after making a reasonable attempt to gain consent, the landlord has serious concerns about the health/safety of a person on the premises.

Utilities: gas, electricity and water

The tenant has to pay for gas, electricity and water usage, provided the premises are separately metered.

If the premises are connected to a gas supply, but no gas appliances are supplied by the landlord and the tenant does not use any gas, the landlord has to pay fees for maintaining the gas supply to the premises.

If the premises are separately metered for water, the tenant is liable for water usage costs. The landlord must provide a copy of the water bill showing the usage cost. The tenant must pay within 21 days. The landlord must give the bill to the tenant within three months of it being issued.

If the tenant pays for water usage, the landlord must have water efficiency devices installed. For tenancies in place at January 31 2011, the devices must be installed by January 31, 2012.

The landlord cannot interfere with the supply of gas, electricity, water or telecommunications to a home unless it is to avoid danger to any person.

Social housing – different provisions

Tenants living in social housing often have different rules related to water usage. Some social housing premises may not have to be separately metered for the tenant to be liable to pay for water usage.

Phone, internet, and TV antenna connections

As much as modern communications are a part of everyday life, there is no requirement for a landlord to provide connections to telephone lines, the internet or for TV reception.

The general rule is that if a connection is present in the premises, it should work, and if it does not, the landlord has a responsibility to repair it. This applies to the physical phone, internet, and pay TV connections and TV antennas, but not the actual provision of these

CHECK  after January 31 2011 refer to telecommunications connections, as well as health issues and water efficiency devices. Tenants should make sure that these are noted.

The provision of telecommunications connections and TV antennas will become a hot topic as fibre broadband is rolled out, digital TV is introduced and analogue broadcasts are discontinued.



Many landlords refuse to maintain functioning telecommunications connections to their property. If tenants want to pay for their own connections, see page 26.

Locks and security

A tenant can't remove, alter, or add locks/security devices, without reasonable excuse, unless the landlord agrees, and must give keys to the landlord within 7 days.

The landlord must

- provide and maintain 'reasonable' security,
- give each tenant on the lease a copy of all keys and security devices to all areas the lease entitles them to access, at no charge [unless for replacement]
- not alter, add or remove any security device without the tenant's agreement or just cause; and then must give copies of keys to all tenants immediately.

'Reasonable excuse' could include: an emergency; an order of the CTTT; if the tenancy of a co-tenant had ended; an AVO exclusion order against an occupant.

Reasonable security is not defined in the Act and varies according to circumstances. Ask an insurance company what they require to insure premises in your area, in writing if possible. Write to the landlord asking that security comply with local insurance requirements. Apply to the CTTT if the landlord refuses.



If the CTTT allows you to change or add security devices you will need to give copies of the keys to the landlord, unless there is a reason that you should not.

Notices – rent increases, termination etc.

The landlord has to give proper written notice if they intend increasing the rent or giving a notice of termination.

Notices have to provide the correct amount of notice – see page 28 and page 52 – and be in the proper format.

Notices must be in writing, dated and signed by the landlord or agent. They must include:

- the address of rented premises;
- the date the notice is to take effect (termination, rent increase etc);
- where needed, the reasons, eg *non-payment of rent*.

A termination notice for rent arrears must tell the tenant they won't have to leave if they pay what is owed or enter a repayment plan.

Notices must be delivered properly. They can be:

- handed to the tenant or a person over 16 at the tenant's premises,
- hand delivered to the residential or business address in a properly addressed business envelope,
- faxed to a home or business address.
- if delivered by post, allow another four working days over the notice period for delivery.

If there are minor mistakes in a notice or its delivery the Consumer Trader and Tenancy Tribunal can waive those defects and apply the notice.

Repairs & maintenance

Under the standard residential tenancy agreement [lease] the tenant agrees:

- To keep the premises reasonably clean;
- To tell the landlord/agent of any damages or repairs needed as soon as possible;
- To leave the premises in the same condition as at the beginning of the tenancy, except for fair wear and tear;
- Not to damage or let anyone damage the premises deliberately or negligently [you are responsible for your visitors];
- Not to add or remove any fixtures [including locks], or make any changes to the premises, without written consent from the landlord. The landlord must not unreasonably withhold consent for minor additions or alterations. See “Alterations to premises” on page 26.

The landlord agrees:

- To provide the premises in a reasonably clean condition, fit to live in;
- To maintain the premises in reasonable repair, considering its age, condition and the rent paid.

Urgent repairs

Urgent repairs are:

- A burst water service;

- A broken appliance, fitting or fixture causing substantial water waste;
- A blocked or broken toilet;
- A serious roof leak;
- A gas leak;
- A dangerous electrical fault;
- Flooding or serious flooding damage;
- Serious storm or fire damage;
- A failure or breakdown of the gas, electricity or water supply;
- A failure or breakdown of any essential service for hot water, cooking, heating, cooling or laundering;
- Any fault or damage that makes the premises unsafe or not secure.

Fixing urgent repairs



Notify the landlord/agent straight away, and in writing if possible. Follow up any conversations with a letter and keep copies.

If you cannot reach the landlord/agent or they aren't doing the repairs, you can either:

- Apply to the CTTT for an order for urgent repairs; or
- Arrange to have them done yourself.

If you are arranging to have the repairs done yourself, you will need to show that:

- You have reasonably tried to contact the landlord/

agent;

- The landlord/agent has had reasonable opportunity to do the repairs;
- The repairs were done by the landlord's nominated person or a suitably licensed tradesperson;
- You did not cause the problem.

You must give the landlord the details of the repairs in writing including all costs and copies of receipts [don't give the originals].

The landlord must reimburse reasonable costs, up to \$1,000, within 14 days of your notice.

If the landlord does not pay you can apply to the CTTT for an order for costs.



You may also be able to apply for a rent reduction for loss of goods, services or facilities if the landlord does not carry out necessary repairs.

Non-urgent Repairs

Advise the landlord/agent in writing of the repairs needed, include a time deadline. Keep copies of letters and written records of all conversations about the repairs.

You must have the landlord's written permission to

do non-urgent repairs yourself. Get them to agree in writing to reimburse any costs.

Don't stop paying rent

Keep paying your rent! Even if the landlord fails to do the repairs.



Going on a rent strike is a breach of your tenancy agreement and the landlord can take steps to end your tenancy.

If the landlord fails or refuses to do the repairs you can apply to the CTTT for orders that they do so. You must make the application within 90 days of notifying your landlord of the problem.

You may also be able to apply for a rent reduction, for costs or any losses incurred, or to pay your rent into the CTTT until the repairs are completed. In some situations, you may apply for compensation for physical inconvenience, distress and disappointment caused by the landlord's failure to do the repairs.



Alterations to premises

The new law allows tenants to carry out minor alterations to the property (such as putting up picture hooks) without permission from the landlord, if they repair any damage caused by the “alterations” at the end of the tenancy.



For more substantial alterations, the tenant must obtain the permission of the landlord. This will usually be at the tenant's expense, unless the tenant can negotiate with the landlord. If the landlord unreasonably withholds permission for the tenant to install a fixture, the tenant can take the matter to the Consumer Trader and Tenancy Tribunal (CTTT).



The tenant must also seek the permission of the landlord if they want to remove fixtures that they have fitted during the tenancy. If permission is given, the tenant must make good any damage caused by the removal of the fixtures. If the landlord refuses permission for the removal, they have to compensate the tenant for the cost of installing the fixture. Tenants can pursue these matters in the CTTT if the landlord refuses to pay.

Pets

The standard tenancy agreement does not have a clause related to pets. Most agreements have an *additional clause* needing written permission from the landlord. Another additional clause allows pets if the tenant agrees to have the carpets, and/or premises, professionally cleaned and/or fumigated, **if required**, at the end of the tenancy.

If your agreement does not have any additional clauses about pets there is no legal provision stopping you keeping a pet, unless you live in a strata unit.

A tenant in a strata scheme could need permission from the landlord and the owners corporation to keep a pet.

Strata schemes often have a by-law that requires the agreement of the owners corporation for residents to keep a pet. Many by-laws say that agreement for a resident to keep a pet will not be unreasonably withheld. A tenant who wanted to argue that failure to agree was unreasonable could do so at the Mediation Unit of the Office of Fair Trading.



More information on pets and tenancies can be found at the RSPCA Website at <http://www.rspcansw.org.au>.

Rent increases

Most fixed term agreements do not allow rent increases. (If increases are allowed during the fixed term, the agreement has to set out the amount of the increase or the method of calculating it and the start date.) The landlord must still give the proper notice.

In a continuing agreement the landlord can increase the rent at any time, with proper notice. There is no limit on the number of times, or amount of rent increases in this type of agreement.

Notice periods

For any rent increase, the landlord must give a minimum 60 days written notice with an additional four days for postage if the notice is posted. See page 21.

If your agent or landlord issues a new fixed term lease that incorporates a rent increase, the tenant must still receive a minimum 60 days notice of the increase.

If you do not get the proper notice, you do not have to pay the increased rent. Claiming that the notice was lost in the post won't work. If the landlord can show the notice was posted, you will be assumed to have received it.



Challenging rent increases

If you receive a rent increase and believe it is more

than the property is worth, try negotiating with the agent or landlord for a lesser increase.

A tenant can ask the Consumer Trader and Tenancy Tribunal (CTTT) to find a rent increase is excessive, if they apply within 30 days of receiving the notice. The CTTT will not find an increase excessive simply because the increase is more than the tenant can afford.



The CTTT will consider, among other things, market rents in the area, and the state of the property.

To successfully show a rent increase is excessive, you will need evidence that the new rent is above market rent. The Rent and Sales Report at www.housing.nsw.gov.au. – shows the market rent for properties in your postcode. Check what tenants are paying in similar properties nearby, and collect evidence of the state of your property and others (such as photos).



If the CTTT finds the rent increase is excessive, it will set a maximum rent for a period of 12 months.

Social housing tenancies

Housing NSW and the Aboriginal Housing office do not have to give notice to change a tenant's rent rebate. If a tenant wants to challenge their rent rebate, they can appeal to the Housing Appeals Committee.

Rent arrears (behind in the rent)

Rent has to be paid one or two weeks in advance, as set out in your agreement.

If you are more than 14 days behind in the rent, the landlord can issue a 14 day termination notice, see page 21. At the same time, the landlord can apply to the Consumer, Trader and Tenancy Tribunal (CTTT) to end your tenancy. The CTTT will not hear the matter until the 14 days notice is up.

If the tenant pays the arrears in full or agrees to a repayment plan, the CTTT cannot terminate the tenancy, unless the landlord can show there have been frequent previous arrears. This is called the 'pay to stay' provision.

If you fall behind

If the landlord tells you that you have fallen behind in the rent, don't ignore it. Check your receipts. You can ask for a copy of the rent ledger to check. If you think the landlord has made a mistake, tell them, in writing, and contact your local Tenants' Advice Service.

If you are behind, pay the arrears straight away, if you can. Otherwise, try to negotiate an agreement to pay the arrears with the landlord or agent.

If the landlord has made an application to the CTTT to terminate your tenancy, talk to your local Tenants'



Advice Service as soon as you can. Even if the CTTT terminates the tenancy, you may still save your tenancy if you pay the arrears or reach an agreement with the landlord before the Sheriff's office evicts you.

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If you are behind in the rent



When you are more than 14 days behind, the landlord can issue you a notice of termination saying you have to be out in 14 days.



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After the date of possession on your notice of termination, the CTTT can hear the matter and either reach an agreement to pay off the arrears or give you notice to be out of the property

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If the CTTT orders you out of the property by a certain date, after that date the landlord can ask the sheriff to evict the tenants and change the locks on the premises.



Once the Sheriff has been to the premises, it is too late to save the tenancy



**If you pay
the rent you
owe in this
time you
could still
save your
tenancy**

Sale of property

If the landlord puts the property you are living in on the market, s/he must try to get your agreement about times to show the property to potential buyers.

The landlord must give you 14 days notice before they intend to start showing the property. The landlord is entitled to show the property twice a week. If times cannot be agreed upon they may apply to the Consumer Trader and Tenancy Tribunal for an order that you allow them access.

It is often better for tenants to reach agreement with the agent rather than have the CTTT impose times on them.

The landlord is entitled to take photos of the property, but not of the tenant's belongings without the tenant's agreement.



The landlord cannot demand that you not be on the property when it is shown. It is, in fact, a good idea for the tenant to be present or arrange for a friend to be there to make sure that the tenant's things are safe.

Some landlords offer a rent reduction to tenants, to compensate for the inconvenience and cleaning, for the period the property is being shown.

The landlord must tell you before you sign a lease if

TIP  they are intending to sell the property. If s/he does not, and afterwards tell you s/he is intending to sell, you can leave, without penalty, by giving the landlord 14 days notice.

If the property is sold while you have a fixed term agreement, the new owner cannot terminate your tenancy until the end of the fixed term.

If you have a continuing agreement your old landlord can give you 30 days notice to leave if a contract has been signed that provides the new owner should get the property with vacant possession. If there is no such provision and the new owner wants to get you out after settlement they have to give you 90 days notice to leave.

Share Housing

If you have a room in a communal house or unit (a group of friends sharing), or rent a room from a landlord or head tenant your legal status depends on your relationship with the landlord and the other people in the house with you.

If you...	You are legally a...	And your rights and obligations are set out in...
Share a house or unit, with your name on the lease along with some or all of your housemates	Co-tenant	The Residential Tenancies Act (summarised in this booklet).
Rent a room in a unit or house from a head tenant who lives in the premises, and you have a written agreement	Sub-tenant	The Residential Tenancies Act
Rent a room in a unit or house from a head tenant who lives in the premises, but you do not have a written agreement	Boarder or lodger	You have limited legal rights, and should talk to your local Tenants' Advice Service about your situation
Rent a room in a unit or house from a landlord or head tenant who does not live in the premises	Either a tenant, sub-tenant, boarder or lodger.	Your should talk to your local Tenants' Advice Service for information about your legal status, your rights and obligations

Co-tenants deal collectively with a landlord or landlord's agent and have all the rights set out in this booklet. Co-tenants can, collectively, pursue their rights at the Consumer Trader and Tenancy Tribunal.

A co-tenant can leave the share household and have their name removed from the lease, during the fixed term, with the agreement of the other co-tenants and the landlord.

In a continuing tenancy (ie after the fixed term has ended), a co-tenant can leave by giving the other co-tenants and landlord 21 days notice. The remaining co-tenants have to repay the former co-tenants bond within 14 days of being asked. With the landlord's agreement, the remaining co-tenants can put a new co-tenant onto the lease. If the landlord unreasonably withholds agreement, the co-tenants can take the matter to the CTTT.

In special circumstances, co-tenants can apply to the CTTT to end the tenancy of another co-tenant. The Tribunal cannot otherwise deal with disputes between co-tenants. Household members should seriously consider contacting a Community Justice Centre for help in working out their differences.

Sub-tenants have all the rights set out in this booklet, and deal with a head tenant, or very rarely, a head tenants' agent. They can pursue their rights through

the Consumer, Trader and Tenancy Tribunal.



Boarders or lodgers, “occupants” or those whose legal status is unclear should contact their local Tenants’ Advice Service for help in working out their legal status and tenancy rights and obligations.

When the head tenant(s) leave

If the person or people on the lease leave a household, and others, who are not on the lease, remain, those who are left behind could try to negotiate a new tenancy agreement with the landlord or agent. If the landlord does not agree, s/he cannot threaten to physically remove the people left in the household. The landlord must give the remaining household members 14 days notice to leave, and may apply to the Tribunal for orders if they do not go.

Travellers

Student accommodation

Boarding houses

Overseas travellers, students (particularly overseas students) and people who live in “boarding houses” often live in accommodation where it is not clear if they are in a legal tenancy.

The Residential Tenancies Act 2010 does not cover serviced apartments, hotels, motels or most residential colleges attached to educational institutions or hospitals. The Consumer Trader and Tenancy Tribunal (CTTT) will not protect the rights of people who are not legally “tenants”.



If you have a written agreement for accommodation that is not a tenancy in the legal sense, and your agreement is with a business, you may be able to get it enforced in the consumer division of the CTTT. Otherwise, the local court system may be the only legal option.



“Boarders and Lodgers”, people who live in crisis accommodation, refugees or premises let for a holiday for three months or less will mostly not be covered by the Residential Tenancies Act. Neither will people who live in share

houses where their name is not on the lease, the head tenant lives on the premises, and there is no written subtenancy agreement.

The problem for many tenants is that cheating landlords will try to make tenancy agreements look like boarding agreements. They do this to stop tenants accessing their rights. Such landlords usually prey on vulnerable members of the community – such as those who are not familiar with the Australian legal system, low income people or those with special needs.



Many do not lodge tenants' bonds with NSW Fair Trading. They intimidate residents by threatening to keep their bonds.

Some of the questions the CTTT would consider when deciding whether you are a tenant are shown on the next page.



If you live in these circumstances, you may, legally, be a tenant. The CTTT is the only body that can say for sure. If you have a problem you should talk to a Tenants' Advice Service.

Tenants are entitled to the rights and obligations set out in this booklet. People who are not legally "tenants" are entitled to whatever their agreement provides them.

Whatever category you are in, it is most important that you:

- Get receipts for your rent, if you pay by cash;
- If you pay rent by direct deposit, keep records or get receipts of rent payments;
- Get a receipt for your bond;
- Refer to the Share Housing Survival Guide, available online at **www.rlc.org.au**;
- If possible, talk to your local Tenants' Advice Service, Student Union or community legal centre before you sign an agreement.

Questions that relate to tenants and boarders/lodgers	May be a tenant	Probably not a tenant
Do you have meals, linen and cleaning provided as part of your agreement?	No	Yes
Do you have a lock on your room; does the landlord/head tenant need your permission to enter your room	Yes	No
Do you have your own cooking or meal preparation facilities?	Yes	No
Are there restrictive house rules, such as restricting your right to have visitors?	No	Yes
Does the landlord or head tenant live on the premises and share facilities with tenants?	No	Yes
Do you have a written agreement?	Maybe	Maybe

Strata buildings and tenants

Tenancies in strata buildings can be more complicated than when a tenant has to only deal with a landlord or real estate agent.

A tenant in a strata building has a legal relationship with their landlord. The landlord has a legal obligation to the tenant to maintain and repair the premises. But some repairs can be the responsibility of the owners corporation.

Strata and repairs

A strata building is administered by an owners corporation. The owners corporation has responsibility to maintain common areas. This usually includes roofing, floors, plumbing, guttering, leaking windows, TV antennas, garages and so on.



Tenants in strata buildings are often frustrated when trying to get repairs done. Landlords say they can't or won't do repairs because they are the strata's responsibility.



Tenants in these situations should talk to their Tenants' Advice Service. Usually they will advise that the landlord has a responsibility to the tenant to carry out repairs, even if that means the landlord must pursue the Owners Corporation. The landlord's failure to get the

owners corporation to carry out repairs should attract the same penalties – in terms of rent reductions or compensation to the tenant, as would apply to any other landlord who failed to carry out repairs.

By-laws



Strata buildings have “by-laws”, which have to be supplied to the tenant by the landlord within seven days of moving into the property.

By-laws have to be registered to be enforceable. They may relate to pets, noise, or times of access and use of certain common areas. Tenants who break by-laws may be fined.

An owners corporation cannot act against a tenant who has broken “house rules” which are not registered by-laws. The owners corporation cannot terminate a tenancy. That has to be done by the landlord and/or the CTTT.

There is a special section in NSW Fair Trading that deals with disputes in strata schemes, although disputes between tenants and an owners corporation may eventually end up before the CTTT. Tenants who experience problems with an owners corporation should contact a Tenants' Advice Service as soon as they can.



Blacklists and tenant databases

Tenant databases, or “bad tenant databases” are maintained by private companies. Real estate agents and landlords subscribe to them.



They list “unsatisfactory” tenants, and the databases can be used as a “blacklist” to stop people finding a place to live.

A landlord or real estate agent can put a tenant’s details onto one of these databases only if:

- The tenant has breached a residential tenancy agreement AND
- The tenancy has been terminated by the CTTT for that breach OR
- The tenant owes more than the bond because of that breach.

If a landlord plans to put information about a tenant on a database (after January 31, 2011), they must give the tenant a copy of the information and give the tenant at least 14 days to respond. The tenant can object –

- that the information should not be listed at all, or
- that the information is inaccurate, incomplete or ambiguous.

If a prospective landlord/agent finds information about a tenant on a database, they must tell the tenant, in writing and within seven days:

- that the tenant is listed on a database;

- the name of the agent or landlord who listed them (the tenant can request a copy of the information about them from the listing agent or landlord);
- how to contact the database operator ,and
- how to get the information about them removed or changed.

Landlords or agents who discover that information about a tenant is inaccurate or unclear must instruct the database operator to change that information.

Disputes about listings can be dealt with by the Consumer Trader and Tenancy Tribunal.



If you find out that your are listed on a database, or suspect that you are, contact your Tenant's Advice Service for advice and help.



Tenants' Rights Factsheets on the Tenants NSW website contain important extra information on this topic.

Uninhabitable premises

Storms, floods, fires, or other events can make a home wholly or partly uninhabitable without it being the fault of either the landlord or the tenant.

If this happens the tenant has to consider whether they want to end the tenancy and move somewhere else, or stay in the premises and ensure that repairs are done.

If a property becomes wholly or partly uninhabitable, the tenant or the landlord can end the agreement immediately. In legal terms, the agreement has been *frustrated*.

If the landlord wants to end a tenancy by claiming the premises are uninhabitable, and the tenant disagrees, the tenant can remain in the premises and the matter can be determined by the Consumer Trader and Tenancy Tribunal (CTTT).



If the tenant ends the agreement, the landlord could claim that the tenancy was still viable, and seek compensation – for lost rent, from the tenant.

If the premises are wholly or partly uninhabitable, the tenant can apply for CTTT orders that the landlord carry out repairs and for the rent to be reduced for the time that the premises are uninhabitable.

It can also be in the tenant's interest to try to negotiate



a fair outcome with the landlord in these circumstances. Talk to your Tenants' Advice Service.

Insurance

The loss of a tenant's belongings will almost certainly **not** be covered by the landlord's insurance. Tenants need their own household contents insurance policy.

If uninhabitability is the landlord's fault

These provisions do not apply if a tenants home becomes wholly or partly uninhabitable because of the landlord's action or neglect.

In these circumstances, a tenant (or a landlord) cannot claim "frustration". The uninhabitability is caused by a breach of the agreement. If the tenant wants to leave as a result, they can issue a 14 day notice of termination to the landlord. The tenant may be able to claim a rent reduction and/or compensation for the losses they have suffered.



If the landlord claims that the uninhabitability was caused by the tenant, the landlord, or their insurance company could claim compensation from the tenant. The tenant should seek advice urgently.

Domestic violence

The recent changes to tenancy laws are a big improvement in the way that people subjected to domestic violence can deal with tenancy issues. Some of the possible financial penalties that applied previously have been removed.

If you live with someone who is threatening or violent towards you, you may want to:

- End your connection with that person AND
- Stay in the premises, and have the perpetrator leave, OR
- Leave the premises and end any legal responsibilities you have for the tenancy.



The processes that a person subjected to domestic violence needs to follow vary depending on the type of tenancy agreement – whether the victim is a tenant or head tenant, a co-tenant, subtenant or boarder. Tenants' Rights Factsheets on the Tenants NSW website provide more details on the options available. If you are subjected to domestic violence it is a good idea to talk to a Tenants' Advice Service, a Community Legal Centre or Domestic Violence support service to discuss your options.



A tenant who is subjected to domestic violence can

obtain an apprehended violence order (AVO) with an exclusion order from a court which will exclude the person committing the violence (the perpetrator) from the premises. A final AVO will terminate the perpetrator's tenancy.

If the perpetrator does not consent to the AVO this process could take some months.

If a person subjected to domestic violence wants to leave the tenancy they can do so by giving the appropriate notice stipulated in their agreement – see page 48. They can also break a fixed term tenancy by giving 14 days notice, if they have obtained a final AVO from a court. They will owe nothing more to the landlord.

Domestic Violence Line	1800 656 463
Community Legal Centres	9212 7333
Domestic Violence Legal Service (for women)	1800 810 784

Threats to your tenancy

A landlord can give a tenant 14 days notice to vacate if the tenant has breached the agreement. This can be traumatic, costly and hugely disruptive.



If the tenant leaves by the date on the landlord's notice, the landlord could still pursue the tenant for compensation, to repair damage or for lost rent.

If the tenant wants to fight the landlord's claims against them, these will be dealt with in the Consumer, Trader and Tenancy Tribunal (CTTT) when the landlord applies for orders of termination and possession.

Some of the breaches that tenants can be accused of include:

- Falling behind in rent – by at least 14 days.
- Noise and nuisance, or interfering with the neighbours peace, comfort and privacy.
- Abuse of a landlord or real estate agent
- Having extra occupants in the premises, or subletting without permission
- Keeping pets without permission if this is against terms in the agreement
- Causing damage to the premises
- Carrying out unauthorised alterations
- Using the premises for something illegal.

Tenants should remember that the landlord can make

these claims if the tenant, or somebody they allowed onto the premises, committed the breach.

The landlord cannot claim:

- Increased rent if they allege tenants had extra occupants in the premises



A tenant who receives a termination notice for a breach of the agreement should contact their Tenants' Advice Service as soon as they can. If a landlord applies to the CTTT for orders of termination and possession, they must include details of the allegations, so that the tenant knows what they have to answer. See *Notices*, page 21.

When it hears the matter, the CTTT will consider the notice, whether a breach has occurred, and whether the seriousness of the breach warrants termination.

Generally, the tenancy won't be terminated if the breach is less serious and the tenant has taken steps to:

- Rectify the breach (for example, by paying the rent arrears, removing the pet that is not allowed); and /or
- Ensure that the breach will not happen in future; such as by seeking help from a financial advisor,
- Obtain advice from a Tenancy Advice Service.

Termination: You want to leave

The amount of notice required depends on the sort of lease you have. Notice should be in writing, and nominate the day that you will leave and return the keys.

Type of agreement / circumstances	Notice you have to give
Fixed term agreement, at the end of the lease	14 days
Continuing agreement (sometimes called a periodic agreement, that is, no longer covered by a fixed term)	21 days
Co tenant in a continuing agreement – notice to be given to other co-tenants and the landlord	21 days
If there is a serious breach of the agreement by the landlord, either fixed term or continuing	14 days
If you obtain social housing or aged care facility accommodation	14 days
If the landlord puts the premises on the market for sale, without telling you at the start of the agreement that s/he would do so	14 days

You want to leave while in a fixed term agreement

Leaving during a fixed term can be very expensive for tenants, as a landlord can claim compensation for lost rent. In some agreements, the tenant leaving during a fixed term can be liable for a “break lease fee” of up to six weeks rent.

Once the tenant has left, the landlord has to try hard

to find new tenants. In legal terms they have to try to “mitigate their loss”. But the landlord is not obliged to accept new tenants found by the outgoing tenant.



Tenants considering leaving during a fixed term lease should talk to their Tenants' Advice Service before they start to act.

Termination: illegal “lockouts”

It is unlawful for a landlord to physically enter a tenant's home and “retake possession”, or throw the tenant's things out onto the street.

The Residential Tenancies Act 2010 stipulates that the only way a landlord can get possession of a property is

- if the tenant leaves in accordance with a notice of termination,
- if the tenant abandons the premises, or
- by an order of the Consumer Trader and Tenancy Tribunal (CTTT) or a writ issued by a court.

The Act provides a penalty of up to \$22,000 for landlords who breach this provision. The landlord may also be liable to pay compensation to the tenant.



A landlord threatening to physically evict a tenant may also be liable to pay the tenant compensation for breaching their “reasonable peace, comfort and privacy”.

Termination: The landlord wants you out



If the landlord wants you out they must give you a written notice of termination (see below for notice periods). If you don't want to go, or you need more time, contact your local Tenants' Advice Service as soon as you receive a written notice from the landlord. See *Notices*, page 21.

The landlord cannot physically evict you. If you do not leave, the landlord must get an order from the Consumer Trader and Tenancy Tribunal terminating the lease. The tenancy continues until then.



A tenant may also feel that a Notice of Termination is 'retaliatory'. This is difficult to prove, but you can apply to the CTTT. You will need evidence.

If your landlord gives you notice, (other than at the end of a fixed term agreement), you can leave



before the the termination date and only have to pay rent up to the day you leave. For example, a tenant who receives a 90 day "no grounds" notice of termination and finds a new place after 30 days can leave at that time, without having to give the landlord notice or pay rent beyond the day they leave.

The amount of notice a landlord has to give depends

on the type of agreement and circumstances.

Type of agreement / circumstances	Notice the landlord has to give
Fixed term agreement, at the end of the lease, no grounds	30 days
Continuing agreement (that is, no longer covered by a fixed term), "no grounds"	90 days
If there is a serious breach of the agreement by the tenant, either fixed term or continuing	14 days
If the premises have been sold during a continuing agreement, and a term of the sale is vacant possession	30 days
If the premises are sold during a fixed term agreement	NOT ALLOWED
If the landlord defaults on the mortgage and the bank repossess the premises, notice from the mortgagee	30 days RENT FREE

Overpaid rent

A tenant is entitled to recover rent that has been overpaid to a landlord. If an overpayment has been made, the tenant can write to the landlord, either during a tenancy or after it has ended, asking that the overpayment be reimbursed.



Although there is no time limit specified in the Act, the request in writing should be made as soon as possible.

If the landlord has not repaid what they owe the tenant within 14 days after the tenant made the request, the tenant can apply to the Consumer Trader and Tenancy Tribunal for an order that the overpaid amount be repaid.

This is a long awaited change to tenancy law. The old tenancy laws had a loophole that did not require landlords to repay overpaid rent. As a result, very few ever did.

Law reform: making things better for tenants

After reading this booklet, or because of your own tenancy experiences, you may feel that tenancy law is unfair, inadequate or outdated.

There are many people in the community who are interested in improving laws like the Residential Tenancies Act. If you feel strongly about the issue, you may want to contact some of them and let them know your views on the subject.

The Tenants' Union of NSW (www.tenants.org.au) is involved in law reform. A good starting point is to read the material on the Tenants NSW website.

You may want to contact your local members of parliament or local government councillors. You should be able to get contact details on the internet for the NSW and Federal Parliament, or your local Council.

If you are a member of or support a particular political party, or other member based organisation, it may be useful to contact them with your views, or to see if they have policies for improvements in housing or tenancy law.

Tenant organisations also work for a better deal for tenants. Organisations like SHELTER, the Tenants' Union of NSW, and local tenant's advice services can

give you information about issues related to tenancy law. In most cases you can participate in discussions about law reform, and even become a member of the organisations concerned.

It is important to remember that the current state of the law did not happen by itself. People and organisations have organised and taken action to change what they see as unfair and inadequate laws.

The Real Estate Institute, representing real estate agents and landlords, fights hard to ensure that laws benefit landlords. Those who want the law made fairer for tenants need to make sure that their voices are heard just as loudly.