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Your landlord has a responsibilty to maintain the premises and this includes lifts.

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If there are problems with the lifts in your building, advise your landlord in writing straight away.

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## Lifts – an outline of tenants' rights

As high-rise accommodation becomes more common, working lifts are becoming a necessity for many tenants.

A landlord has a responsibility under s. 63 of the Residential Tenancies Act 2010 to maintain the residential premises in a reasonable state of repair. The case law indicates this responsibility may extend to maintaining the lifts that provide access to the premises.

Under s. 50 a tenant has a right to quiet enjoyment of the residential premises without interruption by the landlord. The landlord or landlord's agent must not interfere with the peace, comfort and privacy of the tenant in using the residential premises.

When a tenant is renting an apartment that has lift access and the lift/s fail or the tenant's access to the lifts is interfered with (if, for example, the lifts are monopolised by maintenance workers), the tenant might be able to claim compensation from a landlord for the period that the access to the lifts is stopped or reduced. This is regardless of whether there is an alternative way to access the premises, such as stairs or a fire escape.

Tenants have successfully claimed compensation in two ways:

- During the tenancy a tenant may be able to apply for a rent reduction for loss of amenity under s. 44(1)(b). This section allows the Tribunal on application from a tenant to make an order that the rent payable under an existing or proposed residential tenancy agreement is excessive, having regard to the reduction or withdrawal by the landlord of any goods, services or facilities; or,
- After a tenancy has ended section 187(1) gives the Tribunal the ability to make an order for the payment of an amount of money or make an order as to compensation

Tenants have used both sections successfully to claim compensation because part of the rent that a tenant pays is for ready access to and from the premises. The Tribunal has held in a number of cases that the landlord must not interfere with the tenant's ability to enjoy this access and has a responsibility to organise for a lift to be repaired if it is broken. The amount of compensation a tenant may be able to claim depends on how their use of the premises was affected, for example, if there were two lifts, and one was out of order, a tenant could expect to claim less compensation than if the only lift was not functional. The level of the apartment complex that the tenant lives on is also relevant.

In ***Craigie v Moore (Tenancy) [2012] NSWCTTT (21 October 2012)*** a landlord was ordered to compensate a tenant $300 (equivalent to 25% of the tenant's total rent for 12 days) when the only lift of the apartment complex was inoperable. The tenant lived on the 6th floor. A rent reduction was not possible as the tenancy had ended on 7 May 2012. The application was filed on 20 June 2012.

In ***Wright Patton Shakespeare Pty Ltd v Lo (Tenancy) [2008] NSWCTTT 1331 (21 October 2008)*** a tenant paying $4345 a month was given a rent reduction of $600 a week for the loss of the lift, garbage services, and removal of carpets in common areas.

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Some landlords have been ordered to pay tenants compensation when lifts in a multistorey building have failed.

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If lifts are a strata responsibility, (as they usually are), a landlord who does not vigorously pursue strata to fix the problems could face claims for compensation.

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The tenant was on the 9th floor. One lift was operational 20-30% of the time. The other lift did not work. The Tribunal accepted that the faulty lifts made entry and exit difficult and that the tenant's quiet enjoyment had been affected to the point where he had to stay elsewhere on occasions. The tenant made the application while still at the premises.

It appears that the inconvenience of access is a factor that the Tribunal will consider. This is linked to loss of amenity and is equated to an amount off the rent. In matters where the Tribunal referred to inconvenience any compensation awarded is assessed in the same way as a rent reduction under s. 44(5). The general market value of a comparative property without lifts is considered.

For example, in ***Wright Patton*** this was a reduction of 60%, from $1000 a week to $400 week, calculated by applying the amount the tenant would expect to pay for a nine-story walk down flat.

In situations where a lift is broken or a tenant's access is reduced, a landlord may try to avoid responsibility by stating that a lift is a strata issue and the tenants' request should be referred to the body corporate. While a lift may be strata managed, the case law indicates that a landlord may not necessarily be able to hide behind strata to prevent a tenant making a compensation claim. It appears that the Tribunal will consider it to be the landlord's responsibility to contact strata and negotiate on the tenants' behalf to have the lift fixed. The tenant's only responsibility is to report the repair issue to the landlord (in writing) as soon as possible.

In ***Wright Patton*** the Tribunal did not accept the landlord's agent's submissions that faulty lifts were "not the landlord's fault" or "outside the landlord's control" as the contractors to service the lifts were engaged by the landlord (through the owners corporation).

In ***Dartnell & Cogar v Larnock Pastoral Co Pty Ltd [2000] NSWRT 248*** the Tribunal said:

*'It is also important to note that the landlord's obligation not to "permit" interference with the tenants reasonable peace comfort and privacy, in effect imposes a positive obligation on the landlord to take all reasonable steps to minimize that interference, either by ... their own temporary repairs, and/or by taking up those matters strongly with the offending party. It was not sufficient, after they made their diligent enquiries to simply throw up their hands in despair'*

In August 2010, there were 7 applications against a single landlord for disruption to peace, comfort and privacy including the loss of a lift and restricted access to fire escapes (see here **Fairlane Constructions Pty Ltd & Miasa Holdings Pty Ltd**). In each of these cases rent reductions were made for disruption to quiet enjoyment but additional compensation was awarded for 'distress' and 'anxiety'. Considering that the decision in **Insight Vacations v Young [2011] HCA 16** now applies, it is doubtful that awards for non-economic loss would be given now, unless it could be proved that the non-economic loss was through the deliberate actions of the landlord and the non-economic loss fitted within the 15% threshold set out under the Civil Liability Act 2002 (NSW).

Problems may arise in a claim for rent reduction or compensation for an inoperable lift if a landlord can demonstrate that they have made an honest and sincere attempt to mobilise the body corporate to make repairs and the body corporate has failed to organise for the work to be done.

There has yet to be a case that deals with this situation, but in such an instance the Tribunal may determine that the landlord has taken all possible steps and should therefore not be liable to compensate the tenant.

### Fees for use of lifts

It has been brought to our attention that some body corporates have been charging tenants for the exclusive use of a lift to move their goods when moving in and out of the property. This usually involves the body corporate placing padding material in the lift and allowing the tenant exclusive access to one of the lifts. There are concerns about whether body corporates are legally able to pass this charge onto tenants, (owners are another question).

We believe that strata imposing such a charge however should not relieve landlords of their obligations to tenants, nor protect them from compensation claims from tenants if they are inconvenienced.