

Ending a tenancy, information for tenants

This is a collection of fact sheets for people who rent, on topics related to ending a tenancy:

- Breaking a lease early
- Getting your bond back
- Retrieving goods left behind
- Residential tenancy complaints

All the fact sheets in this document can also be accessed as individual pages on the Fair Trading website:
www.fairtrading.nsw.gov.au.

Many of them are in the *Renting a home, Ending a tenancy* section.

August 2014

Breaking a lease early

Information for tenants

When you sign a fixed term tenancy agreement (lease) you are committing to stay for the full term. If your circumstances change and you want to move out before the end of the fixed term there are potential costs involved. There are some circumstances where a fixed term agreement can be terminated early without penalty. Refer to the section 'Breaking the agreement without penalty' below.

Costs you may have to pay

Breaking your tenancy agreement during the fixed term can be costly. You may have to pay:

- rent until a new tenant takes over or the fixed term period ends, whichever occurs first, and
- a percentage of the advertising costs and the agent's reletting fee (if the landlord uses an agent). For example, if you break the lease 9 months into a 12-month tenancy there is 25% of the lease remaining, so you would expect to pay 25% of these amounts.

If you need to end your agreement early you should give as much notice as you can. The landlord or agent must take all reasonable steps to find a replacement tenant as soon as possible. The more you can do to help, the less you may have to pay. You should make it as easy as possible for the landlord or agent to show the premises to potential new tenants.

If you are concerned that it is taking a long time to find a new tenant, you can check that the landlord or agent is trying to relet the property. Check the agent's website and their list of available rental properties.

The landlord and agent must try to keep your costs to a minimum. For example, if they do anything to make it harder to find a new tenant (such as asking for a higher rent or unreasonably rejecting potential tenants) you may not have to pay the full amount they are asking.

Once the new tenant is found the landlord or agent will request payment for the amount you owe. If you don't pay or if you disagree with the amount, the landlord or agent will usually claim from your bond or apply to the NSW Civil and Administrative Tribunal. Be aware that if you owe more money than the bond your name could be listed on a tenancy database. Such listings can make it difficult to rent again anywhere in Australia.

Optional break fee

You and the landlord can agree to include a break fee clause in the additional terms of your tenancy agreement. The break fee is a penalty you agree to pay if you move out before the end of the fixed term.

If the fixed term of the agreement is for 3 years or less the break fee is:

- 6 weeks rent if you move out in the first half of the fixed term
- 4 weeks rent if you move out in the second half of the fixed term.

If the fixed term is for more than 3 years and you and the landlord agree to include a break fee clause, you can agree on the amount and write it into the agreement.

Where there is a break fee in your agreement that is all you have to pay if you move out early. However, if the landlord or agent find a new tenant quickly it does not mean that you will get any of the break fee back. It is a fixed fee.

Breach by the landlord

If your landlord is not complying with the terms of your tenancy agreement you may be able to end your lease early without penalty, for example, if the landlord is failing to keep the premises in reasonable repair.

If you think the breach is serious enough to justify ending the tenancy, you can give 14 days written termination

notice to the landlord. If they disagree they can apply to the Tribunal.

Alternatively, you can apply to the Tribunal without giving notice. You will need to take evidence to satisfy the Tribunal that the breach justifies ending the agreement. The Tribunal can refuse to make an order if the landlord remedies the breach. If you had already moved out, you may have to pay the costs of breaking the lease.

Breaking the agreement without penalty

In limited circumstances you can break the agreement early without penalty. You can give 14 days written notice to end an agreement early if:

- you have accepted an offer of social housing (eg. from Housing NSW)
- you need to move into an aged care facility or nursing home (not a retirement village)
- you have obtained a final apprehended violence order against somebody you were living with that excludes them from the property
- the landlord has put the premises on the market for sale, and you were not told before signing the lease that the property would be sold.

You can give 21 days written notice to end an agreement early if:

- you have a fixed term agreement of more than 2 years and you have been given a rent increase notice or
- your co-tenant passes away.

If you give notice for any of these reasons you are able to end the agreement early without having to pay any compensation or other costs to the landlord. You are only liable for the rent until your notice ends and you hand back possession of the premises.

Mutual consent

Any tenancy agreement can be ended at any time if the landlord and tenant mutually agree.

Hardship

If it would cause you undue hardship to stay in the premises until the end of the fixed term you can apply to the Tribunal to end the agreement early. You can ask for an urgent hearing but will need to keep paying the rent.

You will need to satisfy the Tribunal that special circumstances exist which were not in place when you first moved in and that your hardship is severe or serious. If the Tribunal agrees that your tenancy can end early it may order you to compensate the landlord for lost rent and other losses.

Getting your bond back

Information for tenants

If you do not owe the landlord or agent money at the end of your tenancy, the bond that you paid at the beginning of your tenancy should be refunded to you in full.

However, if the landlord or agent believes you owe them money, they are able to make a claim against your bond.

Refund by agreement

Before you leave and hand back the keys you should contact the agent or landlord to arrange a mutually agreeable time to do the final inspection. This is where you both go over the property to see if there is any damage or anything which needs cleaning. If they raise something that is minor you may be able to deal with it on the spot. The official condition report needs to be completed at this inspection.

If you agree with the agent or landlord on how the bond is to be paid out ask them to fill out and sign a Claim for Refund of Bond Money form and give it to you so you can lodge it with Fair Trading. This way, the bond can be paid out straight away.

Never sign a blank Claim for Refund of Bond Money form. Always make sure the bond refund amounts are filled in before you sign the form.

If you disagree

If you cannot agree with the agent or landlord about how the bond should be paid out, or if you feel that they are taking too long, you can lodge a Claim for Refund of Bond Money form yourself without their signature on it. This will start the ball rolling but the bond will not be released immediately.

Fair Trading will post a notice to the agent or landlord giving them 14 days in which to contest your claim by applying to the NSW Civil and Administrative Tribunal. If they do not apply within the 14 days, the bond will then be paid out as per your claim. If they apply to the Tribunal the bond will be held by Fair Trading until the dispute is settled. The landlord or agent will need to

attend a hearing at the Tribunal and present evidence to back up their claim. You will receive a notice from the Tribunal if they apply. You should also attend the hearing and bring evidence to support your claim.

Challenging a landlord's claim

If the landlord or agent lodges a claim first, without your signature, Fair Trading will send you notice giving you 14 days in which to contest the claim. You can contact the agent or landlord and try to get them to change their mind and lodge a new claim form signed by both of you. If that is unsuccessful your only option is to apply to the Tribunal within the 14 days, otherwise the bond will be paid out as per the landlord's claim.

If you lodge a claim with the Tribunal make sure you complete and return the Notice of claim slip to Fair Trading as mentioned in the form. Fair Trading will then hold the bond until the Tribunal makes a decision.

Within 7 days of lodging the claim they must send you copies of the final inspection report, along with any estimates, quotes, invoices or receipts relating to the claim. If they fail to do this you should raise it at the Tribunal hearing. You should also tell the Tribunal if you were not given a reasonable opportunity to be present at the final inspection, and if you disagree with what was written in the final condition report. You should also show any evidence you have to support your position.

Claim by your landlord

The main reasons a claim may be lodged against your bond are:

- if you still owe any rent or have unpaid water usage bills
- if you broke the lease early and haven't paid the break fee or other compensation payable

- if you didn't hand all the copies of the keys you were given and the locks needed to be changed
- if you caused damage or didn't leave the premises in a reasonably clean condition, compared to the original condition report, apart from normal fair wear and tear.

This is not an exhaustive list. There may be other legitimate reasons for the landlord or agent to make a claim against your bond, such as the cost of disposing of goods you have left behind.

Fair wear and tear

As explained above, you are not responsible for fair wear and tear to the premises. Fair wear and tear means the deterioration that occurs over time with the use of the premises even though the premises receive reasonable care and maintenance. Such deterioration could be caused by exposure, time or just by ordinary use. You are only liable for negligent, irresponsible or intentional actions that cause damage to the premises. These examples may help to explain the difference.

Fair wear and tear - you are not liable	Damage - you are liable
Faded curtains or frayed cords	Missing curtains or torn by the tenant's cat
Furniture indentations and traffic marks on the carpet	Stains or burn marks on the carpet
Scuffed up wooden floors	Badly scratched or gouged wooden floors
Faded, chipped or cracked paint	Unapproved paint job
Worn kitchen bench top	Burns or cuts in bench top
Loose hinges or handles on doors or	Broken glass from one of your children hitting a ball through the window

windows and worn sliding tracks	
Cracks in the walls from movement	Holes in walls left by tenant removing picture hooks or shelves they had installed

Water stain on carpet from rain through leaking roof or bad plumbing	Water stain on carpet caused by overflowing bath or indoor pot plants
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Interest payable

A small amount of interest will be paid to you when you get your bond back. The majority of the income earned from the collective pool of rental bonds is used to fund a range of services that benefit all tenants, such as funding the NSW Civil and Administrative Tribunal and organisations across New South Wales under the Tenants Advice and Advocacy Program.

Retrieving goods left behind

Information for tenants

If you move out or are evicted from your rental property and you leave behind some of your goods or personal documents the law sets out how the landlord or agent can deal with them and how you can get them back.

You should contact the landlord or agent as soon as you can. That way, there is less risk that your goods or personal documents will be damaged, removed or disposed of. The sooner you collect the items the less you may have to pay to cover storage costs.

Rubbish and perishable items

If you leave any rubbish or perishable items on the property, the landlord or agent may dispose of them immediately. For example, a broken chair and a pile of old newspapers or perishable food left in a cupboard and dying pot plants in the yard. They do not have to notify you or get your consent to dispose of such items.

Notice required

If you have left items other than rubbish behind (goods of value) the landlord or agent must attempt to notify you. They need to try to contact you and let you know that they have your goods and will dispose of them after a certain time if you do not collect them. The landlord or agent can do this in writing (to your forwarding address if they have it, or to the rental property in case you have arranged for your mail to be redirected), in person or over the telephone. If after 2 days the landlord or agent has not been able to contact you, they are able to leave a notice on the premises (eg. stuck to the front door).

Goods of value

Goods of value could include such things as furniture, electrical items and clothing. If you have left goods behind of this nature, the landlord or agent needs to store them in a safe place. This could be on the premises or somewhere else. They are only required to keep these goods for 14 days from the day they notify you to come and collect them.

Personal documents

Different rules are in place when dealing with your personal documents. Personal documents are defined under the Act as being:

- a birth certificate, passport or other identity document
- bank books or other financial statements or documents
- photographs and other personal memorabilia (eg. medals and trophies)
- licences or other documents conferring authorities, rights or qualifications.

The landlord or agent should keep personal documents left behind in a safe place for at least 90 days from the day they give you notice.

Reclaiming your goods and documents

You, or anybody else with a legal interest in the goods (eg. your ex-housemate or a goods hire company) can reclaim the goods at any time they remain in the landlord or agent's possession. A suitable time and day for collection needs to be agreed upon. The landlord or agent cannot refuse to return your belongings, even if you owe rent or money for some other reason.

You may have to pay an occupation fee to cover storage expenses if sufficient goods were left behind to prevent the landlord or agent renting the premises to somebody else.

An occupation fee equal to a day's rent can be charged for each day the goods are held, whether they are stored on the premises or elsewhere. However, only a maximum of 14 days occupation fee can be charged even if the goods are held for longer.

Disposal of unclaimed items

If you fail to reclaim your goods of value within the 14 days, the landlord or agent may dispose of them in any of the following ways:

- donating the goods to charity (eg. leaving clothes in a clothing bin or arranging for furniture etc to be collected)
- disposing of the goods in a lawful manner (eg. taking them to the tip or organising a council collection)
- keeping the goods in the property if they are useful fixtures and fittings (eg. curtains)
- selling the goods for fair value and giving the proceeds to you (less any occupation fee and the reasonable costs of the sale).

Unclaimed personal documents can be disposed of after the 90 days in an appropriate manner, such as by being returned to the issuing authority (wherever possible), or shredded.

Resolving disputes

If the law is correctly followed there is no action you can take against the landlord if your goods or personal documents have been donated, disposed of or sold.

However, if the law is not followed you may seek compensation from the landlord or agent through the Tribunal for any losses.

If the landlord or agent refuses to return goods or personal documents, you can apply to the Tribunal for an order that the items be returned to you.

If your goods have been sold and the proceeds of the sale have not been passed on to you an application can be made to the Tribunal.

Residential tenancy complaints

Tenants, landlords and property managers

NSW Fair Trading provides a free complaint service for tenants, residents, landlords and property managers with tenancy-related matters or disputes.

How can Fair Trading assist with my matter?

The tenancy complaint service offered by Fair Trading is a voluntary process between any parties involved in a tenancy matter or dispute. An experienced Fair Trading officer will aim to finalise the matter through mutual agreement.

Fair Trading will bring parties together by teleconference or on site to finalise the matter.

The tenancy complaint process does not include:

- orders that require action or payment from either party
- a Fair Trading officer inspecting property to determine fault or attribute blame, which falls outside their role.

A video is available that demonstrates how the complaint service works: *Help with tenancy problems* contains examples of cases that were based on real complaint scenarios. It can be viewed on Fair Trading's YouTube channel.

What type of tenancy matters can Fair Trading assist with?

Fair Trading can assist with tenancy matters about:

- repairs and maintenance
- non-urgent health and safety issues
- alterations to premises
- access to premises or inspections
- non-compliance with tenancy agreement
- water saving devices and smoke alarms
- provision of correct notices
- ending a tenancy or breaking a lease
- condition reports

- rental increases
- rental arrears of less than 14 days.

What type of tenancy matters can't Fair Trading assist with?

Fair Trading cannot assist with tenancy matters about:

- public or social housing matters
- urgent health and safety issues
- an Apprehended Violence Order (AVO) or violence related matters
- lockouts and evictions
- termination
- illegal activity
- serious damage to the property
- rental arrears in excess of 14 days
- rental bond matters.

For these matters, you may lodge a claim with the NSW Civil and Administrative Tribunal (NCAT).

The Tenants Advice and Advocacy Services provide assistance and advocacy to all tenants, particularly vulnerable or social housing tenants. Find your nearest Tenants Advice and Advocacy Service at www.tenants.org.au or call 8117 3700.

What should I do before seeking Fair Trading intervention?

Parties involved in the complaint should try to resolve the issues themselves before seeking Fair Trading intervention. These steps can help you find a resolution:

1. Discuss your concerns and explain the problem with the other party. Let the other party express their concerns and position.
2. Both of you should be ready to discuss issues related to the matter. This could include:
 - invoices
 - receipts
 - tenancy agreements
 - notices provided
 - condition reports

- quotes
 - correspondence.
3. Both of you should suggest ways to resolve the complaint and be willing to negotiate a mutually agreeable settlement.
 4. For advice, call Fair Trading on 13 32 20 to discuss your problem.

If you are not able to resolve the matter yourself, you can lodge a tenancy complaint with Fair Trading to begin the complaint process.

When will the complaint process take place?

The time to finalise the complaint depends on parties' availability and the level of inquiries to be made by Fair Trading.

Generally Fair Trading endeavours to finalise a matter within 30 days of receiving the complaint.

What to expect from the complaint process

If Fair Trading is able to help both parties reach an agreeable settlement, we will finalise the complaint without any further intervention.

Where agreement cannot be reached, parties will be advised of the outcome and recommended to seek independent advice or lodge a claim with the NSW Civil and Administrative Tribunal (NCAT).

During the complaint process

Any parties involved need to be prepared to put their points forward and listen to what the other party has to say. Both parties will benefit when each is willing to negotiate and make suggestions to settle the matter.

What is the role of the Fair Trading Officer?

Fair Trading officers are qualified and skilled in handling complaints.

The Fair Trading officer will:

- provide impartial advice to the parties with the complaint
- allow all parties to put forward their points
- explain the relevant matters in the complaint
- confirm that all relevant matters have been discussed, and
- put forward suggestions as to the best way to finalise the complaint.

The Fair Trading officer will not:

- take sides or represent either party
- continue with the complaint handling process if the parties do not show willingness to reach an agreeable settlement, or
- offer any legal advice.

The tenancy complaint process is voluntary and its success depends on parties cooperating. Fair Trading cannot force either party to continue with the complaint process.

What happens if there is no resolution?

If the complaint is not finalised either party may lodge a claim with the NSW Civil and Administrative Tribunal (NCAT).

NCAT can request a report from Fair Trading on any complaint process conducted. This report is provided directly to NCAT.

The NCAT can make orders which are binding on the parties. These may include monetary payment, ending a tenancy agreement, or repair work to be completed. The maximum claim through NCAT is \$30,000.

Find out more at www.cc.ncat.nsw.gov.au

How can I access the tenancy complaint service?

If you are not able to resolve the matter yourself, you can lodge a tenancy complaint with Fair Trading to begin the complaint process.

For more information about Fair Trading's tenancy complaint service call 13 32 20.

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

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