



Starting a tenancy, information for tenants

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

- New tenant checklist
- Tenancy databases
- Discrimination when renting
- 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, Starting a tenancy* section.

August 2014

New tenant checklist

What you must know before you sign a lease

At the start of every tenancy you should be given the following by the landlord or agent:

- a copy of this information statement
- a copy of your lease (tenancy agreement)
- 2 copies of the premises condition report (more on that later)
- a bond lodgement form for you to sign, so that it can be lodged with NSW Fair Trading
- keys to your new home.

The first thing you should do before you sign the lease is read it thoroughly. If there is anything in it which you don't understand, ask questions.

Remember, you are committing to a legally binding contract for which there is no cooling-off period. You will want to be certain you understand and agree to what you are signing.

Only when you can respond with a Yes to the following statements, should you sign the lease.

The lease

- I have read the lease and I asked questions if there were things I didn't understand.
- I know the length of the lease is negotiated before I sign, which means it can be for 6 months, 12 months, or some other period.
- I know that I must be offered at least one way to pay the rent which does not involve paying a fee to a third party.
- I know that any additional terms to the lease are negotiated before I sign.
- I have checked that all additional terms to the lease are legal, for example, the lease does not include a term requiring me to have the carpet professionally cleaned when I leave, unless I have agreed to that as part of a condition to allow me to keep a pet on the premises.

Promised repairs

In relation to any promises by the landlord or agent (for example, replace the oven, paint a room, clean up the backyard etc):

- I have made sure these have already been done, or
- I have an undertaking in writing (before signing the lease) that they will be done.

Upfront costs

I am not being required to pay:

- more than 2 weeks rent in advance, unless I freely offer to pay more
- more than 4 weeks rent as a rental bond.

I am not being charged for:

- the cost of preparing my lease
- the initial supply of keys and security devices to each tenant named on the lease.

After you move in

Make sure you:

- Fill in your part of the condition report and don't forget to return a copy to the landlord or agent within 7 days. This is an important piece of evidence. If you don't take the time to complete it accurately money could be taken out of your bond to pay for damage that was already there when you moved in.
- Get a letter from Fair Trading sometime during the first 2 months saying that your bond has been received and advising you of your Rental Bond Number. If this doesn't arrive call Fair Trading to make sure it has been lodged.

Top tips for problem-free renting

Follow these useful tips to help avoid problems while you are renting:

- Photos are a great way to record the condition of the property when you first move in. Take pictures (that are date stamped) of the property, especially areas that are damaged or unclean. Keep these in case the landlord objects to returning your bond at the end of your tenancy.
- Keep a copy of your lease, condition report, rent receipts, Rental Bond Number and copies of letters/ emails you send or receive in a designated 'tenancy' file folder and put it somewhere you can easily find it later.
- Never stop paying your rent, even if the landlord is not complying with their side of the agreement (eg. by failing to do repairs) - you could end up being evicted if you do.
- Keep a diary of your dealings with the landlord or agent - record all the times and dates of conversations, who you spoke to and what they agreed to do. If repairs are needed, put your request in writing to the landlord or agent and keep a copy. This type of evidence is very helpful if a dispute arises which ends up in the NSW Civil and Administrative Tribunal.
- Comply with the terms of your lease. In particular, never make any alterations, keep a pet or let other people move in without asking the landlord or agent for permission first.
- Consider taking out home contents insurance. It will cover your belongings in case of theft, fires and natural disasters. The landlord's building insurance, if they have it, will not cover your things.
- If the property has a pool or garden be clear about what the landlord or agent expects you to do to maintain it.

- Be careful with what you sign relating to your tenancy, and don't let anybody rush you. Never sign a blank form, such as a Claim for refund of bond.
- If you are happy in the place and your lease ends, consider asking for the lease to be renewed for another fixed term. This will remove the worry about being unexpectedly asked to leave, and helps to lock in the rent for the next period of time.

Further information

Go to the Fair Trading website, call 13 32 20 or visit a Fair Trading Centre for more information about your renting rights and responsibilities.

The NSW Government funds a range of community based Tenants Advice and Advocacy Services across NSW to provide advice, information and advocacy to tenants. Go to the Tenants Union website at www.tenants.org.au for details of your nearest service or check your local phone directory.

Landlords and agents must give a copy of this information statement to all new tenants before they sign a residential lease. Fines can be imposed if this is not done.

Tenancy databases

Information for tenants and prospective tenants

Tenancy databases are used mainly by agents as a way of screening prospective tenants.

The *Residential Tenancies Act 2010* sets out who, when, and why a person can be listed. The Act also enables disputes over proposed and existing listings to be resolved. If you believe that an agent or landlord has listed information about you that is incorrect, out-of-date or unjust, there are ways you can go about having the information removed or amended.

What is a tenancy database?

Tenancy databases are run by private companies, not by the Government or the NSW Civil and Administrative Tribunal. They collect and hold information about tenants and can only be used by members (mostly agents) who pay membership fees. Members can list tenants on the database for certain reasons and can check the database to see if a prospective tenant has been listed by another member. There are a number of tenancy databases which operate in NSW, including TICA, National Tenancy Database and Trading Reference Australia. Tenancy databases are sometimes referred to as 'blacklists' or 'bad tenant databases'.

Files kept by an individual landlord or agency for their own internal use (hard copy or computerised) are not databases for the purposes of the legislation.

Listings - who

You can only be listed on a database if you are named on the lease as a tenant. Approved or unapproved occupants, visitors or children cannot be listed.

Listings - when

You can only be listed on a database after your tenancy has ended. You cannot be listed on a database simply because you fall behind with the rent, are given a termination notice or are not looking after the property in a satisfactory way.

Listings - why

You can only be listed on a database for one or both of the following two reasons:

- You have vacated owing an amount more than the rental bond for a breach of the agreement which is still outstanding at the time of listing.
- The Tribunal has made an order terminating the agreement because of something you have done wrong and the tenancy has ended.

Any information recorded on a database must identify the reason for the listing in an accurate, complete and unambiguous way. For example, 'eviction order given on grounds of rent arrears, tenant owes \$500 in rent above the bond'.

How will I know if I have been listed on a database?

Landlords or agents must advise you in writing if they propose to list you on a tenancy database. They must also give you details of the proposed listing, or take reasonable steps to try to advise you. They can do this by sending a letter to your new address (if known) or to the address of the rented premises (in case you are having your mail redirected).

They must give you at least 14 days to object before listing you on the database. You can apply to the Tribunal if you think the proposed listing would be incorrect or unjust.

If you apply for a tenancy and the landlord or agent discovers you have been listed on a database, they must advise you in writing. They should inform you of the contact details of the person who has listed you and how you can go about checking what the listing says and having it corrected or amended (if need be). They do not have to advise you of the reason for the listing. You are entitled to a copy of the information from the person who listed you (free of charge) or direct from the database

operator. The database operator can charge you a fee for the information but it must not be excessive.

Some database operators also provide information over the phone, but be aware that high charges may apply.

Removal of out-of-date, incorrect or unjust listings

Any listing that is older than 3 years must be removed from a database. Listings under 3 years must also be removed if they are 'out-of-date'. This is where any amount you owed above the bond has been repaid to the landlord within 3 months or if the termination order made by the Tribunal was not enforced.

Listings also need to be amended if the information is inaccurate, incomplete or ambiguous.

You can also seek to have your name removed from a tenancy database if you think the listing was unjust.

Any changes to the database records must be done by the landlord or agent within 7 days of them becoming aware that the information needs to be changed, if they can do it themselves, or within 14 days if they need to notify the database operator to have it removed or amended.

The laws apply to all listings, including any listings made before the new laws commenced.

Disputes in the Tribunal

You are able to apply to the Tribunal to have incorrect, out-of-date or unjust listings removed if you cannot resolve the matter with the agent or landlord.

The Tribunal can order information about you in the database to be wholly or partly removed, changed, or not listed at all if it was a proposed listing. The Tribunal also has the ability to award compensation to you if you have suffered a loss as a result of inaccurate, ambiguous or out-of-date information being listed on a tenancy database.

Discrimination when renting

Information for tenants and prospective tenants

Everybody should be given a 'Fair Go' when renting or trying to rent a property. While landlords and agents have the right to choose the most suitable tenant, they are not able to unfairly discriminate against you when you apply for a rental property.

Anti-discrimination laws

The law states that you cannot be discriminated against or harassed because of your:

- race (colour, nationality or descent)
- sex (male or female)
- pregnancy
- marital status (e.g. singles or unmarried mothers)
- disability (physical, intellectual or psychiatric disability)
- homosexuality (both gay and lesbian)
- age (both young or old)
- transgender (transsexual).

It is also against the law to discriminate against you because of the race, sex, pregnancy, marital status, disability, homosexuality, age or transgender of your relatives, friends or associates.

But people sometimes claim "that's discrimination!" without understanding the law. As long as the landlord or agent is not discriminating on one of the listed grounds they may rent to whoever they like. If, for example, they do not want smokers in their premises or tenants with pets, or if they reject your rental application because you have a poor tenancy history or they do not think you can pay the rent, there is no law to stop them from rejecting you as a tenant for that reason.

However, landlords and agents may be liable for discriminatory acts if, for example, the owner instructs an agent not to rent the property to 'foreigners' and the agent carries out those instructions. In that case both the landlord and the agent may be liable. It is no defence for an agent to say she or he was simply carrying out instructions.

Direct and indirect discrimination

Direct discrimination is when a person is treated less favourably than another person because of their race, sex, marital status etc. One example of direct discrimination would be if a landlord refused to rent to you because you have children.

Indirect discrimination is where there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unequal or disproportionate effect on particular groups (for example, women, people of certain races, young people). Unless this requirement is 'reasonable having regard to the circumstances of the case' (Anti-Discrimination Act) it is likely to be indirect discrimination.

The following are examples of possible indirect discrimination:

- setting more restrictive standards, such as a higher than necessary income
- requiring all younger tenants to have one of their parents sign the lease as a co-tenant knowing that they do not intend to live in the premises
- having an across the board 'no pets' policy which also excludes the needs of disabled tenants, such as those with a guide dog
- requiring all applicants to have a proven rental history for a minimum number of years, which, for example, could exclude young people trying to rent their first home
- placing unrealistic restrictions on the number of occupants permitted which, for example, could exclude those who are pregnant
- having a complicated and long application form which may, for example, deter recently arrived migrants from applying.

Fair trading laws

Fair trading laws prohibit agents from engaging in conduct that is, in the circumstances, misleading in

connection with the supply of goods and services to a customer.

The following is an example that may be both discrimination and misleading conduct.

An Aboriginal person rings the real estate agent about a rental property. On the phone the agent tells the caller that the property is available. When the Aboriginal person goes to the office to lodge an application, the agent informs them that it is no longer available. Then a non-Aboriginal person asks the same agent and is told that the property is still available.

In an actual case like this, the Administrative Decisions Tribunal ruled that the real estate agent was liable under anti-discrimination law and awarded \$6,000 damages against the agent.

More information

If you believe that you have been discriminated against when applying for a rental property and would like more information, contact the NSW Anti-Discrimination Board on 9268 5555 or 1800 670 812 or visit their website at www.lawlink.nsw.gov.au/adb.

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

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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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.

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