

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 and real estate 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.

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New tenant checklist

What you must know before you sign a lease

At the start of every tenancy, your landlord or agent should give you:

- a copy of this information (the *New tenant checklist*)
- a copy of your lease (tenancy agreement)
- 2 copies of the premises condition report (more on that later)
- an invitation to lodge the bond using Rental Bonds Online (RBO). Or, if you are unable to use RBO, a bond lodgement form for you to sign, so that it can be lodged with NSW Fair Trading
- keys to your new home.

If applicable, you should also receive:

- a certificate of compliance for a swimming pool (more on that later)
- a copy of the by-laws, if the property is in a strata complex
- notification if the premises has been listed on the Loose-Fill Asbestos Insulation Register (more on that later)
- notification of any other material fact relating to the premises (more on that later).

Before you sign the lease, make sure you read it thoroughly. If there is anything in the lease that you do not understand, ask questions.

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

You should only sign the lease when you can answer Yes to the following statements.

The lease

- I have read the lease and asked questions if there were things I did not 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 that does not involve paying a fee to a third party.
- I know that any additional terms to the lease must be 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

For any promises made 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.

Managing your bond online

Your landlord or agent **must** give you the option to use Rental Bonds Online (RBO) to pay your bond. You can use RBO to securely pay your bond direct to NSW Fair Trading using a credit card or BPAY, without the need to fill out and sign a bond lodgement form. Once registered, you can continue to use your RBO account for future tenancies.

If you decide not to use RBO, you can ask your agent or landlord for a paper bond lodgement form for you to sign, so that it can be lodged with NSW Fair Trading.

Swimming and spa pools

Does the property have a swimming or spa pool? If so, the landlord or agent must give you a copy of a valid certificate of compliance or occupation certificate issued in the past 3 years. This does not apply if you are renting in a strata or community scheme of more than 2 lots.

Property containing loose-fill asbestos insulation

Properties in NSW that test positive for loose-fill asbestos insulation will have the property address included in a public register (available on the NSW Fair Trading website). If a property has been listed on this public register, the agent or private landlord must disclose this information to new tenants. The following section lists the other information that must be provided to tenants before they sign a lease.

What tenants must be told

Sometimes a residential property has something in its history that you should know. If the landlord or agent is aware of any of the following facts, they must inform you:

- if the property:
 - has been affected by flooding or bushfire in the previous 5 years
 - has significant health or safety risks (unless they are obvious when you inspect the property)
 - has been the scene of a violent crime in the previous 5 years
- is affected by zoning or laws that will not allow you to obtain a parking permit and only paid parking is available in the area
- is provided with council waste services on a different basis to other premises in the area
- is listed on the loose-fill asbestos insulation register
- if other people are entitled to share the driveway or walkway.

After you move in

- Fill in your part of the condition report and make sure you return a copy to the landlord or agent within 7 days. This is an important piece of evidence. If you do not 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.
- If you lodged the bond using RBO, make sure you receive an email or SMS notification from Fair Trading confirming your bond has been received. If the bond was not lodged using RBO, make sure you 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 you do not receive an email, SMS notification or letter, call NSW Fair Trading to make sure the bond 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 date-stamped photos of the property, especially areas that are damaged or unclean. Keep these photos 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 safe place where you can easily find it later.

- Never stop paying your rent, even if the landlord is not complying with their side of the agreement (e.g. by failing to do repairs). You could end up being evicted if you do.
- 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.
- 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 that ends up in the NSW Civil and Administrative Tribunal (NCAT).
- 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 them.
- Be careful with what you sign relating to your tenancy and do not let anybody rush you. Never sign a blank form, such as a 'Claim for refund of bond' form.
- 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 can help to lock in the rent for the next period of time.

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.

Further information

Go to the Fair Trading website or call 13 32 20 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

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 and real estate complaints

Tenants, landlords and agents

NSW Fair Trading provides a free complaint service for tenants, residents, landlords and agents with real estate and property related matters or disputes.

How can Fair Trading assist with my matter?

The complaint service offered by Fair Trading is a voluntary process between parties that are involved in a tenancy, real estate or property dispute, and who have been unsuccessful in resolving the issue themselves. An experienced Fair Trading officer will provide the parties with relevant information in order to assist them to come to a mutual agreement. In some circumstances, formal mediation may also be offered.

The complaint process **does not** include:

- enforcing orders that require action or payment from either party
- a decision on evidence resulting in a legal determination or an Order
- 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 based on real complaint scenarios. It can be viewed on Fair Trading's YouTube channel.

What type of matters can Fair Trading assist with?

Fair Trading **can** assist with matters about:

- residential tenancies where the dispute is between a tenant, agent and/or landlord e.g. tenants illegally locked out of their tenancy, or a landlord seeking advice on getting access to have a repair done

- the landlord or agent refusing access to Rental Bonds Online
- individuals involved in the sale or purchase of property/stock in NSW
- retirement village residents or owner/operators
- residential community (park) residents or owner/operators
- owner/occupants of strata schemes
- conveyancers.

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

Fair Trading **cannot** assist with matters about:

- public or social housing
- urgent health and safety issues
- an Apprehended Violence Order (AVO) or violence related matters
- boarding house residents
- commercial or retail lease disputes
- suspected and/or illegal activity
- termination of agreements
- serious damage to the property
- contractual disputes
- rental bond matters (other than Rental Bonds Online).

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

What should I do before coming to Fair Trading for help?

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

1. Review the Fair Trading website for relevant information on your rights or obligations and any applicable legislation.

2. Seek independent legal assistance when legal advice or interpretation of legislation is required.
3. Discuss your concerns and explain the issues with the other party. Let the other party express their concerns and position and try to come to a mutual agreement.
4. Contact the organisation's head office if a resolution cannot be achieved. Many businesses have their own internal complaint resolution body. These industry based organisations may assist to resolve complaints or simply provide advice.

What will Fair Trading do to help resolve complaints?

We will contact each party to seek a mutual resolution to the complaint. If Fair Trading is able to help both parties reach an agreement, we will finalise the complaint without any further intervention.

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

The time to finalise the complaint depends on parties' availability and the level of inquiries to be made by Fair Trading. We aim to finalise most complaints within 30 days.

Please keep in mind that if a complaint is complex or the parties do not co-operate, then this time may vary. Please also keep in mind that we cannot order or direct either party to resolve the complaint, only a court or a tribunal can do this.

What is the role of the Fair Trading Officer?

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
- make suggestions as to the best way to finalise the complaint, and
- refer applicable strata disputes to Fair Trading's free strata and community mediation service.

Fair Trading can conduct investigations and take disciplinary action where a breach has been identified.

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 complaint process is voluntary and its success depends on parties co-operating. Fair Trading cannot force either party to continue with the complaint process.

What happens if there is no resolution?

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).

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.

Find out more at <http://www.ncat.nsw.gov.au>

Information on strata and community mediation services can be found on the Fair Trading website.

How can I access the complaint service?

If you are not able to resolve the matter yourself, you can lodge a complaint online via the NSW Fair Trading website or call Fair Trading on 13 32 20 to discuss your matter further.