

## 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 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](http://www.fairtrading.nsw.gov.au).

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

March 2017

# 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

### Rental Bonds Online

For new residential tenancies from 30 January 2017, an agent or self-managing landlord must offer you the option of using Rental Bonds Online (RBO), Fair Trading's easy and secure service to manage bonds online. To use RBO, all you need is an email account, a mobile phone, internet connection, a Visa, Mastercard or the ability to pay by BPAY, and an Australian bank account.

For more information on making a bond claim using RBO, visit the Frequently asked questions for tenants page on the Fair Trading website.

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.

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 have not paid the break fee or other compensation payable
- if you didn't hand back all the copies of the keys you were given and the locks needed to be changed
- if you caused damage or did not leave the premises in a reasonably clean condition, compared to the original condition report, apart from '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.

### 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 to the property or anything that needs cleaning. If the agent or landlord raises 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. They can then give it to you so you can lodge it with Fair Trading, or they may lodge it on your behalf. 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 have a Rental Bonds Online account, you or your landlord or landlord's agent can submit a claim for bond refund online. If you wish to submit the claim, you can do this by logging into Rental Bonds Online and accessing your bond details. Click on 'Submit a claim' and follow the instructions. You will need your mobile phone to receive an SMS code to verify the claim. All refunds for online bonds will be paid by direct deposit into the bank accounts nominated in Rental Bonds Online. This means it is important your bank account details are up-to-date before you submit a claim for refund.

### 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. Tenants with a Rental Bonds Online account can submit a claim online. This will start the ball rolling but the bond will not be released immediately.

Fair Trading will issue a 'Notice of Claim' to the agent or landlord, giving them 14 days in which to contest or agree with your claim.

If the landlord or agent agrees with your claim, they can advise NSW Rental Bonds in writing for a bond that was originally lodged by the paper bond lodgement form. If the bond was lodged online, they can log on to Rental Bonds Online and agree to the claim. The bond will be refunded within two working days.

If the landlord or managing agent disagrees with the claim, they may discuss the claim with you. If an agreement cannot be reached, they can apply to the NSW Civil and Administrative Tribunal (the Tribunal) to contest 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.

If they do not apply within the 14 days, the bond will then be paid out as per your claim.

### Challenging a landlord's claim

If the landlord or agent lodges a claim first, 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 come to an agreement for the claim. 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. If the bond was lodged online, you must log in to Rental Bonds Online and tell us that you are disputing the claim. Fair Trading will then hold the bond until the Tribunal makes a decision.

Within 7 days of lodging the claim, the landlord or agent 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.

### Fair wear and tear

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 windows and worn sliding tracks	Broken glass from one of your children hitting a ball through the window
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

## Interest payable

A small amount of interest may 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.

[www.fairtrading.nsw.gov.au](http://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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# 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 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.