



Statutory Review of the *Residential Tenancies Act 2010:*

Discussion Paper - October 2015



Fair
Trading

Published by:

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Minister's message

The NSW residential property market has entered a challenging and exciting era. Around 823,000 households live in rental properties and, as more people move to our great state, the demand for quality rental properties continues to grow.

Whether you rent or lease a property – everyone needs residential tenancy laws that are modern, and strike the appropriate balance between the need for flexibility and the need for certainty.

The *Residential Tenancies Act 2010* introduced some significant changes to the regulation of residential tenancies, particularly in relation to sub-letting by tenants, and providing greater protection for tenants and victims of domestic violence. The legislation clarified the rights and obligations of tenants and landlords and reduced unnecessary red tape and costs.

Getting the laws right has been a fine balancing act and, while the legislation seems to be working well, there is always room to improve. With the right laws in place, NSW will be in a strong position to manage future growth in the residential tenancies market.

In preparing this Discussion Paper, NSW Fair Trading has covered a number of areas of interest including starting a tenancy, ending a tenancy, rental bonds, accommodation standards, and dispute resolution mechanisms.

We want to know what issues covered or not covered by the Act are important to you. I ask that you share your ideas and tell us if you think the legislation is working effectively or how it can be improved.

We will continue to consult the community, as well as key interest groups, as reform proposals start to take shape in the coming months.



Victor Dominello MP

Minister for Innovation and Better Regulation



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Introduction

Purpose of this Discussion Paper

When the *Residential Tenancies Act 2010* (the Act) was introduced it represented a significant reform package which transformed and modernised residential tenancy legislation in NSW.

Section 227 of the Act requires it to be reviewed 5 years after the date of assent to determine whether its policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives. This review process is now underway, and includes this Discussion Paper.

The purpose of this Discussion Paper is to encourage and facilitate public discussion about the regulation of residential tenancies in NSW and whether the legislation is working as intended.

This paper provides an opportunity for you to be involved in the law reform process. Your knowledge, experience and feedback as participants in the rental market will help us ensure the legislation continues to reflect the needs of the community – now and into the future.

In preparing this paper and identifying a range of matters for consideration, NSW Fair Trading has taken into account comments received from tenants, landlords and other interested parties since the Act commenced in 2010. Preliminary research and consultation has also taken place to scope issues relevant to the review.

The issues and options identified are not exhaustive as they are intended to facilitate discussion and do not indicate government policy.

While Part 7 of the Act deals with social housing tenancy agreements, social housing tenancies are not within the scope of this review and Discussion Paper. The NSW Government is currently working towards reforming social housing through a number of other review processes. These processes will deal specifically with social housing reform and the relevant sections in the Act. Further information on social housing reform can be found on the NSW Department of Family and Community Services website www.facs.nsw.gov.au/reforms/social-housing-in-nsw.

We welcome further comments on any other general matters that are relevant to improving the current regulatory framework established by the Act.

Next steps

Once the consultation period has closed, all comments and submissions will be analysed and potential options for reform assessed. A report on the review will be submitted to the Minister for Innovation and Better Regulation for tabling in Parliament.



Have your say

We invite you to read this paper and provide comments.

To assist you in making a submission, an optional submission form is provided on NSW Fair Trading's website www.fairtrading.nsw.gov.au. However, this form is not compulsory and submissions can be in any written format.

You may wish to comment on only one or two matters of particular personal interest or all of the issues raised in this Discussion Paper.

You can make submissions by:

- online feedback at the NSW Government's Have Your Say website: www.haveyoursay.nsw.gov.au
- email to: policy@finance.nsw.gov.au
- send submissions to the following address:

Statutory Review of Residential Tenancies Act 2010
Fair Trading Policy
PO Box 972
PARRAMATTA NSW 2124

Please take careful note of the deadline for submissions: **COB Friday 29 January 2016**

Important note: release of submissions

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons.

Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*).



Executive summary

The regulatory framework for residential tenancies in NSW aims to strike a balance between the interests of tenants and landlords. Landlords have a right to ensure their investment is protected and can generate reasonable returns. Tenants are entitled to suitable housing and reasonable rights to enjoy their home and not be evicted without proper notice.

The *Residential Tenancies Act 2010* (the Act) was introduced to reflect this balance and keep pace with changes in the rental property market. It establishes a comprehensive set of rights and obligations for landlords, tenants, social housing providers and real estate agents who act for landlords. It regulates the conduct of these parties in the different stages of a residential tenancy:

- Pre-tenancy – addressing issues such as disclosures, tenancy agreements, condition reports, and holding fees;
- During the tenancy – addressing maintenance and repairs, alterations and additions, landlord’s rights of access, rent increases, dispute resolution and sub-letting;
- Termination of a tenancy – addressing termination notices and claims for bonds.

The Act also regulates the lodgement of and claims for rental bonds, social housing tenancies, and residential tenancy databases, and gives the NSW Civil and Administrative Tribunal jurisdiction to hear and deal with tenancy matters.

This Discussion Paper gives/offers an opportunity for the community to directly provide the NSW Government with their feedback on and any concerns about the Act in its current form. It is divided into seven key topic areas related to the regulation of residential tenancies in NSW:

1. Starting a tenancy;
2. Rental bonds;
3. Rent and other charges;
4. Rights and obligations of landlords and tenants;
5. Terminations;
6. Resolving disputes; and
7. Other key issues.

The issues and options identified in this Discussion Paper are not exhaustive as they are intended to facilitate discussion and do not indicate government policy. Further comments on any other general matters relevant to improving the current regulatory framework for residential tenancies are welcome.

Background

The changing profile of the NSW rental market

The changing composition and structure of the residential rental market in NSW has created a higher demand for rental housing.

According to 2011 Census data, approximately one-third of 2.47 million private households in NSW live in rented properties. While the majority of rental accommodation is provided by individual landlords (who mostly engage licensed real estate agents to manage their properties), there is also a significant public and community housing sector. In the 2012-2013 financial year, close to 280,000 people in NSW received social housing assistance to meet their housing needs.



The NSW rental market, which has been previously dominated by younger people, now sees families and older people representing a larger part of the housing mix. A more dynamic workforce, people choosing to have families later in life, and higher income earners opting to rent for lifestyle reasons are among the social and economic factors influencing today's market.

Historically, renting has been viewed as a short term housing option - a stepping stone to home ownership. Today, people are renting for longer. According to figures from the Rental Bond Board¹, in the last 10 years there has been a 7.2% increase in the number of tenancies lasting longer than 3 years. A corresponding decrease of 5.2% was recorded for tenancies of less than 6 months.

The Residential Tenancies Act must continue to provide certainty for tenants while also meeting the needs of landlords managing their investment in these changing times.

The residential tenancies regulatory framework aims to strike a balance between the interests of tenants and landlords. Landlords have a right to ensure their investment is protected and can generate reasonable returns. Tenants are entitled to suitable housing and reasonable rights to enjoy their home and not be evicted without proper notice.

The current regulatory framework

The introduction of the Act in 2010 was the result of a comprehensive review and consolidation of the old *Residential Tenancies Act 1987* and the *Landlord and Tenant (Rental Bonds) Act 1977*. The Act replaced the previous legislation in order to modernise, streamline and simplify the law.

The Act aims to establish a regulatory regime for residential tenancies in NSW that:

- provides clarity and certainty about the rights and obligations of tenants and landlords;
- promotes equity and efficiency and reduces unnecessary costs for both landlords and tenants;

¹ View or download the NSW Fair Trading, *Rental Bond Board Annual Report 2013-2014* (in PDF format, size: 4.15MB) from the Fair Trading website

- enables landlords to manage their investment in a way that optimises returns and supports the future provision of rental accommodation in NSW;
- enables tenants to have access to suitable rental accommodation and make informed choices about where they live, for how long, and what they are paying for; and
- encourages both landlords and tenants to take a responsible approach to their obligations to each other, to the people they share their home with and to their neighbours and the wider community.

1. Are the aims and objectives of the Act, outlined above, still valid?

Scope of the Residential Tenancies Act

Certain premises and agreements are not within the scope of the Act. These exclusions include:

- hotels, motels and backpackers' hostels;
- serviced apartments;
- boarding and lodging agreements;
- aged care facilities;
- refuge and crisis accommodation;
- hospitals and nursing homes;
- residence agreements under the *Retirement Villages Act 1999*;
- agreements for holiday accommodation for a period less than 3 months; and
- tenancy disputes where the Commonwealth Government is the landlord.

Many of these exemptions are mirrored in the residential tenancy laws of other jurisdictions. Regardless of which premises or agreements are excluded, the legislation needs to be clear and unambiguous about who is and who is not covered. This helps to reduce disputes and avoid misunderstandings between parties.

Inquiry into the regulation of accommodation services in the sharing economy

Given the rise of the 'sharing economy' and online platforms such as Airbnb and Stayz, the NSW Government has commissioned a parliamentary inquiry into the regulation of short term holiday letting services. More information about this parliamentary inquiry is available on the NSW Parliament website www.parliament.nsw.gov.au.

2. How can the regulation of residential tenancies in NSW adapt to effectively support the changing profile of the rental market into the future?
3. Are there any types of occupancy arrangements which should be included or excluded from the Act?

Starting a tenancy

Residential tenancy agreements

The majority of residential tenancy arrangements are governed by the Residential Tenancies Act. At the beginning of a tenancy, both the tenant and landlord must sign a written tenancy agreement (also known as a lease). This agreement is a legally binding contract that sets out the terms and conditions of the arrangement, and is accompanied by a condition report noting the condition of the property.



Standard tenancy agreement

The standard form of a tenancy agreement is contained in Schedule 1 of the Residential Tenancies Regulation 2010 and sets out 40 terms which are required in all residential tenancy agreements (see Appendix A).

Additional terms can be included in the agreement (for example, in relation to 'break fees' or pets), as long as those terms are consistent with the Act. This allows tenants and landlords a degree of contractual flexibility and the ability to negotiate some of the terms of their agreement.

Section 19 of the Act outlines terms that are prohibited from inclusion in residential tenancy agreements. Any additional terms which are prohibited or conflict with the Act are void and unenforceable. Agents and landlords can also be penalised for including prohibited terms in a tenancy agreement.

Prohibited terms include those requiring professional carpet cleaning and requiring tenants to hold insurance. However, where a tenancy agreement includes an additional term allowing pets, the (usually prohibited) term requiring carpets to be professional cleaned at the end of the tenancy can be included in the agreement.

Types of agreements

There are two main types of residential tenancy agreements in NSW: a 'fixed term' agreement and a 'periodic' (continuing) agreement. A fixed term agreement is for a fixed period of time (such as for 6 or 12 months or other agreed period) and specifies an end date. It is usually used at either the start of a tenancy or when the parties are renewing the agreement once the original fixed term period has ended.

A periodic agreement is an agreement for an indefinite period and usually follows an initial fixed term agreement. At the end of a fixed term, if the tenant remains in the premises and no new agreement is signed, they will automatically move to a periodic agreement (sometimes known as a "rolling lease"). Having a periodic agreement from the beginning of a tenancy is uncommon in Australia.

A tenant cannot terminate a fixed term agreement without potentially incurring break lease fees. This paper will expand on this area in more detail (page 27).

Agreements of more than 20 years

If a landlord is willing to offer a fixed term agreement of 20 years or more, the Act provides a large degree of flexibility. Most of the mandatory terms of the standard agreement can be omitted from the agreement. For example, the agreement may provide for the tenant to take on the responsibility of maintaining the premises in return for a cheaper rent.

The NSW Civil and Administrative Tribunal has the power to strike out any terms included in these agreements that are considered unconscionable, unjust, harsh or oppressive.

Pre-agreement matters

Lease preparation and holding fees

The current Act sets limits on the amounts a tenant can be required to pay when entering a residential tenancy agreement. For example, tenants cannot be charged a lease preparation fee and potential tenants cannot be asked to pay more than one week's rent as a 'holding fee'. A holding fee cannot be required unless the prospective tenant's application has been approved by the landlord. If a holding fee is paid, a receipt must be provided, and the property must be held for 7 days.

Disclosures

The appropriate disclosure of information gives tenants an opportunity to make an informed decision about whether to enter into a residential tenancy agreement.

At the time of entering into a residential tenancy agreement, landlords (or their agents) are required to disclose certain information to tenants, including;

- any proposal to sell the premises (but only if a contract for sale has been prepared);
- if a mortgagee has commenced court proceedings to take possession of the premises; and
- current contact details for the landlord and/or agent.

The landlord must not knowingly conceal any material facts in order to induce a tenant to enter into a residential tenancy agreement. The Act and associated regulations require disclosure where the premises:

- have been subject to flooding or bush fire in the last 5 years;
- are subject to significant health or safety risks that are not apparent to a reasonable person on inspection of the premises; or
- have been the scene of a serious violent crime within the last 5 years.

Mandatory disclosure also applies in circumstances where:

- council waste services will be provided to the tenant on a different basis than other premises in the area;
- the tenant will not be able to obtain a residential parking permit due to zoning or other planning laws; or
- the property includes a driveway or walkway that other people are legally entitled to share with the tenant.

The tenant must also be offered a copy of the 'New Tenant Checklist', a fact sheet produced by NSW Fair Trading (see Appendix B). This contains important information on the lease, any promises to undertake repairs and upfront costs that should be considered before signing a tenancy agreement. It also outlines which documents the tenant should receive from the landlord and tips for problem-free renting.

Tenant groups have suggested that the disclosure requirements could be expanded to include more matters. One example is the disclosure of whether there is an existing mortgage over the property, as the residential tenancy agreement may be terminated if the property is repossessed.

Another suggestion is that by-laws for a strata property should be attached to the tenancy agreement, so that potential tenants are aware of any restrictions prior to signing. Restrictions could affect the use of common areas, moving times or maximum number of occupants. Currently, the Act requires the landlord to provide the tenant with a copy of the by-laws within 7 days of entering into the agreement. In Queensland and Tasmania, the by-laws must be attached to the tenancy agreement.

Condition reports

The Act requires the landlord to complete a condition report that complies with the condition report set out in Schedule 2 of the Residential Tenancies Regulation 2010 (see Appendix C).

The tenant must be given two copies of the condition report before or at the same time that the residential tenancy agreement is given to the tenant for signing. The tenant must then complete one copy and give it back to the landlord within 7 days of receiving it.

The condition report is used as evidence of the state of the premises at the beginning of the tenancy. Another condition report is completed at the end of the tenancy.

4. Are there any provisions of the standard tenancy agreement or condition report which can be improved or updated (see Appendix A and C)?
5. Should there be any additional prohibited terms beyond those listed in section 19 of the Act?
6. Is the 'New Tenant Checklist' a useful resource (see Appendix B)? Are there any other important matters which should be covered in the checklist?
7. Should the 'New Tenant Checklist' include, or be accompanied by, specific information on required safety features e.g. smoke detectors, electrical safety switches, pool fencing etc.?
8. Should any other information be required to be disclosed by landlords at the time of entering into an agreement?

Length of tenancy agreements

In the last financial year, records from the Rental Bond Board indicate that 64% of all bonds refunded had been held by the board for more than 12 months at the time of refund, with 36% of all bonds refunded being held for tenancies of greater than 2 years' duration.

A 2013 report by the Australian Housing and Research Institute also suggests that the number of tenancies lasting longer than 3 years is increasing, with more than a third of people in the private rental market renting for 10 years or more².

While measures are in place to protect residents, some groups believe the short term nature of existing agreements can create a sense of uncertainty among tenants. Once the fixed term expires, unless a new fixed term agreement is signed, the tenant may be required to vacate the premises without grounds, provided they receive the appropriate notice period of 90 days.

There are several regulatory models in Europe that focus on encouraging long term tenancies. For example, in France the standard contract period for an unfurnished property is 3 years and in Germany, leases are most commonly offered for an 'unlimited term'.

9. What incentives would encourage the use of longer term leases?
10. What are the key challenges for landlords in offering longer term leases? How could longer term leases be managed?



² Australian Housing and Research Institute, *Long term private rental in a changing Australian private rental sector*, Final Report No. 209, July 2013.

Rental Bonds

A bond is an amount of money paid by a tenant at the beginning of the tenancy as 'security' against unpaid rent or damage. The bond is required to be paid to the Rental Bond Board, which manages all bonds for tenants and landlords and holds these monies in a trust account.

As a statutory body, the Rental Bond Board acts as an independent and impartial custodian of rental bonds on private residential tenancies in NSW. The powers and functions of the Board are set out in the Residential Tenancies Act and the associated regulations.

NSW Fair Trading assists the Board by undertaking bond lodgement, custody and refund functions, as well as providing tenancy and bond information to customers.

While rental bonds are not compulsory, they are a common feature of the modern rental market. In NSW, the maximum bond that can be charged is 4 weeks' rent. The maximum amount of bond aims to balance the need for financial protection for a landlord against the need for affordability for tenants, particularly as tenants may need to pay a new bond before their previous bond is refunded. While the bond provides some financial protection for a landlord, it is not intended to act as insurance.

A landlord cannot request or receive additional bond payments (also known as 'top-ups') during the course of a tenancy. Higher bonds cannot be charged for tenants with pets or children or for any other reason.

Bond lodgement

Currently, bonds must be lodged with NSW Fair Trading within 10 days of receipt (or within 10 days of the end of the month where the bond is collected by a real estate agent). The Act also allows for a rental bond to be paid by instalments. Both the landlord and tenant must agree to this arrangement.

When the Rental Bond Board receives the bond, it will provide a receipt to the tenant as well as to the landlord and/or agent.

At the end of 30 June 2015, 754,423 rental bonds valued at \$1.202 billion were held by the Rental Bond Board. The total number of bonds held increased by 3.9% compared to the total number held at 30 June 2014 and the value increased by 7.7%.

Rental bond refunds

At the end of a tenancy, a landlord (or their agent) or tenant can lodge a bond refund claim with NSW Fair Trading. Where the parties agree to the amount to be refunded, a 'Claim for Refund of Bond Money Form' must be signed by both parties and lodged so that the bond can be released accordingly.

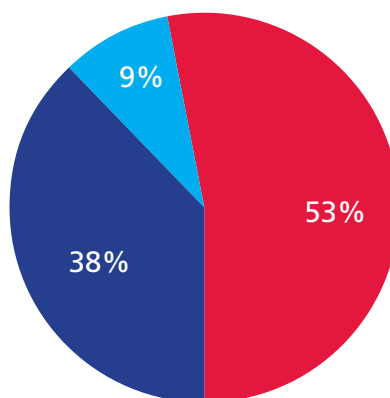
Where an agreement cannot be reached or where the tenant or landlord cannot be located, a claim for the bond can be made solely by one party. In this case, a 'Notice of Claim' will be sent by NSW Fair Trading to the other party and they will be given 14 days to either agree to the claim or dispute it. If the claim is not disputed within 14 days, the bond will be refunded as per the original claim form.

In 2014-2015, 73.9% of all refunds were agreed to by the parties, while in 22.7% of cases a notice of claim was issued but no dispute proceeded to the NSW Civil and Administrative Tribunal. During this period, 1.5% of bond refunds were the result of an order by the Tribunal following a dispute over the bond refund. A further 0.3% of bonds were refunded after a Tribunal application was withdrawn prior to hearing.

Also in 2014-15, 266,856 rental bonds were refunded. This represents an average of 1,063 bond claims being processed every day. There has been a continuation of the trend towards using electronic services as opposed to lodging refunds via mail and face-to-face services.

Bond refunds paid to tenants and landlords in 2014-15

- Full refund to tenant
- Part payment to both parties
- Full refund to landlord or agent



Interest on bonds

Interest accrues on rental bonds and a portion of this interest is paid to tenants. The rate of interest payable on rental bonds is prescribed in the Residential Tenancies Regulation 2010 and is equivalent to the rate payable by the Commonwealth Bank of Australia on an Every Day Access Account balance of \$1,000. The current rate is 0.01% per annum.

The system of paying interests on bonds was introduced in 1990, at a time when interest rates were much higher than they are today.

The remainder of the interest earned on rental bonds is used to fund a range of services for the benefit of all parties in the rental market, such as the Tenants' Advice and Advocacy Program (TAAP), operations of the NSW Civil and Administrative Tribunal and information, education, complaint handling, compliance and administration services provided by NSW Fair Trading.

NSW is currently the only state to pay interest on bonds. Given that the administrative costs of paying this interest exceed the interest payments to tenants, there may be a case to cease paying interest on bonds and to use the money to fund existing or new services for tenants and landlords.

11. Is the maximum bond amount of 4 weeks' rent appropriate?
12. Should a portion of the interest on rental bonds continue to be paid to tenants, or should this portion also be used to fund services for tenants?
13. Does the process for refunding bonds and resolving bond disputes work well? What could be improved?

Rent and other charges

In the private rental market in NSW, rents are negotiated between the parties based on market conditions. The Residential Tenancies Act establishes rules for matters such as receipts, rent increases and recovery of arrears.

It is important that the appropriate level of regulation is in place to protect tenants from potential exploitation, while allowing the market to operate freely, without anti-competitive restrictions.



Rent payments

Changes to residential tenancies legislation in 2010 were intended to support the shift in rent payment practices towards electronic systems. Under the Act, tenants must be given at least one fee-free method to pay their rent and the method must be agreed to by the parties and set out in the tenancy agreement.

Tenants cannot be required to pay rent more than 2 weeks in advance (unless they wish to do so), or pay rent for a period of the tenancy before the previous period has ended. A landlord or their agent must provide a tenant with a receipt for rent (if the rent is paid in person) and keep a record of rent paid in all cases.

Rent increases

The Act's provisions relating to rent increases vary depending on whether the agreement is a 'fixed term' or 'periodic' agreement. The following provisions apply:

- **Fixed-agreements of 2 years or less:** rent can only be increased during a fixed term if the agreement specifies the increased rent or the method for calculating the increase and the tenant is given 60 days' written notice;
- **Fixed-agreements of more than 2 years:** rent can only be increased during the fixed term if there is only one increase in any 12 month period and the tenant is given 60 days' written notice;
- **For periodic agreements:** there are no limits to the number of rent increases that can be made, but the tenant must be given 60 days' written notice.

Some tenant groups have called for further restrictions on the frequency and size of rent increases, suggesting that increases should be limited to no more than once or twice every year, linked to consumer price index measures, or a prescribed percentage increase on existing rent.

However, it has been suggested that this change would encourage some landlords to automatically increase rent every six or 12 months, and subject tenants to a series of increases that may not have happened otherwise. Limits on rent increases would also restrict the ability of landlords to reasonably recover increases in their costs and discourage them from investing in housing.

Disputes about rent increases

If a tenant believes a rent increase is excessive, section 44 of the Act allows them to seek a remedy through the NSW Civil and Administrative Tribunal.

In making an order that a rent increase is excessive, the Tribunal is to look at a number of factors including the general market rent for similar premises in the area, the state of repair of the premises, any improvements done by the tenant and when the last rent increase occurred.

The Tribunal is explicitly prevented from taking into account the income of the tenant or the tenant's ability to afford the rent when determining whether a rent increase is excessive.

Tenants can also apply for a reduction in rent if there is a reduction in the goods, services or facilities provided with the premises, if the premises become unusable and this is not caused by the tenant, or if the tenant is required to allow prospective buyers to view the premises.

The Tribunal can make orders limiting the rent or rent increase, and the day that the new rent will take effect.

14. Are the current notice periods for rent increases appropriate?
15. Do the existing provisions governing excessive rent increases strike the right balance between the interests of landlords and tenants? If not, how could they be improved?

Rental arrears

A significant area of concern for many landlords is the problem of rental arrears and the amount of time it can take to evict a tenant who falls behind in their rent. Some landlords have indicated that the bond is often inadequate to cover lost rent where it has taken a long time to evict the tenant. This can cause financial problems and hardship for landlords, particularly those who rely on the rent to pay the mortgage on their property.

If a tenant falls behind in their rent by more than 14 days, the Act allows the landlord to issue a termination notice on the grounds that the tenant has breached their tenancy agreement. This notice must be given to the tenant 14 days before the date the landlord wishes the tenant to vacate.

However, if the tenant pays all the rent owing or enters into (and fully complies with) a repayment plan with the landlord within the 14 days, they do not have to vacate the property. This is designed to help tenants who encounter temporary financial difficulties.

To prevent tenants taking advantage of this concession by deliberately and repeatedly paying their rent late, the NSW Civil and Administrative Tribunal is able to make an order to end the tenancy for tenants who frequently fail to pay rent on time, even if the tenant pays the rent they owe.

In the United States, late fees for failing to pay rent on time have been introduced to encourage tenants to pay their rent punctually and to compensate landlords for any inconvenience late payment may have caused.

By comparison, the Act currently prohibits residential tenancy agreements from requiring tenants to pay a penalty if the agreement is breached, including through failing to pay rent on time.

It is possible that, for tenants who may already be in rental stress and genuinely experiencing financial difficulties, a late fee on top of rent owing could make matters worse.

16. Do the Act's provisions governing termination for rental arrears strike the right balance between the interests of landlord and tenant?
17. Should the introduction of late fees for rent owing be considered? Please give reasons.

Water and utilities

Currently, tenants are responsible for paying all charges for the supply of electricity, gas or water, if the premises are separately metered.

A landlord can only pass on water usage charges if the premises are separately metered and are fitted with the following prescribed water efficiency features:

- all showerheads must have a maximum flow rate of 9 litres per minute;
- all internal cold water taps and single mixer taps for kitchens or bathrooms must have a maximum flow rate of 9 litres per minute; and
- there must be no leaking taps at the commencement of the tenancy agreement or when the water efficiency measures are installed, whichever is the later.

Taps and showerheads with a maximum flow rate of 9 litres per minute have a 3 star water efficiency rating.

Given that a tenant is paying for the water and energy they use, landlords must ensure fittings in the property are efficient and do not result in additional costs for the tenant. However, in terms of energy efficiency, there is currently little incentive for the landlord to make the property energy efficient as they will not reap the benefits.

There is also little incentive, or in some cases ability, for a tenant to invest in a property they may only be occupying temporarily. This problem is known as a 'split incentive' and can contribute to tenants paying higher costs than necessary for utilities.

Other charges

Tenants are responsible for paying charges for pumping out septic tanks, and any charges for excess garbage.

18. How can the 'split incentive' issue be addressed in the residential tenancy market?
19. What incentives might encourage landlords or tenants to improve energy and water efficiency?

Rights / obligations of landlords and tenants

The Residential Tenancies Act sets out the rights and obligations of landlords and tenants during occupation of the premises. Some of the general rights and responsibilities include:

Landlords	Tenants
Provide premises in a reasonable state of cleanliness and fit for habitation	A right to quiet enjoyment of the premises
Not to interfere with the supply of gas, electricity and water	Not to use the premises for an illegal purpose
Keep rent records	Not to cause or permit a nuisance
Install smoke alarms	Keep the premises in a reasonable state of cleanliness
End a tenancy giving the required notice	Pay rent on time

The Act aims to set out these rights and responsibilities with clarity in order to minimise disputes. NSW Fair Trading conducts education and awareness campaigns to ensure landlords and tenants are clear about their obligations and can enforce their rights accordingly.

General obligations regarding the premises

Habitable, safe premises

The premises must be in a reasonable state of cleanliness and 'fit for habitation'. The landlord or their agent must not interfere with the supply of gas, electricity, water or other services to the premises unless there is a safety risk or a need to carry out repairs or maintenance.

The landlord must also comply with any legal requirements regarding the health and safety of the premises, such as obligations regarding the fencing of swimming pools.

Quiet enjoyment by tenant

Tenants have a right to 'quiet enjoyment' of the premises without interruption by the landlord or their agent. The landlord must also take reasonable steps to ensure that neighbours do not interfere with the tenants' right to reasonable peace, comfort and privacy. A landlord or their agent may be penalised for failing to comply with this obligation.

Use of premises by tenant

Tenants must not use the premises for an illegal purpose, cause a nuisance or interfere with the reasonable peace, comfort or privacy of the tenants' neighbours. Tenants must also not intentionally or negligently cause damage to the premises and must keep them in a reasonable state of cleanliness. Any damage to the premises must be notified to the landlord.

The number of people residing at the premises must also not exceed the number specified in the residential tenancy agreement. If the premises is in a strata scheme, tenants must also comply with the strata by-laws.

Repairs

Landlords must provide and maintain rental premises in a reasonable state of repair, considering the age of the property, the amount of rent payable and the prospective life of the premises. In a strata scheme this may involve the landlord requesting the owners corporation to arrange for repairs. This obligation applies even if the tenant knew about the disrepair before occupying the premises.

The Act distinguishes between urgent (emergency) repairs and those which are not so urgent. Urgent repairs include fixing a gas leak, burst water service, storm damage and other repairs set out in section 64 of the Act.

Tenants must notify their landlord or agent of any urgent repairs needed as soon as possible. If urgent repairs are not carried out within a reasonable time, tenants may arrange for a licensed or otherwise properly qualified person to carry out the repairs.

Any urgent repair work paid for by the tenant up to the value of \$1000 must be reimbursed by the landlord if the tenant:

- did not cause the problem requiring urgent repair;
- notified the landlord or agent about the problem or made a reasonable attempt to do so;
- gave the landlord or agent a reasonable opportunity to get the repairs done; and
- arranged for the repairs to be carried out by a licensed tradesperson (if appropriate).

The landlord has 14 days to reimburse the tenant after the tenant provides written notice of the urgent repairs and costs. If the landlord fails to reimburse the tenant, or fails to carry out specified repairs in breach of the landlord's obligations under the Act, the tenant may apply to the NSW Civil and Administrative Tribunal for a resolution.

Alterations by tenants

The Act provides flexibility for tenants to add fixtures and to make minor alterations to the rental premises if they have the landlord's written consent or the residential tenancy agreement expressly permits it. In the majority of cases, any minor alterations to the property will be at the tenant's expense.

A landlord must not reasonably refuse consent if the requested alteration is of a minor nature, such as replacing the toilet seat. It is for the landlord and tenant to agree on what is a minor alteration. The Act provides some guidance as to which types of works the landlord could refuse, such as internal or external painting or work involving structural changes.

If there is a dispute about the nature of a requested alteration, a tenant makes an alteration without consent, or the landlord refuses consent to a reasonable request, either or both parties can apply to the NSW Civil and Administrative Tribunal for a resolution.



20. Is there an appropriate balance between the general rights and obligations of landlords and tenants under the Act?
21. Is further guidance required in relation to whose responsibility it is to repair the premises and when the repairs must be carried out?
22. Are the current provisions regarding making alterations to a rental premises appropriate?
23. Are there other types of work a landlord should be able to refuse permission for a tenant to undertake?

Inspections and the right to privacy

The Act establishes a tenant's right to quiet enjoyment of the rented premises without interruption by the landlord or their agent. For this reason, the Act restricts when and how often a landlord or their agent can enter the premises during the period of the tenancy.

The amount of notice that must be given to the tenant before a landlord or agent enters premises depends on the reason they need to enter:

- to inspect the premises - 7 days' written notice;
- to show the property to potential buyers - 14 days' written notice;
- to undertake maintenance or repairs - 2 days' written notice;
- in the case of emergencies or works to protect the property from damage - no notice is required.



Provided that correct notice has been given, a tenant does not need to be home for a landlord or their agent to enter, however parties are encouraged to negotiate a time that is suitable for everyone.

Currently, a landlord or their agent can inspect the property up to four times in one year. It has been suggested that in order to strengthen the rights of tenants who have resided at the same premises for a number of years ('long term tenants'), the number of inspections allowed per year should be reduced.

24. Are the notice periods for carrying out inspections appropriate?
25. Should the number of inspections allowed per year be reduced for long term tenants? If so, how long should a tenant have continuously occupied the same premises to be classified as a 'long term tenant'?
26. Are any additional protections needed for tenants and landlords regarding inspections and privacy?

Advertising tenanted properties and privacy concerns

In 2014, the Victorian Law Reform Commission conducted a review of the rights of tenants, landlords and real estate agents when it comes to taking photographs and videos to advertise a property for sale or lease.

Some tenants expressed concerns about photographs and videos, in which their personal possessions were visible, being used to advertise the premises for sale or lease. Some tenants were concerned that this practice put them at risk of theft or personal harm, particularly if the photographs revealed the identity of the tenant or showed valuable items.

The Commission ultimately recommended that the rights of Victorian landlords and tenants in this situation be clarified on this matter and additional protections introduced for tenants.

Residential tenancies legislation in Queensland and Tasmania prohibit the use (not the taking) of advertising images that show tenants' possessions without the written consent of the tenant.

In NSW, the Property, Stock and Business Agents Regulation 2014 requires that real estate agents do not use or disclose any confidential information obtained while acting on behalf of a client or dealing with a customer. However, there are no protections specific to the circumstances of a residential tenancy where the tenant's personal possessions are visible in photos or videos used to advertise the premises.

27. Should there be specific provisions in the Act that deal with the use of photographs or videos showing a tenant's personal property to advertise premises for sale or lease?

Shared tenancies

More people are looking for opportunities to reduce their costs of living and living in a shared rental household is one way to do this. Depending on the type of shared tenancy, different obligations apply.

Transfer of tenancy and sub-letting

A transfer of tenancy occurs when a tenant or co-tenant transfers the tenancy, or their share of the tenancy, under a residential tenancy agreement to another person. Sub-letting involves a tenant entering into a formal agreement with another person (whose name is not on the lease) to rent part of the premises, or the whole premises. Under the Act, a transfer of tenancy or sub-let may only occur with the landlord's written consent.

Landlords may refuse consent to transfer or sub-let a whole tenancy or premises, whether or not it is reasonable to do so. However, they cannot unreasonably refuse consent to a partial sub-let or a new co-tenant where one original tenant is still an occupant. The Act provides that a landlord may refuse consent to partial sub-let or new co-tenant if:

- the number of proposed occupants is more than the number permitted by the residential tenancy agreement or any applicable planning consent or approval;
- the proposed tenant or sub-tenant is listed on a residential tenancy database; or

- the landlord is reasonably of the opinion that the transfer or sub-letting would result in the premises being overcrowded.

Where a tenant feels that the landlord has been unreasonable in their refusal of consent, they can apply to the NSW Civil and Administrative Tribunal for a resolution.

The Act offers measures to deal with some of the main disputes that arise with co-tenancies. One of the most common disputes is where one co-tenant wants to leave and have their share of the bond refunded before the end of the tenancy.

In such cases, the remaining co-tenants must pay out the leaving tenant's share of the bond amount within 14 days. Once a new tenant is found, a 'Change of Shared Tenancy Arrangement' form, available from the NSW Fair Trading's website www.fairtrading.nsw.gov.au, must also be signed and lodged with NSW Fair Trading.

28. Does the Act adequately protect the interests of sub-tenants/co-tenants and landlords in shared tenancy arrangements?

Rental housing standards

The Act outlines statutory obligations for landlords in relation to the condition of rental properties. Rental properties must be provided in a reasonable state of cleanliness, be fit for habitation and be maintained for the life of the tenancy in a reasonable state of repair.

The Act also relies on other legislation such as fire safety, local government, planning and building laws to establish standards for rental properties. Landlords must comply with their legal obligations in relation to issues such as installation of smoke alarms.

Tenants have a number of rights and options to pursue when a property is sub-standard. This may include going to the NSW Civil and Administrative Tribunal seeking an order about repairs, applying for a rent reduction or terminating the agreement where the premises are wholly or partly uninhabitable. In addition, there are already some parts of the Act which indirectly set benchmarks, such as the provisions promoting water efficiency.

Some tenants groups would like to see 'minimum standards' introduced into the residential tenancy legislation.

The idea of minimum standards has been explored in other jurisdictions. For example, Tasmania recently passed legislation requiring rental homes to have certain facilities such as heating, ventilation, cooking facilities and running water. In Western Australia, minimum requirements have been clarified in relation to the security of rental homes.

However, there is a possibility that setting minimum standards could push up rental costs, contribute to a shortage of housing and duplicate many existing laws.

29. Do the existing provisions in the Act and other legislation in relation to the standard of rental properties strike the right balance between the need to protect tenants and the need to contain costs for landlords?
30. Are there alternative ways to improve the standard of rental properties?

Rights of long term tenants

The Act contains special provisions for long term tenants who have resided continuously at the same premises for a period of 20 years or more. In these cases, landlords are not able to terminate the tenancy except on specific grounds. In addition, where the fixed term of the lease is for 20 years or more, some of the terms of the agreement can be left out or varied, while otherwise prohibited terms may be included.



31. Are the provisions applying to long term tenancies appropriate?

Terminations

When ending a tenancy, the Residential Tenancies Act sets out a number of procedures that need to be followed as well the rights and obligations of the tenant and the landlord.

Termination notices

The Act specifies certain notice periods that must be adhered to in order to end a tenancy. These notice periods are designed to give tenants reasonable time to find another rental property and landlords reasonable time to find a new tenant.

Tenants are able to vacate at any time after they have given or been given notice to vacate the rented premises. If the tenant gives notice to vacate, they need to pay rent up until the termination date. Previously, tenants had to advise of their departure date but this is no longer the case.



Specific grounds for termination

The Act provides a number of specific grounds under which a tenant or landlord can lawfully end a lease early upon giving correct notice. These include:

- Breach of the agreement – either the tenant or landlord may issue a termination notice specifying a termination date of at least 14 days after the date the notice is given;
- Sale of property – where the premises has been sold after the fixed term has ended (and vacant possession is required by the buyer under the terms of the new sales contract), the notice period is 30 days;
- Non-payment of rent – when the tenant is 14 days in arrears, the landlord can give a termination notice specifying that the agreement will terminate in 14 days;
- Serious damage to the property or injury to a person caused by the tenant or another occupant of the premises – the NSW Civil and Administrative Tribunal may make an order for an immediate termination;
- Use of the premises for an illegal purpose by the tenant, including for the manufacture or supply of prohibited drugs – the NSW Civil and Administrative Tribunal may make an order for an immediate termination;
- Threat, abuse, intimidation or harassment of the landlord or their agent by the tenant or occupant – the NSW Civil and Administrative Tribunal may make an order for an immediate termination;
- Hardship to the landlord or tenant – the Tribunal may make a termination order depending on the circumstances.

'No grounds' notice

Options to end the tenancy on 'no grounds' depend on the type of agreement:

- *Fixed term agreements* – At the end of the fixed term, a landlord must give a tenant 30 days' notice to terminate the agreement. Tenants are only required to give 14 days' notice.
- *Periodic agreements* – Where a landlord wants to terminate a tenancy during a periodic agreement, they must give the tenant 90 days' notice (increased from 60 days under the *Residential Tenancies Act 1987*). A tenant must give the landlord 21 days' notice.

The amount of notice required for 'no grounds' terminations varies across jurisdictions. In Victoria, a tenant must be given at least 120 days' notice where a tenancy is terminated without grounds. In Germany, the notice requirements vary depending on how long a tenant has been in the property, for example from 3 to 9 months for someone who has occupied the same premises for more than 8 years.

There have been suggestions that 'no grounds' terminations be removed and that the landlord be required to provide a grounds for termination from a prescriptive list of possible reasons. This proposal would need to be balanced against the view that landlords are entitled to deal with their property as they see fit.

32. Are the current termination notice periods appropriate?
33. Should landlords be required to provide a reason for terminating a tenancy? If so, what types of reasons should be considered?

Breaking a lease early

Break fees

Prior to 2010, residential tenancies legislation required a tenant to pay rent until a new tenant moved into the property or until the lease expired, if a new tenant was not found. The Act changed this to allow tenants and landlords to mutually agree on breaking the lease, provided the tenant pays a fee.

For a fixed term agreement of less than 3 years, the maximum break fee is 6 weeks' rent (if less than half the fixed term had expired when the tenant left the premises) or 4 weeks' rent in any other case. For fixed term agreements of more than 3 years, the fee can be negotiated between the parties and set out in the agreement.

Where a break fee is not included in the tenancy agreement, tenants are responsible for compensating the landlord for any loss of rent and other expenses until a new tenant is found or their lease expires. This can amount to substantial costs for a tenant.

When the proposal for introducing the optional break fee was canvassed in 2010, there were differing views from landlords and tenants about the merits of the proposal. While landlords felt that a break fee undermined the purpose of having a lease, tenants groups believed that break fees should be mandatory, as the scheme of compensation does not provide a sufficient incentive for landlords or agents to find a new tenant.

Early termination without compensation

The Act provides for some limited circumstances in which a tenant can break a tenancy agreement early without penalty. These include where:

- a tenant has been offered and accepted accommodation in social housing;
- the tenant has been offered and accepted a place in an aged care facility, or requires care in such a facility;
- a landlord notifies a tenant of their intention to sell the property during the fixed term (this does not apply if *before* the tenant signed the agreement, the landlord disclosed the proposed sale for which a contract for sale was already prepared); and
- a co-tenant or occupant is prohibited by a final apprehended violence order (AVO) from having access to the premises.

In these circumstances, the tenant may give 14 days' notice of termination.

34. Should the Act require all residential tenancy agreements to have provisions imposing break fees?
35. Should there be any additional grounds on which a tenant can terminate a residential tenancy agreement without compensation?

Mortgagee repossessions

A residential tenancy agreement may be terminated if a property is repossessed. The Act acknowledges the significant impact this can have on the lives of affected tenants and provides for some additional protections.

When a mortgagee becomes entitled to possession:

- the Office of the NSW Sheriff is to give no less than 30 days' written notice to tenants to vacate the premises;
- the tenant is not required to pay any rent, fee or charge during that 30 days.

These provisions aim to protect both the interests of tenants who need to find other suitable accommodation and the mortgagee who needs to swiftly sell the property to liquidate their asset.

Tribunal possession orders

Where a landlord has given a termination notice to a tenant and the tenant does not vacate by the due date, a landlord can apply to the NSW Civil and Administrative Tribunal for a possession order. If a tenant still doesn't vacate by the date set by the Tribunal, a landlord can obtain a warrant for possession and have it enforced by the Sheriff.

36. Is the notice period for mortgagee repossession appropriate?
37. Are additional protections needed for tenants in cases of mortgagee repossession?
38. Are there any other termination issues that the Act could better address?

Resolving disputes

The Act is designed to help resolve tenancy disputes if and when they arise.

The most common residential tenancy disputes are about repairs and maintenance, followed by return of bonds.

Residential tenancy advice and dispute resolution

Property managers, landlords and tenants can contact NSW Fair Trading for access to a wide range of tenancy services including information, advice and mediation during a tenancy dispute.

In the case of a tenancy dispute, a NSW Fair Trading officer will talk through the issues with the parties and work to negotiate a mutually acceptable solution. If an agreement cannot be reached, the parties will be advised to seek independent legal advice or lodge a claim with the NSW Civil and Administrative Tribunal.

The Rental Bond Board funds the NSW Fair Trading tenancy information service and dispute resolution service. In the last financial year, Fair Trading staff answered 149,512 tenancy related telephone enquiries. Tenancy enquiry volumes increased by 8.8% in the past year compared to enquiries in 2013-14.

As at 30 June 2015, 4,045 tenancy complaints had been received by Fair Trading's tenancy dispute resolution service, with 95% resolved without the need for higher cost resolution options.

NSW Civil and Administrative Tribunal

If parties are unable to negotiate a mutually agreeable solution to a tenancy dispute, a landlord, agent or tenant can lodge an application with the Tribunal. The current fee for a tenancy application is \$47, but reduced fees are available for eligible persons.

The Act defines the jurisdiction of the Tribunal and sets out the range of orders that can be made. These orders include orders that compensation to be paid to a landlord or tenant, that a rent increase is excessive or that a rental bond be paid to a party.

Currently, the monetary limit of the Tribunal is \$30,000 with respect to a rental bond, or \$15,000 in any other case.

Tenants Advice and Advocacy Program

The Tenants Advice and Advocacy Program (TAAP), administered by NSW Fair Trading, funds a number of direct services to provide information, education, dispute resolution and advocacy services to private and public tenants in NSW. The services particularly focus on vulnerable and social housing tenants. The current program is fully funded by NSW Fair Trading to June 2016 at \$9.26 million per annum.

39. Do the current information, advice and dispute resolution services operate effectively?
40. Do you have any other suggestions to encourage the early resolution of tenancy disputes and reduce the number of tenancy disputes?

Other key issues

Residential Tenancy Databases

Tenancy databases are private, commercially owned databases that collect and hold information about tenants. When used correctly, they can help landlords and agents check a tenant's renting history and screen prospective tenants.



Some landlords and agents are reluctant to rent to a person who is listed on such a database. Given the impact a listing can have on a person's ability to secure a property in the private rental market, it is essential that these databases are appropriately regulated. Accordingly, there are national rules for tenancy databases that apply to both landlords and agents, and are reflected in the Residential Tenancies Act.

The Act sets out who can be listed, and when and why a person can be listed on a database. There are limited grounds on which a person can be listed:

- where the tenant has breached a residential tenancy agreement and owes more than the rental bond to the landlord; or
- where the NSW Civil and Administrative Tribunal has made an order terminating the residential tenancy agreement.

A listing can only be made after the residential tenancy agreement has ended.

Before personal information about a tenant can be listed on a database, a landlord or their agent must give the tenant details of the proposed listing and allow them 14 days to review the information and make submissions. The personal information can only remain on the database for a maximum period of 3 years.

The Act allows the Tribunal to resolve disputes about proposed or existing listings. If a tenant believes that a listing is incorrect, out of date or unjust, they can apply to the Tribunal for that information to be wholly or partly removed or amended. The Tribunal may also award compensation if a person suffers any losses as a result of the information listed about them.

41. Do you have any suggestions for improving the current provisions relating to residential tenancy databases?

Innovation through technology

There is a growing trend towards using electronic services in preference to traditional mail and face-to-face services. The Act is designed to support the use of modern technology when agents, tenants and landlords are communicating.

The use of email has been considered as a recognised form of providing written notice. However, potential problems are that an email address could change, an email may not be read in a timely fashion, or there could be a problem with an internet service provider.



As the use of email has increased significantly in the last 5 years and is likely to increase further in the future, it may be timely to reconsider whether e-mail and/or SMS should be recognised as methods of service of notices.

In Victoria for example, landlords and tenants can manage aspects of their tenancy through the 'RentRight' App. One of the features of the app is the ability to send template emails about issues such as repairs or ending a lease.

Provided there are sufficient safeguards in place, the Act could provide flexibility for developments in everyday communications technology so as to reduce the administrative burden on landlords, agents and tenants.

42. Should email or SMS be accepted as methods of giving written notice? What safeguards would be needed to reduce any potential disputes?

Appendix A

Standard form residential tenancy agreement

Residential Tenancies Regulation 2010 Schedule 1 Standard Form Agreement (Clause 4(1))

Standard form Residential tenancy agreement



Fair
Trading

Landlord Name (1):

Landlord Name (2):

Address for services of notices (can be an agent's address):

Postcode:

Telephone number (of landlord or agent):

Tenant's Name (1):

Tenant's Name (2):

Tenant's Name (3):

Add all other tenants here:

Address for services of notices (if different to address of premises):

Postcode:

Telephone number/s:

Landlord's agent:

Address for services of notices:

Postcode:

Telephone number/s:

Premises:

(a) location

(b) inclusions

Insert inclusions, for example a common parking space or furniture provided. Attach a separate list if necessary.

Term:

The term of this agreement is weeks/months/years, For a fixed term agreement insert the term. Otherwise leave blank or write 'periodic'

starting on / / and ending on / /

Rent: a week fortnight payable in advance starting on / /

For information about your rights and responsibilities under this agreement, contact Fair Trading at www.fairtrading.nsw.gov.au or call 13 32 20. **1**

The method by which the rent must be paid:

(a) to _____ at _____

by cash or cheque, or

(b) into the following account, or any other account nominated by the landlord:

BSB number: _____ account number: _____

account name: _____

payment reference: _____, or

(c) as follows: _____

Note: The landlord or landlord's agent must permit the tenant to pay the rent by at least one means for which the tenant does not incur a cost (other than bank or other account fees usually payable for the tenant's transactions) (see clause 4.1) and that is reasonably available to the tenant.

RENTAL BOND [*Cross out if there is not going to be a bond*]:

A rental bond of \$ _____ must be paid by the tenant on signing this agreement.

The amount of the rental bond must not be more than 4 weeks rent.

IMPORTANT INFORMATION

Maximum number of occupants

No more than _____ persons may ordinarily live in the premises at any one time.

Urgent repairs

Nominated tradespeople for urgent repairs

Electrical repairs: _____ Telephone: _____

Plumbing repairs: _____ Telephone: _____

Other repairs: _____ Telephone: _____

Water usage

Will the tenant be required to pay separately for water usage?

Yes

No

If yes, see clauses 11 and 12.

Strata by-laws

Are there any strata or community scheme by-laws applicable to the residential premises?

Yes

No

If yes, see clause 35.

Condition report

A condition report relating to the condition of the premises must be completed by or on behalf of the landlord before or when this agreement is signed.

Tenancy laws

The *Residential Tenancies Act 2010* and the Residential Tenancies Regulation 2010 apply to this agreement.

Both the landlord and the tenant must comply with these laws.

For information about your rights and responsibilities under this agreement, contact Fair Trading at www.fairtrading.nsw.gov.au or call 13 32 20.

2

The Agreement

Right to occupy the premises

1. The landlord agrees that the tenant has the right to occupy the residential premises during the tenancy. The residential premises include the additional things (if any) noted under 'Premises'.
2. The landlord agrees to give the tenant:
 - 2.1 a copy of this agreement before or when this agreement is signed and given by the tenant to the landlord or a person on the landlord's behalf, and
 - 2.2 a copy of this agreement signed by both the landlord and the tenant as soon as is reasonably practicable.
- 4.5 not to use rent paid by the tenant for the purpose of any amount payable by the tenant other than rent, and
- 4.6 to give a rent receipt to the tenant if rent is paid in person (other than by cheque) and to make a rent receipt available for collection by the tenant or to post it to the residential premises if rent is paid by cheque, and
- 4.7 to keep a record of rent paid under this agreement and to provide a written statement showing the rent record for a specified period within 7 days of a request by the tenant (unless the landlord has previously provided a statement for the same period).

Rent

3. The tenant agrees:

- 3.1 to pay rent on time, and
- 3.2 to reimburse the landlord for the cost of replacing rent deposit books or rent cards lost by the tenant, and
- 3.3 to reimburse the landlord for the amount of any fees paid by the landlord to a bank or other authorised deposit-taking institution as a result of funds of the tenant not being available for rent payment on the due date.

4. The landlord agrees:

- 4.1 to provide the tenant with at least one means to pay rent for which the tenant does not incur a cost (other than bank fees or other account fees usually payable for the tenant's transactions) and that is reasonably available to the tenant, and
- 4.2 not to require the tenant to pay more than 2 weeks rent in advance or to pay rent for a period of the tenancy before the end of the previous period for which rent has been paid, and
- 4.3 not to require the tenant to pay rent by a cheque or other negotiable instrument that is post-dated, and
- 4.4 to accept payment of unpaid rent after the landlord has given a termination notice on the ground of failure to pay rent if the tenant has not vacated the residential premises, and

Note. The landlord and tenant may, by agreement, change the manner in which rent is payable under this agreement.

Rent increases

5. **The landlord and the tenant agree** that the rent cannot be increased after the end of the fixed term (if any) of this agreement or under this agreement unless the landlord gives not less than 60 days written notice of the increase to the tenant. The notice must specify the increased rent and the day from which it is payable.

Note: Section 42 of the Residential Tenancies Act 2010 sets out the circumstances in which rent may be increased during the fixed term of a residential tenancy agreement. An additional term for this purpose may be included in the agreement.

6. The landlord and the tenant agree:

- 6.1 that the increased rent is payable from the day specified in the notice, and
- 6.2 that the landlord may cancel or reduce the rent increase by a later notice that takes effect on the same day as the original notice, and
- 6.3 that increased rent under this agreement is not payable unless the rent is increased in accordance with this agreement and the *Residential Tenancies Act 2010* or by the NSW Civil and Administrative Tribunal.

For information about your rights and responsibilities under this agreement, contact Fair Trading at www.fairtrading.nsw.gov.au or call 13 32 20.

3

Rent reductions

7. **The landlord and the tenant agree** that the rent abates if the residential premises:
- 7.1 are destroyed, or become wholly or partly uninhabitable, otherwise than as a result of a breach of this agreement, or
 - 7.2 cease to be lawfully usable as a residence, or
 - 7.3 are compulsorily appropriated or acquired by an authority.
8. The landlord and the tenant may, at any time during this agreement, agree to reduce the rent payable.

Payment of council rates, land tax, water and other charges

9. **The landlord agrees** to pay:
- 9.1 rates, taxes or charges payable under any Act (other than charges payable by the tenant under this agreement), and
 - 9.2 the installation costs and charges for initial connection to the residential premises of an electricity, water, gas, bottled gas or oil supply service, and
 - 9.3 all charges for the supply of electricity, gas (except bottled gas) or oil to the tenant at the residential premises that are not separately metered, and
 - 9.4 the costs and charges for the supply or hire of gas bottles for the supply of bottled gas at the commencement of the tenancy, and
 - 9.5 all charges (other than water usage charges) in connection with a water supply service to separately metered residential premises, and
 - 9.6 all charges in connection with a water supply service to residential premises that are not separately metered, and
 - 9.7 all charges for the supply of sewerage services (other than for pump out septic services) or the supply or use of drainage services to the residential premises, and
 - 9.8 all charges for the availability of gas to the residential premises if the premises do not have any appliances, supplied by the landlord, for which gas is required and the tenant does not use gas supplied to the premises for any purpose.

10. The tenant agrees to pay:

- 10.1 all charges for the supply of electricity, gas (except bottled gas) or oil to the tenant at the residential premises if the premises are separately metered, and
- 10.2 all charges for the supply of bottled gas to the tenant at the residential premises, and
- 10.3 all charges for pumping out a septic system used for the residential premises, and
- 10.4 any excess garbage charges relating to the tenant's use of the residential premises, and
- 10.5 water usage charges, if the landlord has installed water efficiency measures referred to in clause 11 and the residential premises:
 - 10.5.1 are separately metered, or
 - 10.5.2 are not connected to a water supply service and water is delivered by vehicle.

11. The landlord agrees that the tenant is not required to pay water usage charges unless:

- 11.1 the landlord gives the tenant a copy of the part of the water supply authority's bill setting out the charges, or other evidence of the cost of water used by the tenant, and
- 11.2 the landlord gives the tenant at least 21 days to pay the charges, and
- 11.3 the landlord requests payment of the charges by the tenant not later than 3 months after the issue of the bill for the charges by the water supply authority, and
- 11.4 the residential premises have the following water efficiency measures:
 - 11.4.1 all internal cold water taps and single mixer taps for kitchen sinks or bathroom hand basins on the premises have a maximum flow rate of 9 litres per minute,
 - 11.4.2 all showerheads have a maximum flow rate of 9 litres per minute,
 - 11.4.3 there are no leaking taps at the commencement of this agreement or when the water efficiency measures are installed, whichever is the later.

12. The landlord agrees to give the tenant the benefit of, or an amount equivalent to, any rebate received by the landlord for water usage charges payable or paid by the tenant.

For information about your rights and responsibilities under this agreement, contact Fair Trading at www.fairtrading.nsw.gov.au or call 13 32 20.

4

Possession of the premises

13. The landlord agrees:

- 13.1 to make sure the residential premises are vacant so the tenant can move in on the date agreed, and
- 13.2 to take all reasonable steps to ensure that, at the time of signing this agreement, there is no legal reason why the premises cannot be used as a residence for the term of this agreement.

Tenant's right to quiet enjoyment

14. The landlord agrees:

- 14.1 that the tenant will have quiet enjoyment of the residential premises without interruption by the landlord or any person claiming by, through or under the landlord or having superior title to that of the landlord (such as a head landlord), and
- 14.2 that the landlord or the landlord's agent will not interfere with, or cause or permit any interference with, the reasonable peace, comfort or privacy of the tenant in using the residential premises, and
- 14.3 that the landlord or the landlord's agent will take all reasonable steps to ensure that the landlord's other neighbouring tenants do not interfere with the reasonable peace, comfort or privacy of the tenant in using the residential premises.

Use of the premises by tenant

15. The tenant agrees:

- 15.1 not to use the residential premises, or cause or permit the premises to be used, for any illegal purpose, and
- 15.2 not to cause or permit a nuisance, and
- 15.3 not to interfere, or cause or permit interference, with the reasonable peace, comfort or privacy of neighbours, and
- 15.4 not to intentionally or negligently cause or permit any damage to the residential premises, and
- 15.5 not to cause or permit more people to reside in the residential premises than is permitted by this agreement.

16. The tenant agrees:

- 16.1 to keep the residential premises reasonably clean, and

16.2 to notify the landlord as soon as practicable of any damage to the residential premises, and

16.3 that the tenant is responsible to the landlord for any act or omission by a person who is lawfully on the residential premises if the person is only permitted on the premises with the tenant's consent and the act or omission would be in breach of this agreement if done or omitted by the tenant, and

16.4 that it is the tenant's responsibility to replace light globes and batteries for smoke detectors on the residential premises.

17. The tenant agrees, when this agreement ends and before giving vacant possession of the premises to the landlord:

17.1 to remove all the tenant's goods from the residential premises, and

17.2 to leave the residential premises as nearly as possible in the same condition, fair wear and tear excepted, as at the commencement of the tenancy, and

17.3 to leave the residential premises reasonably clean, having regard to their condition at the commencement of the tenancy, and

17.4 to remove or arrange for the removal of all rubbish from the residential premises, and

17.5 to make sure that all light fittings on the premises have working globes, and

17.6 to return to the landlord all keys, and other opening devices or similar devices, provided by the landlord.

Landlord's general obligations for residential premises

18. The landlord agrees:

18.1 to make sure that the residential premises are reasonably clean and fit to live in, and

18.2 to make sure that all light fittings on the residential premises have working light globes on the commencement of the tenancy, and

18.3 to keep the residential premises in a reasonable state of repair, considering the age of, the rent paid for and the prospective life of the premises, and

18.4 not to interfere with the supply of gas, electricity, water, telecommunications or other services to the residential premises (unless the interference is necessary to avoid danger

For information about your rights and responsibilities under this agreement, contact Fair Trading at www.fairtrading.nsw.gov.au or call 13 32 20.

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- to any person or enable maintenance or repairs to be carried out), and
- 18.5 to comply with all statutory obligations relating to the health or safety of the residential premises.

Urgent repairs

19. **The landlord agrees** to pay the tenant, within 14 days after receiving written notice from the tenant, any reasonable costs (not exceeding \$1,000) that the tenant has incurred for making urgent repairs to the residential premises (of the type set out below) so long as:
- 19.1 the damage was not caused as a result of a breach of this agreement by the tenant, and
- 19.2 the tenant gives or makes a reasonable attempt to give the landlord notice of the damage, and
- 19.3 the tenant gives the landlord a reasonable opportunity to make the repairs, and
- 19.4 the tenant makes a reasonable attempt to have any appropriate tradesperson named in this agreement make the repairs, and
- 19.5 the repairs are carried out, where appropriate, by licensed or properly qualified persons, and
- 19.6 the tenant, as soon as possible, gives or tries to give the landlord written details of the repairs, including the cost and the receipts for anything the tenant pays for.

Note: The type of repairs that are urgent repairs are defined as follows:

- (a) a burst water service,
- (b) an appliance, fitting or fixture that uses water or is used to supply water that is broken or not functioning properly, so that a substantial amount of water is wasted,
- (c) a blocked or broken lavatory system,
- (d) a serious roof leak,
- (e) a gas leak,
- (f) a dangerous electrical fault,
- (g) flooding or serious flood damage,
- (h) serious storm or fire damage,
- (i) a failure or breakdown of the gas, electricity or water supply to the premises,
- (j) a failure or breakdown of any essential service on the residential premises for hot water, cooking, heating, cooling or laundering,
- (k) any fault or damage that causes the premises to be unsafe or insecure.

Sale of the premises

20. The landlord agrees:

- 20.1 to give the tenant written notice that the landlord intends to sell the residential premises, at least 14 days before the premises are made available for inspection by potential purchasers, and
- 20.2 to make all reasonable efforts to agree with the tenant as to the days and times when the residential premises are to be available for inspection by potential purchasers.
21. The tenant agrees not to unreasonably refuse to agree to days and times when the residential premises are to be available for inspection by potential purchasers.

22. The landlord and tenant agree:

- 22.1 that the tenant is not required to agree to the residential premises being available for inspection more than twice in a period of a week, and
- 22.2 that, if they fail to agree, the landlord may show the residential premises to potential purchasers not more than twice in any period of a week and must give the tenant at least 48 hours notice each time.

Landlord's access to the premises

23. **The landlord agrees** that the landlord, the landlord's agent or any person authorised in writing by the landlord, during the currency of this agreement, may only enter the residential premises in the following circumstances:
- 23.1 in an emergency (including entry for the purpose of carrying out urgent repairs),
- 23.2 if the NSW Civil and Administrative Tribunal so orders,
- 23.3 if there is good reason for the landlord to believe the premises are abandoned,
- 23.4 if there is good reason for serious concern about the health of the tenant or any other person on the residential premises and a reasonable attempt has been made to obtain consent to the entry,
- 23.5 to inspect the premises, if the tenant is given at least 7 days written notice (no more than 4 inspections are allowed in any period of 12 months),
- 23.6 to carry out, or assess the need for, necessary repairs, if the tenant is given at least 2 days notice each time,

For information about your rights and responsibilities under this agreement, contact Fair Trading at www.fairtrading.nsw.gov.au or call 13 32 20.

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- 23.7 to carry out, or assess the need for, work relating to statutory health and safety obligations relating to the residential premises, if the tenant is given at least 2 days notice each time,
- 23.8 to show the premises to prospective tenants on a reasonable number of occasions if the tenant is given reasonable notice on each occasion (this is only allowed during the last 14 days of the agreement),
- 23.9 to value the property, if the tenant is given 7 days notice (not more than one valuation is allowed in any period of 12 months),
- 23.10 if the tenant agrees.
24. **The landlord agrees** that a person who enters the residential premises under clause 23.5, 23.6, 23.7, 23.8 or 23.9 of this agreement:
- 24.1 must not enter the premises on a Sunday or a public holiday, unless the tenant agrees, and
- 24.2 may enter the premises only between the hours of 8.00 a.m. and 8.00 p.m., unless the tenant agrees to another time, and
- 24.3 must, if practicable, notify the tenant of the proposed day and time of entry.
25. **The landlord agrees** that, except in an emergency (including to carry out urgent repairs), a person other than the landlord or the landlord's agent must produce to the tenant the landlord's or the landlord's agent's written permission to enter the residential premises.
26. **The tenant agrees** to give access to the residential premises to the landlord, the landlord's agent or any person, if they are exercising a right to enter the residential premises in accordance with this agreement.
- Alterations and additions to the premises**
27. **The tenant agrees:**
- 27.1 not to install any fixture or renovate, alter or add to the residential premises without the landlord's written permission, and
- 27.2 not to remove, without the landlord's permission, any fixture attached by the tenant that was paid for by the landlord or for which the landlord gave the tenant a benefit equivalent to the cost of the fixture, and
- 27.3 to notify the landlord of any damage caused by removing any fixture attached by the tenant, and
- 27.4 to repair any damage caused by removing the fixture or compensate the landlord for the reasonable cost of repair.
28. **The landlord agrees** not to unreasonably refuse permission for the installation of a fixture by the tenant or to a minor alteration, addition or renovation by the tenant.
- Locks and security devices**
29. **The landlord agrees:**
- 29.1 to provide and maintain locks or other security devices necessary to keep the residential premises reasonably secure, and
- 29.2 to give each tenant under this agreement a copy of the key or opening device or information to open any lock or security device for the residential premises or common property to which the tenant is entitled to have access, and
- 29.3 not to charge the tenant for the cost of providing the copies except to recover the cost of replacement or additional copies, and
- 29.4 not to alter, remove or add any lock or other security device without reasonable excuse (which includes an emergency, an order of the NSW Civil and Administrative Tribunal, termination of a co-tenancy or an apprehended violence order prohibiting a tenant or occupant from having access) or unless the tenant agrees, and
- 29.5 to give each tenant under this agreement a copy of any key or other opening device or information to open any lock or security device that the landlord changes as soon as practicable (and no later than 7 days) after the change.
30. **The tenant agrees:**
- 30.1 not to alter, remove or add any lock or other security device without reasonable excuse (which includes an emergency, an order of the NSW Civil and Administrative Tribunal, termination of a co-tenancy or an apprehended violence order prohibiting a tenant or occupant from having access) or unless the landlord agrees, and
- 30.2 to give the landlord a copy of the key or opening device or information to open any lock or security device that the tenant changes within 7 days of the change.

For information about your rights and responsibilities under this agreement, contact Fair Trading at www.fairtrading.nsw.gov.au or call 13 32 20.

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31. A copy of a changed key or other opening device need not be given to the other party if the other party agrees not to be given a copy or the NSW Civil and Administrative Tribunal authorises a copy not to be given or the other party is prohibited from access to the residential premises by an apprehended violence order.

Transfer of tenancy or sub-letting by tenant

32. **The landlord and tenant agree** that:

- 32.1 the tenant may, with the landlord's written permission, transfer the tenant's tenancy under this agreement or sub-let the residential premises, and
- 32.2 the landlord may refuse permission (whether or not it is reasonable to do so) to the transfer of the whole of the tenancy or sub-letting the whole of the residential premises, and
- 32.3 the landlord must not unreasonably refuse permission to a transfer of part of a tenancy or a sub-letting of part of the residential premises, and
- 32.4 without limiting clause 32.3, the landlord may refuse permission to a transfer of part of the tenancy or to sub-letting part of the residential premises if the number of occupants would be more than is permitted under this agreement or any proposed tenant or sub-tenant is listed on a residential tenancy database or it would result in overcrowding of the residential premises.

Note: Clauses 32.3 and 32.4 do not apply to social tenancy housing agreements.

33. **The landlord agrees** not to charge for giving permission other than for the landlord's reasonable expenses in giving permission.

Change in details of landlord or landlord's agent

34. **The landlord agrees:**

- 34.1 if the name and telephone number or contact details of the landlord change, to give the tenant notice in writing of the change within 14 days, and
- 34.2 if the address of the landlord changes (and the landlord does not have an agent), to give the tenant notice in writing of the change within 14 days, and

34.3 if the name, telephone number or business address of the landlord's agent changes or the landlord appoints an agent, to give the tenant notice in writing of the change or the agent's name, telephone number and business address, as appropriate, within 14 days, and

34.4 if the landlord or landlord's agent is a corporation and the name or business address of the corporation changes, to give the tenant notice in writing of the change within 14 days.

Copy of certain by-laws to be provided

[Cross out if not applicable]

35. **The landlord agrees** to give to the tenant within 7 days of entering into this agreement a copy of the by-laws applying to the residential premises if they are premises under the *Strata Schemes Management Act 1996*, the *Strata Schemes (Leasehold Development) Act 1986*, the *Community Land Development Act 1989* or the *Community Land Management Act 1989*.

Mitigation of loss

36. The rules of law relating to mitigation of loss or damage on breach of a contract apply to a breach of this agreement. (For example, if the tenant breaches this agreement the landlord will not be able to claim damages for loss which could have been avoided by reasonable effort by the landlord.)

Rental bond

[Cross out this clause if no rental bond is payable]

37. **The landlord agrees** that where the landlord or the landlord's agent applies to the Rental Bond Board or the NSW Civil and Administrative Tribunal for payment of the whole or part of the rental bond to the landlord, then the landlord or the landlord's agent will provide the tenant with details of the amount claimed and with copies of any quotations, accounts and receipts that are relevant to the claim and a copy of a completed condition report about the residential premises at the end of the residential tenancy agreement.

For information about your rights and responsibilities under this agreement, contact Fair Trading at www.fairtrading.nsw.gov.au or call 13 32 20. **8**

Smoke alarms

38. **The landlord agrees** to ensure that smoke alarms are installed and maintained in the residential premises in accordance with section 146A of the *Environmental Planning and Assessment Act 1979* if that section requires them to be installed in the premises.
39. **The landlord and tenant each agree** not to remove or interfere with the operation of a smoke alarm installed on the residential premises unless they have a reasonable excuse to do so.

Swimming pools

[Cross out this clause if there is no swimming pool]

40. **The landlord agrees** to ensure that the requirements of the *Swimming Pools Act 1992* have been complied with in respect of the swimming pool on the residential premises.
- [Cross out this clause if there is no swimming pool]
- 40A. **The landlord agrees** to ensure that at the time that this residential tenancy agreement is entered into:
- 40A.1 the swimming pool on the residential premises is registered under the *Swimming Pools Act 1992* and has a valid certificate of compliance under that Act or a relevant occupation certificate within the meaning of that Act, and
- 40A.2 a copy of that valid certificate of compliance or relevant occupation certificate is provided to the tenant.

Note: This clause does not apply to a residential tenancy agreement entered into before 29 April 2016.

Additional terms

[Additional terms may be included in this agreement if:

- (a) both the landlord and tenant agree to the terms, and
- (b) they do not conflict with the *Residential Tenancies Act 2010*, the Residential Tenancies Regulation 2010 or any other Act, and
- (c) they do not conflict with the standard terms of this agreement.

ANY ADDITIONAL TERMS ARE NOT REQUIRED BY LAW AND ARE NEGOTIABLE.]

Additional term—break fee

[Cross out this clause if not applicable]

41. The tenant agrees that, if the tenant ends the residential tenancy agreement before the end of the fixed term of the agreement, the tenant must pay a break fee of the following amount:

- 41.1 if the fixed term is for 3 years or less, 6 weeks rent if less than half of the term has expired or 4 weeks rent in any other case, or
- 41.2 if the fixed term is for more than 3 years, [specify amount]:

This clause does not apply if the tenant terminates the residential tenancy agreement early for a reason that is permitted under the *Residential Tenancies Act 2010*.

Note: Permitted reasons for early termination include destruction of residential premises, breach of the agreement by the landlord and an offer of social housing or a place in an aged care facility. Section 107 of the Residential Tenancies Act 2010 regulates the rights of the landlord and tenant under this clause.

42. The landlord agrees that the compensation payable by the tenant for ending the residential tenancy agreement before the end of the fixed term is limited to the amount specified in clause 41 and any occupation fee payable under the *Residential Tenancies Act 2010* for goods left on the residential premises.

Additional term—pets

[Cross out this clause if not applicable]

43. The tenant agrees not to keep animals on the residential premises without obtaining the landlord's consent.
44. The landlord agrees that the tenant may keep the following animals on the residential premises:

45. The tenant agrees to have the carpet professionally cleaned or to have the residential premises fumigated if the cleaning or fumigation is required because animals have been kept on the residential premises during the tenancy.

Insert any other agreed additional terms here. Attach a separate page if necessary.

For information about your rights and responsibilities under this agreement, contact Fair Trading at www.fairtrading.nsw.gov.au or call 13 32 20.

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Notes

1. Definitions

In this agreement:

landlord means the person who grants the right to occupy residential premises under this agreement, and includes a successor in title to the residential premises whose interest is subject to that of the tenant.

landlord's agent means a person who acts as the agent of the landlord and who (whether or not the person carries on any other business) carries on business as an agent for:

- (a) the letting of residential premises, or
- (b) the collection of rents payable for any tenancy of residential premises.

rental bond means money paid by the tenant as security to carry out this agreement.

residential premises means any premises or part of premises (including any land occupied with the premises) used or intended to be used as a place of residence.

tenancy means the right to occupy residential premises under this agreement.

tenant means the person who has the right to occupy residential premises under this agreement, and includes the person to whom such a right passes by transfer or operation of the law and a sub-tenant of the tenant.

2. Continuation of tenancy (if fixed term agreement)

Once any fixed term of this agreement ends, the agreement continues in force on the same terms as a periodic agreement unless the agreement is terminated by the landlord or the tenant in accordance with the *Residential Tenancies Act 2010* (see notes 3 and 4). Clause 5 of this agreement provides for rent to be able to be increased if the agreement continues in force.

3. Ending a fixed term agreement

If this agreement is a fixed term agreement it may be ended by the landlord or the tenant by giving written notice of termination. The notice may be given at any time up until the end of the fixed term but cannot take effect until the term ends. The landlord must give at least 30 days notice and the tenant must give at least 14 days notice.

4. Ending a periodic agreement

If this agreement is a periodic agreement it may be ended by the landlord or the tenant by giving written notice of termination. The notice may be given at any time. The landlord must give at least 90 days notice and the tenant must give at least 21 days notice.

5. Other grounds for ending agreement

The *Residential Tenancies Act 2010* also authorises the landlord and tenant to end this agreement on other grounds. The grounds for the landlord include sale of the residential premises, breach of this agreement by the tenant and hardship. The grounds for the tenant include sale of the residential premises (not revealed when this agreement was entered into), breach of this agreement by the landlord and hardship. For more information refer to that Act or contact NSW Fair Trading on 13 32 20.

6. Warning

It is an offence for any person to obtain possession of the residential premises without an order of the NSW Civil and Administrative Tribunal if the tenant does not willingly move out. A court can order fines and compensation to be paid for such an offence.

For information about your rights and responsibilities under this agreement, contact Fair Trading at www.fairtrading.nsw.gov.au or call 13 32 20. **10**

Signed by the landlord/agent

Name of landlord/agent

Signature of landlord/agent

on the day of 20__

in the presence of (witness)

Name of witness

Signature of witness

Signed by the tenant (1)

Name of tenant

Signature of tenant

on the day of 20__

in the presence of (witness)

Name of witness

Signature of witness

Signed by the tenant (2)

Name of tenant

Signature of tenant

on the day of 20__

in the presence of (witness)

Name of witness

Signature of witness

Signed by the tenant (3) and any other tenants

Name of tenant/s

Signature of tenant/s

on the day of 20__

in the presence of (witness)

Name of witness

Signature of witness

The tenant acknowledges that, at or before the time of signing this residential tenancy agreement, the tenant was given a copy of the *New tenant checklist* published by NSW Fair Trading.

Signature of tenant/s

For information about your rights and obligations as a landlord or tenant, contact:

- (a) NSW Fair Trading on 13 32 20 or www.fairtrading.nsw.gov.au, or
- (b) Law Access NSW on 1300 888 529 or www.lawaccess.nsw.gov.au, or
- (c) your local Tenants Advice and Advocacy Service at www.tenants.org.au

For information about your rights and responsibilities under this agreement, contact Fair Trading at www.fairtrading.nsw.gov.au or call 13 32 20.

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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.

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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Tel: 13 32 20 www.fairtrading.nsw.gov.au





Residential Tenancies Regulation 2010

Schedule 2: Condition report

How to complete this report

- Three copies of this condition report are filled out and signed by the landlord or the landlord's agent.
- Before the tenancy begins, the landlord or the landlord's agent must inspect the residential premises and record the condition of the premises by indicating whether the particular room item is clean, undamaged and working by placing "Y" (YES) or "N" (NO) in the appropriate column (see example below). Where necessary, comments should be included in the report. The landlord or the landlord's agent must also indicate "yes" or "no" in relation to the matters set out under the headings "Health issues" and "Communications facilities".
- If the tenant has agreed to pay for water usage charges under the residential tenancy agreement, the landlord or landlord's agent must also indicate whether the residential premises have the required water efficiency measures.
- Two copies of the report which have been filled out and signed by the landlord or the landlord's agent must be given to the tenant before or when the tenant signs the agreement. The landlord or landlord's agent keeps the third copy.
- As soon as possible after the tenant signs the agreement, the tenant must inspect the residential premises and complete the tenant section of the condition report. The tenant indicates agreement or disagreement with the condition indicated by

- the landlord or landlord's agent by placing "Y" (YES) or "N" (NO) in the appropriate column and by making any appropriate comments on the form. The tenant may also comment on the matters under the headings "Health issues", "Communications facilities" and "Water efficiency devices".
- The tenant must return one copy of the completed condition report to the landlord or landlord's agent within 7 days after receiving it and is to keep the second copy.
- At, or as soon as practicable after, the termination of the tenancy agreement, both the landlord and tenant should complete the copy of the condition report that they retained, indicating the condition of the premises at the end of the tenancy. This should be done in the presence of the other party, unless the other party has been given a reasonable opportunity to be present and has not attended the inspection.

Important notes about this report

- It is a requirement that a condition report be completed by the landlord and the tenant (see above). This condition report is an important record of the condition of the residential premises when the tenancy begins and may be used as evidence of the state of repair or general condition of the premises at the commencement of the tenancy. It is important to complete the condition report accurately. It may be vital if there is a dispute, particularly about the return of the rental bond money and any damage to the premises.

- At the end of the tenancy the premises will be inspected and the condition of the premises at that time will be compared to that stated in the original condition report.
- A condition report should be filled out whether or not a rental bond is paid.
- If you do not have enough space on the report attach a separate sheet.
- Call Fair Trading on 13 32 20 or visit the website for information about the rights and responsibilities of landlords and tenants or before completing the condition report.

Where to go for help when you are renting

- Fair Trading looks after your bond money, manages the renting laws that cover this tenancy agreement, and can provide help with renting problems through the free tenancy complaint service. Contact Fair Trading at www.fairtrading.nsw.gov.au or call 13 32 20. Language assistance on 13 14 50 (ask for an interpreter in your language) TTY 1300 723 404.
- Your real estate agent or landlord (record contact number here):
- Tenants' Advice and Advocacy Service at www.tenants.org.au

Sample condition report

ENTRANCE	Condition of premises at START of tenancy						Condition of premises at END of tenancy						
	Clean			Undamaged			Working			Tenant agrees			
	Y	N		Y	N		Y	N		Y	N		
front door/screen door/ security door	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		Comments
walls/picture hooks	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		2 picture hooks
lights/power points/ door bell	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		3 picture hooks
floor/coverings	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		carpet stain near window
	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>		5 picture hooks

www.fairtrading.nsw.gov.au

Residential Tenancies Regulation Schedule 2: Condition report

Address of premises:

	Condition of premises at START of tenancy					Landlord/Agent Comments	Tenant agrees	Tenant comments	Condition of premises at END of tenancy							
	Clean	Undamaged	Working						Clean	Undamaged	Working	Comments	Tenant agrees			
ENTRANCE/HALL	front door/screen door /security door	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	walls/picture hooks	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	doorway frames	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	windows/screens/ window safety devices	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	ceiling/light fittings	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	blinds/curtains	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	lights/power points /door bell	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	skirting boards	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	floor coverings	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	other	Y	N	Y	N		Y		Y	N	Y	N			Y	N
LOUNGE ROOM	walls/picture hooks	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	doors/doorway frames	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	windows/screens/ window safety devices	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	ceiling/light fittings	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	blinds/curtains	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	lights/power points	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	skirting boards	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	floor coverings	Y	N	Y	N		Y		Y	N	Y	N			Y	N
	other	Y	N	Y	N		Y		Y	N	Y	N			Y	N

Address of premises:

	Condition of premises at START of tenancy					Condition of premises at END of tenancy												
	Landlord /Agent Comments			Tenant agrees		Tenant comments			Comments		Tenant agrees							
	Clean	Undamaged	Working	Y	N	Y	N			Y	N	Y	N					
walls/picture hooks	Y	Y	Y	Y	Y													
doors/doorway frames	Y	Y	Y	Y	Y													
windows/screens/ window safety devices	Y	Y	Y	Y	Y													
ceiling/light fittings	Y	Y	Y	Y	Y													
blinds/curtains	Y	Y	Y	Y	Y													
lights/power points	Y	Y	Y	Y	Y													
skirting boards	Y	Y	Y	Y	Y													
floor coverings	Y	Y	Y	Y	Y													
other	Y	Y	Y	Y	Y													
walls/picture hooks	Y	Y	Y	Y	Y													
doors/doorway frames	Y	Y	Y	Y	Y													
windows/screens/ window safety devices	Y	Y	Y	Y	Y													
ceiling/light fittings	Y	Y	Y	Y	Y													
blinds/curtains	Y	Y	Y	Y	Y													
lights/power points	Y	Y	Y	Y	Y													
skirting boards	Y	Y	Y	Y	Y													
floor coverings	Y	Y	Y	Y	Y													
cupboards/drawers	Y	Y	Y	Y	Y													
bench tops/tiling	Y	Y	Y	Y	Y													
sink/taps/disposal unit	Y	Y	Y	Y	Y													
stove top/hot plates	Y	Y	Y	Y	Y													

Address of premises:

		Condition of premises at START of tenancy						Condition of premises at END of tenancy								
		Clean	Undamaged	Working	Landlord/Agent Comments	Tenant agrees	Tenant comments	Clean	Undamaged	Working	Comments	Tenant agrees				
KITCHEN	oven/griller	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	exhaust fan /range hood	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	dishwasher	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	other	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
BEDROOM 1	walls/picture hooks	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	built-in wardrobe /shelves	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	doors/doorway frames	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	windows/screens/ window safety devices	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
ENSUITE	ceiling/light fittings	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	blinds/curtains	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	lights/power points	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	skirting boards	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	floor coverings	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	other	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	walls/tiles	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	floor tiles /floor coverings	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	doors/doorway frame	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	windows/screens/ window safety devices	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	ceiling/light fittings	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	blinds/curtains	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	
	lights/power points	Y	N	Y	N		Y	N	Y	N		Y	N	Y	N	

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Residential Tenancies Regulation Schedule 2: Condition report | July 2015

Address of premises:

	Condition of premises at START of tenancy						Condition of premises at END of tenancy					
	Clean	Undamaged	Working	Landlord / Agent Comments	Tenant agrees	Tenant comments	Clean	Undamaged	Working	Comments	Tenant agrees	
bath/taps	Y	N	Y		Y		Y	N	Y		Y	
shower/screen/taps	Y	N	Y		Y		Y	N	Y		Y	
wash basin/taps	Y	N	Y		Y		Y	N	Y		Y	
mirror/cabinet/vanity	Y	N	Y		Y		Y	N	Y		Y	
towel rails	Y	N	Y		Y		Y	N	Y		Y	
toilet/distem/seat	Y	N	Y		Y		Y	N	Y		Y	
toilet roll holder	Y	N	Y		Y		Y	N	Y		Y	
heating/exhaust fan/vent	Y	N	Y		Y		Y	N	Y		Y	
other	Y	N	Y		Y		Y	N	Y		Y	
walls/picture hooks	Y	N	Y		Y		Y	N	Y		Y	
built-in wardrobe /shelves	Y	N	Y		Y		Y	N	Y		Y	
doors/doorway frames	Y	N	Y		Y		Y	N	Y		Y	
windows/screens/window safety devices	Y	N	Y		Y		Y	N	Y		Y	
ceiling/light fittings	Y	N	Y		Y		Y	N	Y		Y	
blinds/curtains	Y	N	Y		Y		Y	N	Y		Y	
lights/power points	Y	N	Y		Y		Y	N	Y		Y	
skirting boards	Y	N	Y		Y		Y	N	Y		Y	
floor coverings	Y	N	Y		Y		Y	N	Y		Y	
other	Y	N	Y		Y		Y	N	Y		Y	
walls/picture hooks	Y	N	Y		Y		Y	N	Y		Y	
built-in wardrobe /shelves	Y	N	Y		Y		Y	N	Y		Y	

Address of premises:

	Condition of premises at START of tenancy						Condition of premises at END of tenancy							
	Clean			Undamaged			Working			Comments			Tenant agrees	
	Y	N		Y	N		Y	N		Y	N		Y	N
	Y	N		Y	N		Y	N						
doors/doorway frames	Y	N		Y	N		Y	N						
windows/screens/ window safety devices	Y	N		Y	N		Y	N						
ceiling/light fittings	Y	N		Y	N		Y	N						
blinds/curtains	Y	N		Y	N		Y	N						
lights/power points	Y	N		Y	N		Y	N						
skirting boards	Y	N		Y	N		Y	N						
floor coverings	Y	N		Y	N		Y	N						
other	Y	N		Y	N		Y	N						
walls/tiles	Y	N		Y	N		Y	N						
floor tiles /floor coverings	Y	N		Y	N		Y	N						
doors/doorway frames	Y	N		Y	N		Y	N						
windows/screens/ window safety devices	Y	N		Y	N		Y	N						
ceiling/light fittings	Y	N		Y	N		Y	N						
blinds/curtains	Y	N		Y	N		Y	N						
lights/power points	Y	N		Y	N		Y	N						
bath/taps	Y	N		Y	N		Y	N						
shower/screen/taps	Y	N		Y	N		Y	N						
wash basin/taps	Y	N		Y	N		Y	N						
mirror/cabinet/vanity	Y	N		Y	N		Y	N						
towel rails	Y	N		Y	N		Y	N						
toilet/cistern/seat	Y	N		Y	N		Y	N						

Address of premises:

	Condition of premises at START of tenancy						Condition of premises at END of tenancy									
	Clean			Working			Clean			Working						
	Y	N		Y	N		Y	N		Y	N					
BATHROOM	toilet roll holder	Y	N		Y	N		Y	N		Y	N		Tenant agrees	Y	N
	heating/exhaust fan /vent	Y	N		Y	N		Y	N		Y	N		Comments		
	other	Y	N		Y	N		Y	N		Y	N				
	walls/tiles	Y	N		Y	N		Y	N		Y	N				
	floor tiles /floor coverings	Y	N		Y	N		Y	N		Y	N				
	doors/doorway frames	Y	N		Y	N		Y	N		Y	N				
LAUNDRY	windows/screens/ window safety devices	Y	N		Y	N		Y	N		Y	N				
	ceiling/light fittings	Y	N		Y	N		Y	N		Y	N				
	blinds/curtains	Y	N		Y	N		Y	N		Y	N				
	lights/power points	Y	N		Y	N		Y	N		Y	N				
	washing machine/traps	Y	N		Y	N		Y	N		Y	N				
	exhaust fan/vent	Y	N		Y	N		Y	N		Y	N				
SECURITY/SAFETY	washing tub	Y	N		Y	N		Y	N		Y	N				
	dryer	Y	N		Y	N		Y	N		Y	N				
	other	Y	N		Y	N		Y	N		Y	N				
	external door locks	Y	N		Y	N		Y	N		Y	N				
	window locks	Y	N		Y	N		Y	N		Y	N				
	keys/other security devices	Y	N		Y	N		Y	N		Y	N				
	smoke alarms	Y	N		Y	N		Y	N		Y	N				
	electrical safety switch	Y	N		Y	N		Y	N		Y	N				
	other	Y	N		Y	N		Y	N		Y	N				

Address of premises:

	Condition of premises at START of tenancy						Condition of premises at END of tenancy									
	Clean		Undamaged		Working		Clean		Undamaged		Working		Comments		Tenant agrees	
	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N
heating/air conditioning	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
staircase/handrails	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
external television antenna/tv points	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
balcony/porch/deck	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
swimming pool	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
gates/fences	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
grounds/garden	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
lawns/edges	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
letter box/street number	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
water tanks /septic tanks	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
garbage bins	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
paving/driveways	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
clothesline	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
garage/carport /storeroom	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
garden shed	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
hot water system	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
gutters/downpipe	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N
other	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N			Y	N

GENERAL

Address of premises:

Residential Tenancies Regulation Schedule 2: Condition report

Health issues

The landlord must indicate whether the following apply to the premises:

- Are there are any signs of mould and dampness? Yes No
- Are there any pests and vermin? Yes No
- Has any rubbish been left on the premises? Yes No

Communication facilities

The landlord must indicate whether the following facilities are available:

- a telephone line is connected to the residential premises Yes No
- an internet line is connected to the residential premises Yes No

Water efficiency devices

[only applicable if tenant pays water usage charges for the residential premises]

The landlord must indicate whether the following water efficiency measures are in place in the premises:

- all showerheads have a maximum flow rate of 9 litres per minute Yes No
- all internal cold water taps and single mixer taps in kitchen or bathroom hand basins have a maximum flow rate of 9 litres per minute Yes No
- no leaking taps on residential premises Yes No

Water meter reading: Lph

Furniture: *(See attached /list)*

Condition Report at START of tenancy

Landlord/agent's signature:

Tenant's signature:

Date: / /

Date: / /

Condition Report at END of tenancy

Landlord/agent's signature:

Tenant's signature:

Date: / /

Date: / /

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Additional comments on health issues, communication facilities, water efficiency devices
(may be added by landlord or tenant, or both)

Approximate dates when work last done on residential premises

Installation of water efficiency measures: / /

Painting of premises (external): / /

Painting of premises (internal): / /

Flooring laid/replaced/cleaned: / /

Landlord's promise to undertake work: *(Delete if not required)*

The landlord agrees to undertake the following cleaning, repairs, additions or other work during the tenancy:

The landlord agrees to complete that work by: / /

Landlord/agent's signature:

Date: / /

Note. Further items and comments may be added on a separate sheet signed by the landlord/agent and the tenant and attached to this report.



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