During a tenancy, information for tenants

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

All the fact sheets in this document can also be accessed as individual pages on the Fair Trading website in the *Renting a home*, *During a tenancy* section.

March 2012

Privacy when renting

Information for tenants

You have a right to privacy and quiet enjoyment of the premises you are renting. Your landlord, agent or anybody else acting on their behalf must not interfere with your reasonable peace, comfort and privacy.

For this reason, the law restricts the access a landlord or agent can have to the rented property while you are living in it. They are only allowed to enter the premises at certain times for certain reasons and in most cases have to give you notice first.

Notice before entry

The amount of notice the landlord or agent must give you depends on the reason for entering the premises.

Reason	Notice required
To inspect the premises (up to 4 times per year)	At least 7 days written notice
To do ordinary repairs or carry out maintenance	At least 2 days notice
To carry out urgent repairs, such as fixing burst water pipes, dangerous electrical faults, gas leaks or blocked toilets	None
To comply with health and safety obligations, such as installing smoke alarms	At least 2 days notice
To obtain a property valuation (once in a 12 month period)	At least 7 days notice
To show a prospective tenant (in the last 14 days before your tenancy is due to end)	Reasonable notice on each occasion
In an emergency	None
If they have tried to contact you and been unable to do so and have reasonable cause for serious concern about your health or safety or other occupants	None
If they reasonably believe the premises have been abandoned by you	None
To show the premises to prospective buyers	2 weeks written notice before first inspection. Subsequent inspections as agreed with you, or no more than 2 inspections per week with 48 hours notice
In accordance with a Consumer, Trader and Tenancy Tribunal order	As ordered by the Tribunal

In addition to all of the above reasons you can consent to the landlord, agent, or any other person acting on their behalf to enter the property at any time for any reason.

Limits on access

In most circumstances, access is not permitted on Sundays, public holidays or outside the hours of 8am to 8pm. Where practical, you should be notified of the approximate time when access will be required.

If a person wishes to enter the property without the landlord or property manager (e.g. a selling agent, valuer or tradesperson) they must have written consent from the landlord or managing agent which they must show to you. The person who comes must not stay

on the premises longer than is necessary to achieve the purpose.

These limits do not apply in an emergency, for urgent repairs, if the premises are abandoned, if the Tribunal so orders or if you agree.

Entry when you are not home

If correct notice has been given, you do not need to be at home for the landlord or agent or authorised person to enter. If the time does not suit you, you can try to negotiate a different time with the landlord or agent.

Unlawful entry

If these requirements have not been followed you do not have to allow access to your home. It is an offence for a landlord or someone on their behalf to enter the premises without following the correct procedures. If the problem is serious or persistent, you may apply for an order from the Tribunal.

If your goods are damaged or stolen during the access visit you can apply to the Tribunal for compensation.

Getting repairs done

Information for tenants

When you rent a place to live the landlord must ensure it is in a reasonable state of repair, taking into account the age and remaining life of the property and the amount of rent payable.

If something in the premises breaks down, leaks or needs fixing you should contact the landlord or agent as soon as possible. Unless the repairs are urgent, it is best to make the request in writing. Tell them what needs fixing and when you would like it done by. Remember that the landlord is not always obliged to fix every small thing in the property. They only need to keep the premises in a reasonable state of repair considering the age of the property, the amount of rent you are paying and the prospective life of the premises. They also need to comply with building, health and safety laws.

You are responsible for doing things like replacing light bulbs, changing the smoke detector batteries, cleaning windows, dusting, removing cobwebs and routine garden maintenance such as watering, mowing and weeding.

Urgent repairs

The law distinguishes between urgent (emergency) repairs and those which are not so urgent. Urgent repairs are:

- a burst water service or a serious water service leak
- a blocked or broken toilet
- a serious roof leak
- a gas leak
- a dangerous electrical fault
- flooding or serious flood damage
- serious storm or fire damage
- a failure or breakdown of the gas, electricity or water supply to the premises
- a failure or breakdown of the hot water service
- a failure or breakdown of the stove or oven
- a failure or breakdown of a heater or air-conditioner
- a fault or damage which makes the premises unsafe or insecure.

If urgent repairs are needed you should notify the landlord or agent right away. The landlord or agent must arrange for the repairs to be done as soon as possible. If you cannot reach them, check your tenancy agreement for the details of a nominated tradesperson to contact.

If urgent repairs are not done within a reasonable time you may be able to arrange for the work to be done and be reimbursed by the landlord (but only up to $1000). However, you must be able to show that:

- the need for the urgent repair was not your fault
- you contacted the landlord or agent about the problem or made a reasonable attempt to do so
- you gave the landlord or agent a reasonable opportunity to get the repairs done
- the repairs were carried out by a licensed tradesperson (if appropriate).

You must give the landlord written notice setting out the details of the repair and copies of all receipts. The landlord is required to pay you back within 14 days of receiving your notice. If they do not you can apply to the Consumer, Trader and Tenancy Tribunal for an order.

If urgent repairs are likely to cost more than $1000 or you cannot afford to pay, you can apply to the Tribunal for an urgent hearing order for the landlord to get the repairs done.

Doing repairs yourself

You cannot arrange for non-urgent repairs to be carried out unless the landlord or agent has agreed. If they agree, make sure you get it in writing before the work is done, including any agreement about reimbursing your costs.

If repairs are not done

You should **never** stop paying the rent because the landlord has failed to do repairs. Withholding rent will put you in breach of your agreement and will not help to

resolve the repairs problem. Withholding rent places you at risk of having your tenancy terminated.

Getting orders from the Tribunal

You can apply to the Tribunal for orders relating to repairs. These include:

- an order that the landlord do repairs
- an order that you can pay your rent to the Tribunal until the repairs are done
- an order that your rent be reduced until the time it is fixed
- an order to compensate you for losses (eg. damage to your belongings from a leaking pipe after you told the landlord the pipe was leaking).

Damage caused by you

You must notifiy the landlord as soon as possible if the property is damaged. If you or or somebody you invited to your home caused damage, you may have to pay for the repairs or arrange for the repairs yourself.

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

Safety and security

Information for tenants

When you are renting a place to live, the landlord must provide premises that are in a reasonable state of repair and are reasonably secure. There are a number of safety and security matters that you may need to think about.

Window and balcony safety

Every year in Australia, approximately 50 children fall from a window or a balcony and are injured. In some cases these injuries are fatal. There are a number of simple, commonsense steps you can take to reduce this risk. For example, move furniture away from windows and from balustrades on balconies and decks, and fit locks or guards to windows so that they cannot be opened more than 10cm, except by an adult.

Falls occur more often in the warmer months when families leave windows and doors to balconies open during the day and at night. Do not rely on flyscreens to prevent your child from falling out of a window.

The New South Wales strata and tenancy laws provide a range of options for parents of young children. The tenancy laws require landlords to provide and maintain locks and security devices to make sure the premises are reasonably secure. Landlords cannot unreasonably refuse permission for tenants to make minor changes to rental premises, such as installing child safety window locks. The model strata by–laws allow individual strata owners to install locks or other devices on common property areas such as windows and balconies to prevent harm to children, without needing approval from the owners corporation.

Low–cost, simple options for making windows safer for children without altering the premises are available at most hardware stores.

Further information on window and balcony safety is available from NSW Health or the Westmead Children's Hospital.

Swimming pools

Swimming pools can pose a number of safety hazards. The main hazard is young children drowning because of faulty or inadequate pool fencing. The maintenance of pool fencing is extremely important, even if you do not have young children living at your home. Children are most at risk of drowning within six months of moving into a new property with a swimming pool, or when visiting the home of a friend, family member or neighbour with a pool. If the property you are renting has a swimming pool, you need to check that the pool fence is in good, working condition. Landlords must meet the standards in the Swimming Pools Regulation 2008. This requires pools built after 1 August 1990 to generally be surrounded by a fence that separates the pool from the house.

Smoke alarms

A smoke alarm is an effective early warning device designed to detect smoke and alert you to the presence of a fire, and increase the time available for safe escape. Your landlord is required by law to have installed at least one smoke alarm in a hallway outside a bedroom or other suitable location in each storey of your rented home. You are not allowed to remove or interfere with smoke alarms, without a reasonable excuse. If a smoke alarm is battery operated you are responsible for replacing the batteries and testing that it is working. It is recommended this be done once each year. For information about the type, location and number of smoke alarms that are required call the Smoke Alarms Helpline on 1300 858 812 or go to the Fire and Rescue NSW website, where can also find information to help you conduct a fire safety audit of your home.

Gas water heaters

Gas water heaters that have not been properly maintained have been responsible for deaths and serious injuries. If your property has a gas bath heater or flued instantaneous water heater in the bathroom, or a flueless

water heater in the kitchen, it could be a source of danger.

The Australian Gas Association recommends that all gas water heaters are serviced regularly by approved service agents and when replaced are installed externally to reduce the risk of an accident.

Always ensure:

- the bathroom and kitchen heaters have unobstructed ventilation
- heater flue pipes are free from all restrictions and holes
- there is no evidence of the heater creating soot deposits
- there are no signs of discolouration on or around the heater and flue.

Flueless water heaters using natural or LPG gas are designed to work without a flue pipe. However, if the ventilation is obstructed poisonous fumes such as carbon monoxide can be forced back into the room and contaminate the air. As carbon monoxide is colourless, odourless and tasteless, it is virtually undetectable. Inexpensive carbon monoxide detectors can be purchased from most hardware stores.

For further information, contact the gas retailer, or the Master Plumbers Association of NSW toll free on 1800 424 181.

Security

Your landlord must provide and maintain locks or security devices to ensure that the premises are reasonably secure. What is reasonably secure will vary in different situations.

The potential risk (that is, the likelihood the premises may be broken into) will have a bearing on the type and standard of locks needed to make a property reasonably secure. This will depend largely on the area in which the premises are located. The level of security needed for a ground floor unit may be greater than for a unit on an upper level.

Your landlord does not have to make the property so secure that the premises can never be broken into. The requirements of insurance companies are not the sole test of what is 'reasonably secure', but are merely one factor to be taken into account in deciding what level of security is appropriate for the premises.

You can change or add locks or security devices if you get the landlord's consent, or if it is reasonable to do so, such as in an emergency (for example if the premises have been burgled and keys are missing or if your key breaks off in the lock). You will need to give the landlord a copy of the new key within seven days. If the premises are not reasonably secure, you should raise this matter with the landlord or agent as soon as possible.

Rural properties and dams

Around 20 children are fatally injured on Australian farms every year and many more are hospitalised. Drowning accounts for around 35-40 percent of all child farm deaths, with farm dams being by far the most common site. Apart from dams, children can find their way into creeks, troughs, dips and irrigation channels. Children under five are at most risk.

For more information on how to protect children living or visiting farms, go to the Farmsafe website.

Rainwater tanks

Rainwater tanks are used widely for drinking water in rural areas. It is important that the water is free of harmful microorganisms or harmful levels of chemicals. Good quality water depends on proper maintenance of the rainwater tank and catchment area (such as the roof and gutters if the tank is connected to the roof). This means responsibilities for both landlords and tenants of premises that use rainwater tanks as a source of drinking water.

It is good practice to flush rainwater taps used for drinking or cooking for 2-3 minutes at the start of each day. Before renting out a property the landlord should ensure that the tenant is informed that rainwater is the source of drinking water and that maintenance responsibilities have been discussed. More information on the installation and maintenance of rainwater tanks is available from the NSW Health website.

Rent increases

Information for tenants

There are certain rules that a landlord or their agent must follow if they wish to put the rent up.

Notice of a rent increase

If the fixed term period of your lease has ended and you are on a continuing (periodic) tenancy the landlord may increase the rent by giving you at least 60 days notice in writing before the date the increased rent becomes payable. The notice must:

- specify the proposed new amount of rent (not the amount of the increase) and
- specify the date from which the increased rent is payable and
- be signed, dated and properly addressed to you.

If you have entered into a tenancy without having a written agreement in place, the rent cannot be increased during the first 6 months.

If you are renewing a tenancy agreement for a further fixed term, the rent cannot be increased automatically. You must still be given 60 days written notice before the rent increase can take effect.

During the fixed term

During a fixed term agreement of **less than 2 years** the rent cannot be increased, unless a term has been added to the agreement saying it can. The agreement must spell out the amount of the increase or the method of calculating the increase (eg. a dollar amount or %). It cannot be unclear like 'in line with the market' or 'by the rate of inflation'. Even where you have agreed to the increase in the agreement, you still have to be given 60 days written notice before it can take effect.

During a fixed term agreement of **2 years or more** the rent can be increased at any time (so long as 60 days written notice is given) but cannot be increased more than once in any 12 month period. After receiving a rent increase notice, you have the option to give 21 days notice to terminate the agreement. The notice must be given before the increase becomes payable. If you take this option you are not considered to have broken the agreement early.

Negotiating with the landlord

If you receive a rent increase notice, you can ask to discuss it with the landlord or agent. They may be willing to reduce the amount of the increase, especially if you are a long standing and reliable tenant.

If the landlord agrees to a smaller increase you do not have to be given another 60 days notice. The lower increase simply becomes payable from the same day as stated in the original notice. Make sure any agreement you reach is put in writing and signed by yourself and the landlord or agent. In addition, you could ask to sign a new lease for a new fixed period. That way you will lock in the rent for at least the length of the new lease.

Challenging an increase

If you think a rent increase is excessive you can apply to the Consumer, Trader and Tenancy Tribunal. You must apply within 30 days of receiving the rent increase notice. The Tribunal will consider:

- rents for similar premises in the same area or a similar area (ie. the 'market rent')
- the landlord's costs associated with the tenancy agreement
- the value and nature of fittings, appliances and other goods, services and facilities provided with the premises
- the state of repair of the property
- the accommodation and amenities of the premises
- any work you have done to the premises
- when the last increase occurred
- any other relevant matter, except your income or whether you can afford the increase.

While all these factors are important, the main consideration for the Tribunal is the market rent.

If you are thinking about challenging the increase at the Tribunal, contact your local Tenants Advice and Advocacy Service. They can give you assistance on the type of evidence you will need. Newspaper clippings of other properties for rent will not be enough.

If the Tribunal decides that the rent increase is excessive it can order that the rent not be increased or that it be increased by a smaller amount. It can also set the maximum rent for a period of up to 12 months.

If the rent increase comes into effect before your case is heard by the Tribunal you should pay the increased amount until the Tribunal has made its decision. If the Tribunal decides in your favour it can make an order for a refund.

Applying to the Tribunal is the only way to challenge a rent increase. If you have been given proper notice and you do not pay the increase, you will fall behind with the rent over time. This can lead to you being evicted.

If you are not given proper notice you do not have to pay the increase. If you have already started paying the increase you can ask the landlord to refund the extra payments and apply to the Tribunal if they refuse.

Paying water charges

Information for tenants

Your landlord can only ask you to pay water usage charges provided all the minimum criteria have been met.

Minimum criteria

The minimum criteria for passing on water usage charges is:

- the rental premises must be individually metered (or water is delivered by vehicle, such as those with water tanks on rural properties) and
- the charges must not exceed the amount billed for water usage by the water supplier and
- the rental premises must meet required 'water efficiency' standards.

Water efficiency standards

A rental property is only considered water efficient if it meets these standards.

Water efficiency devices	Minimum standard required
Internal cold water taps and single mixer taps for kitchen sinks and bathroom hand basins	A maximum flow rate of 9 litres per minute
Showerheads	A maximum flow rate of 9 litres per minute
No leaking taps	No leaking taps anywhere on the premises at the start of the tenancy or when the other water efficiency measures are installed

The requirement for sink and basin taps to have a maximum flow rate of 9 litres per minute does not apply to other taps in the premises such as bathtub taps, laundry taps, outside taps for the garden, or taps which supply washing machines and dishwashers.

The landlord does not necessarily need to change the showerheads and tap fittings. The water efficiency measures can be achieved simply by installing aerators or regulators to existing taps and showerheads and fixing any leaking taps on the premises.

Proving water efficiency

It is important to note the presence of the water efficiency measures on the condition report for the premises.

If you are unsure if the taps and showerheads in your property meet the required standards ask the landlord or agent to provide some evidence. You could carry also out a simple bucket and stop watch test to see if, when fully turned on, the flow rate is less than 9 litres in a minute.

Timeframe for installing water efficiency measures

If you are entering into a new agreement from 31 January 2011 the landlord needs to ensure the premises are water efficient in order to pass on water usage charges.

For all tenancies in place **before** 31 January 2011, the landlord has 12 months to make the premises water efficient. You can continue to be asked to pay water usage charges during the transitional period even if the premises are not water efficient. **After** 31 January 2012, you can only be asked to pay if the premises have been made water efficient.

Charges limited to water usage

You are only responsible to pay water usage (volume) costs. Other costs on the water bill such as water service or sewerage services are payable by the landlord and you cannot be asked to pay them. The landlord or agent cannot charge you an administration fee for passing on the bill, late fees or other additional amounts.

Time to pay

You only have to pay if the landlord or agent gives you a copy of the part of the water bill setting out the water usage charges payable, or some other evidence showing how your usage was calculated, within **3 months** of getting the bill. You must be given 21 days to pay the amount owing. So long as they request your payment within the 3 months, if you don't pay they can still take action to recover the money later on (eg. making a claim against your bond or getting an order from the Consumer, Trader and Tenancy Tribunal).

Things to know

Some important points to remember include:

- If you remove or tamper with the water efficiency devices you still have to pay for water usage and you may have to pay to replace them.
- If you think your water bill is too high, it may be helpful to contact your local water provider about average water consumption. A large increase in water usage may indicate a water leak on the property. You should let the agent or landlord know as soon as possible.
- Water billing periods are unlikely to align with tenancy agreements. It is important that the water meter reading be noted on the condition report at the start and end of each tenancy to ensure you are not paying for another tenant's water consumption.
- Social housing tenants may have a different system applied for calculating and paying water usage. Contact Housing NSW for further information.
- These provisions apply to all tenancies, regardless of the terms of any existing leases.

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Falling behind with your rent

Information for tenants

If you have fallen behind with your rent it is important to take action as soon as possible, as your landlord can give you notice to end the tenancy if your rent is more than 14 days overdue.

If you are behind with your rent

One of the terms of your tenancy is that you agree to pay your rent on time. If the rent is late you are in breach of this term. It is important to pay the outstanding rent as soon as possible.

If you are unable to pay all of the overdue rent immediately, you should contact your landlord or agent to talk about a repayment plan.

Repayment plans

A repayment plan is a plan for the outstanding rent to be paid over a period of time, in addition to your normal rent payments. You and the landlord both need to agree on the plan, including the payment amounts and dates. The repayment plan should be put in writing and signed by both parties to avoid misunderstanding or disputes over what was agreed. If you cannot agree on a repayment plan the Consumer, Trader and Tenancy Tribunal may help set to one up.

Can I be asked to leave?

If the rent is **14** days behind or more, the landlord can serve you with a termination notice, giving you **14** days to vacate the property.

The notice must be in writing, signed by your landlord or agent and explain the reason for the notice and the date by which you must vacate.

What if I do not vacate within 14 days?

The landlord can apply to the Tribunal for an order to end your tenancy. They can do this at the same time as giving you notice or up to 30 days after the notice ends. If they apply to the Tribunal you will receive a notice from the Tribunal to attend a hearing. You cannot be evicted until the Tribunal makes a termination order and gives you a date to leave.

The law provides a general guarantee that a tenancy can continue if you catch up with the rent or a repayment plan is agreed to by the landlord and you stick to it. This applies before or after the Tribunal hearing, unless the Tribunal orders differently because the rent has frequently been late (see below for more information).

At the Tribunal

It is important that you attend any Tribunal hearings.

The Tribunal member may first conciliate to try to get you to agree with your landlord on a repayment plan for the overdue rent. At this meeting, make sure that you do not offer to pay more than you can afford because if you fail to make the repayments, the landlord can take you back to the Tribunal and the tenancy may be terminated. If you cannot come to an agreement, your case will be decided by a Tribunal member.

At the hearing, you can:

- ask for time to bring your rent up to date and allow you to continue your tenancy
- give evidence of how much extra you can afford to pay and when.

When do I have to move out?

Termination order

If the Tribunal issues a termination and possession order, you are required to vacate the premises on the date specified unless you pay your overdue rent or comply with a repayment plan agreed to by the landlord. Otherwise, the Sheriff may enforce the warrant for possession and evict you. However, refer to the information below about frequent late payments.

Frequent late payers

If you have a history of frequently paying the rent late, your landlord can apply to the Tribunal for you to be evicted even if you pay all the rent you owe.

The law does not state what is considered to be frequently late. Whether the Tribunal makes such an order is up to the Tribunal to decide based on the evidence you and the landlord present at the hearing.

Rent records

If you are told that you are behind in your rent and you disagree, check your rent receipts and other records (such as bank statements) to see if this is correct. Ask the landlord or agent to give you a copy of your rent ledger so you can see if your records match theirs.

Late fees

The landlord can only ask you to pay the cost of replacing any rent deposit books or rent cards you have lost and the amount of any bank fees for dishonoured rent cheques, insufficient funds for direct debit rent payments and the like.

Your landlord cannot charge you for Tribunal application fees, or costs involved in enforcing a warrant or charge a penalty (e.g. interest) for late payments.

At a glance

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

Old laws	New laws
Tenant must be 14 days late before 14 days termination notice given	Same
Landlord had to wait until notice ended before applying to Tribunal for possession order	Landlord can apply to the Tribunal at the same time or up to 30 days after the termination notice ends
Once notice had been served, payment of rent did not stop the tenancy from ending	General guarantee of tenancy continuing if rent owing is paid or is being paid off under a repayment plan agreed to by the landlord.

Asking to make an alteration

Information for tenants

From time to time, you may wish to add to the comfort or security of your home by making minor changes at your own expense. It is important that you follow the proper process otherwise action can be taken against you for breaching the terms of your lease.

Consent

You must first seek the landlord's written consent before you add a fixture or make any renovation, alteration or addition to the premises. If an agent is managing the property you can put your request to them. It is best to put it in writing so you have a record of your request.

When submitting your request, you should try to provide as much information as you can about the change you wish to make to the property. For example, if you wish to install pay television, you should first find out exactly what is required to be done to the property. A landlord may also be more likely to agree to your request if you use a qualified tradesperson to carry out alterations.

Agreement is essential

Before you make any changes, you should agree with your landlord as to who will pay the costs and what will happen to any fixture you add at the end of the tenancy.

Rules on costs

Generally, an added fixture or change made by you is at your own expense unless your landlord offers to pay. For example, your landlord may offer to share or cover the cost of materials or reduce some rent. It is entirely up to the agreement between you and your landlord. You are not able to go to the Consumer, Trader and Tenancy Tribunal seeking to get back money for improvements so make sure that this is agreed upon well in advance.

Removal at the end of the tenancy

If you pay for any fixtures in the premises, you are allowed to remove them at the end of the tenancy, as long as you notify your landlord or your agent of any damage this causes.

You must then either pay for the cost of repairs, or arrange to repair any damage to a satisfactory standard.

If your landlord pays for the fixture in some way, then you are not allowed to remove it without their consent. Your landlord has the right to apply to the Tribunal for an order that prohibits you from removing a fixture, or an order that you pay for repairs to any damage you have caused in removing a fixture.

If you do not remove a fixture you have added by the time you hand back possession, you cannot come back and get it later on. It ceases to belong to you and forms part of the premises.

When can a landlord refuse my request?

Your landlord cannot unreasonably refuse to give you consent to add a fixture or to make a change that is of a minor nature.

The law gives some guidance as to the types of reasons where it would be reasonable for your landlord to say no to your request.

These include work which:

- involves structural changes (e.g. knocking out a wall)
- is not reasonably capable of being rectified, repaired or removed
- is not consistent with the nature of the property (e.g. installing modern fixtures in a heritage property)
- is prohibited under a law (such as a strata by-law).

This is not an exhaustive list. There may be other reasons to decline your request. If you think that the reason for your landlord's refusal is not reasonable, you can apply to the Tribunal for permission to make the change.

Painting the premises

It is up to the landlord to decide whether you can paint the premises (inside or out) and the Tribunal cannot give permission if the landlord refuses. If the landlord does consent, you should make sure they are aware of the colour, brand of paint and how many coats you are planning to do before you begin, to avoid any disagreements later on. Make sure these details are included in the landlord's written consent.

Minor alterations

The law does not define what is a change of a 'minor nature'. This will depend on the property and the circumstances. It is for you and your landlord to agree on or for the Tribunal to resolve if a dispute arises.

Examples of the types of changes that may be considered reasonable include:

- installing window safety devices for small children
- installing additional security features
- having a phone line connected
- connecting to the National Broadband Network
- putting a reasonable number of picture hooks in the wall
- planting some vegetables or flowers in the garden
- connecting to pay television
- replacing the toilet seat
- installing a grab rail in the shower for elderly or disabled occupants.

Remedies for unsatisfactory work

Your landlord can apply to the Tribunal for order against you for the cost of rectifying work you have done or arranged if:

- they can show the work was not done to a satisfactory standard or
- it is likely to adversely affect the landlord's ability to rent the premises in the future to other tenants.

Such an application can be made whether or not your landlord gave you consent to add the fixture or to make the change.

Sharing a rented home

Information for tenants

There are a number of ways to share a rented home and each arrangement means you have different obligations and processes to follow.

The different arrangements

Sub–letting

This involves you entering into a formal agreement with somebody else to rent part of the premises to them (e.g. the garage or granny flat) or the whole premises. In effect you are taking on the role of landlord for the sub–tenant. You remain the landlord's tenant at the same time. There is no contractual arrangement between the landlord and the sub-tenant. For example, the sub–tenant would pay their rent to you not the landlord or agent. You continue to be responsible for the tenancy, including the actions of the sub–tenant. If, for instance, the sub–tenant caused damage to the premises you would need to fix it or pay for the repairs. You may be able to recover the cost from the sub–tenant.

Transferring or assigning the lease

This is different to sub–letting and is where you wish to transfer the whole tenancy to a new tenant or only part of the tenancy (i.e. by taking in a new co–tenant). There is no ongoing landlord and tenant relationship once the tenancy is transferred as there is with sub–letting. The new tenant is either jointly responsible to comply with the lease (in the case of a new co–tenant) or wholly responsible to the landlord if the whole tenancy is transferred. The existing lease agreement, including any remaining fixed term period and the rent payable, is transferred to the new tenant or co–tenant. There is no need to sign a new lease although it is best to put the arrangement in writing to avoid any disputes later on.

Additional occupants

This arrangement falls outside the sub–letting and transferring rules. This is where you wish to have somebody stay with you in the premises on an informal basis. This could be a family member, friend or stranger and it may be a temporary or permanent arrangement. Exclusive use or possession of part of the premises is not granted. All areas of the premises are simply shared. The new person is just an additional occupant even though they may be paying you rent to stay there. You are responsible for the actions of any occupants or guests you allow in the premises.

Consent of the landlord

You must first seek the landlord or agent's written consent before you sub–let or transfer any part of the premises. If you do this without consent you are breaching the terms of the agreement. The landlord can apply to the Consumer, Trader and Tenancy Tribunal to order you to comply with the lease.

The landlord has total discretion if you ask to sub–let or transfer the whole premises. If they say no, you cannot apply to the Tribunal.

However, if you want to only sub–let part of the premises or take on a new co-tenant the landlord cannot unreasonably say no. They can ask for information about the prospective sub–tenant or co–tenant such as their name and details of their rental history. They can ask that an application for tenancy form be filled out. They could also meet and interview the person, as they would with a new tenant.

If you just want to have an additional occupant you do not need to tell the landlord or agent who they are, or get their consent. However, you must not exceed the maximum number of permitted occupants stated on the lease.

Reasonable refusal

As mentioned above the landlord cannot unreasonably say no to requests from you to sub–let part of the premises or take on a new co–tenant. The law gives

some examples as to when it is reasonable for the landlord to say no. These are:

- if the total number of occupants permitted under the lease would be exceeded
- if the total number of occupants would exceed any local council rules and regulations
- if the person being proposed is listed on a tenancy database
- if they reasonably believe it would result in the premises being overcrowded.

This is not an exhaustive list. There may be other situations where it would be reasonable to decline your request.

Challenging a refusal

If your request to sub–let part of the premises or to add a co-tenant is refused, and you believe the decision is unreasonable, you can apply to the Tribunal which will arrange for a hearing and consider evidence from you and the landlord before making an order about whether to allow you to sub–let or add a co–tenant.

Costs

You cannot be charged by the landlord or agent for allowing a transfer or sub–letting, other than any reasonable expenses incurred. In most situations there is unlikely to be any expense involved.

While the new sub–tenant or co–tenant may mean there is extra income in the household it does not mean that the landlord can automatically increase the rent. The same rules for putting the rent up still apply.

Changing bond records

Where a bond has been paid and co–tenants subsequently change, co–tenants can pass bond money between themselves from the incoming to the outgoing person. A Change of Shared Tenancy Arrangement form will need to be signed and lodged with Fair Trading so that the bond records can be updated. You can get a copy of the form from the Fair Trading website, a Fair Trading Centre or by calling 13 32 20.

Social housing providers

The need to be reasonable when considering requests to add a co-tenant or sub-let part of the premises does not apply to social housing providers, such as Housing NSW. Who can live in the premises is determined by the social housing provider's own policies and procedures.

Domestic violence in a rented property

What tenants and occupants need to know

If there is violence in your rented home you should contact the Police or an advice service. There are also steps you can take under the tenancy agreement to improve your safety.

Changing the locks

If you obtain an Apprehended Violence Order (AVO) which prohibits a person from accessing the rented premises where you were both living, you can immediately change the locks. This applies if the AVO is a provisional, interim or final order.

You do not need the landlord's or agent's consent to change the locks as you would normally do. However you must give them a key for the new lock within 7 days unless they agree not to have a key. The cost of changing the locks is your responsibility. If you do give a key to the landlord or agent, they cannot pass it on to the person who has been excluded from the property.

If the excluded person is named on the tenancy agreement as a tenant, your action in changing the locks does not end their tenancy or make you a tenant instead. All it does is prevent them from using their keys to enter the property while the AVO remains in force.

Changing the tenancy agreement

If the person excluded from the premises was named as a tenant on the agreement, a final AVO made by a magistrate terminates that person's tenancy. If you were named on the agreement as a co-tenant the tenancy simply transfers to your name. There is no need for you to sign a new agreement or do anything else. Any share of the bond owing to the excluded person does not have to be paid back until you vacate.

If your name is not on the agreement, you can ask the landlord or agent to have the agreement put into your name. If they refuse you can apply to the Consumer, Trader and Tenancy Tribunal for an order to do this.

If you are an occupant of social housing premises (eg. Housing NSW) the Tribunal can only make such an order if you meet any eligibility requirements. Contact the social housing provider to find out what you can do.

Ending the lease early

Tenants cannot usually break a fixed term agreement early without paying a penalty or compensation. However, if you are a tenant and you obtain a final AVO which prohibits a co-tenant or occupant from accessing the premises, you have the option to end the lease early without having to compensate the landlord. This may be helpful if you cannot afford the rent on your own. You must give the landlord or agent 14 days notice in writing of your intention to leave.

Tenancy database listings

If you are listed on a tenancy database due to damage to the property caused by a co-tenant or occupant during an incident of domestic violence, there are steps you can take. You can ask for the information about you to be removed or changed and you can apply to the Tribunal for orders. More information can be found on the Tenancy databases page on the Fair Trading website.

Further advice and support

Domestic Violence Legal Advice Line
Tel: 8745 6999
Toll free: 1800 810 784
Website: www.womenslegalnsw.asn.au

Women's Legal Contact Line
Tel: 8745 6988
Toll free: 1800 801 501

Law Acces NSW
Tel: 1300 888 529

Domestic Violence Line (Community Services)
Toll free: 1800 656 463

Rape Crisis Centre
Toll free: 1800 424 017

Women's and Girls' Emergency Centre
Tel: 9360 5388

Victim's Services
Toll free: 1800 633 063

Wirringa Baiya Aboriginal Women's Legal Centre
Toll free: 1800 686 587

Another Closet (information on violence in gay and lesbian relationships)
Website: www.anothercloset.com.au

At a glance

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

Old laws	Current laws
Locks could not be changed without landlord's consent	Consent to change locks no longer required if AVO excludes a tenant or occupant from the premises
No specific right to take over a lease after an AVO is made excluding the tenant	An occupant can seek to become a tenant in these circumstances
Domestic violence victim who left during a fixed term lease liable to pay compensation to landlord	Lease can be ended early without penalty with 14 days notice to landlord

Mortgagee re-possession

Information for tenants

When a landlord is unable keep up with their loan repayments the mortgagee (i.e. the lender, normally a bank or other financial institution) usually wants to take possession of the property in order to sell it and recover their money. This is what is referred to as mortgagee re-possession.

Legal process of re–possession

To take back possession of the premises, the mortgagee needs to obtain an order from the Supreme Court. You should get notice of the proceedings. Sometimes the landlord and the mortgagee are able to resolve the matter and you will not have to move out. If the court makes an order for possession you should be notified. However, the court can make an order even if you were unaware of the proceedings.

Before the order is given the mortgagee may send you a written demand that you pay the rent to them instead of the landlord or agent. If you receive such a letter you should pay the rent according to the demand.

Notice to vacate

Supreme Court orders for possession are enforced by the NSW Sheriff's Office. A Sheriff's Officer will serve you with a notice giving you at least **30 days** to vacate the property. If you do not move out the Sheriff can remove you from the premises. There are no further extensions to this time unless this is agreed to by the mortgagee and the Sheriff's Office. If you find a new place to live before the end of the 30 day notice period you may move out at any time.

Rent–free compensation

Regardless of how much time (if any) remains on your fixed term agreement the court order for possession will end your tenancy earlier than expected.

As a form of compensation you do not have to pay any rent for 30 days after being given the official notice to leave by the Sheriff. This may help to cover the cost of finding a new place to live.

If advance rent has been paid covering any part of this period, you are entitled to have that rent refunded. You can apply to the Consumer, Trader and Tenancy Tribunal if the landlord or agent does not pay the money back.

Access to show buyers

While you are still occupying the premises the mortgagee can show the property to possible buyers, but only if you have been given reasonable notice and you agree to the times and dates of the inspections.

Refund of rental bond

The mortgagee can authorise NSW Fair Trading to release the bond to you once they take over the premises from the landlord. They can even do this while you are still living in the premises so you can use the money to help pay the next bond.

Staying in the property

If the mortgagee had previously been notified of your tenancy agreement, they are bound by it when they take over from the landlord, under the *Real Property Act 1900*. However, most residential tenancy agreements are for less than 3 years which means that they are not registered on the title. In most cases the landlord would have taken out the mortgage before finding you as the tenant. Consequently, it is unlikely that the mortgagee will have had prior notice and be bound to honour your agreement.

This does not stop you from approaching the mortgagee, or somebody acting on their behalf, and requesting to stay on in the premises at least until it is sold. It is possible that the premises will be bought by another investor who may want you to stay as a tenant.

Court or Tribunal ordered tenancies

You can seek to have a tenancy established between you and the mortgagee. You can apply to either the Supreme Court, if the proceedings have not been finalised, or to the Tribunal if the possession order has already been made. These orders can be difficult to obtain as you need to show that there are special circumstances in your particular case. You need to apply before the Sheriff enforces the order. If you are considering taking this option it may be best to first obtain legal advice.

Disclosure by landlord

Before you sign a tenancy agreement, the landlord or agent is required to tell you if they know that court action to recover possession has already been commenced by the mortgagee. If this information was not disclosed you can apply to the Tribunal for compensation. You may also seek to end lease early without paying the usual penalties.

Natural disasters

Information for tenants

As a tenant it is vital you know what your renting rights and responsibilities are if you have been affected by a natural disaster, such as a flood, bushfire or storm damage.

What happens with the tenancy

This will depend on the extent of the damage and what you and the landlord want to do about the situation.

If the premises are destroyed or become totally or partly uninhabitable, this does not automatically end your tenancy. Either you or the landlord can give a termination notice in writing to end the tenancy. The notice, once served, can take effect immediately or can specify a later date. If the landlord serves you with a notice and you do not want the tenancy to end you should let them know. You cannot be evicted without a Consumer, Trader and Tenancy Tribunal order.

If the premises are only partly uninhabitable, such as one room not being usable as a result of hail damage to the roof, you may wish to stay on in the premises while the repairs are being carried out. You should only consider doing this if the damage is relatively minor and there is no ongoing safety risk to you or your family. Follow any instructions from emergency personnel and talk to the landlord to see if they agree.

If the premises have been more seriously damaged or have become totally uninhabitable another option is to move out temporarily and return once the premises are liveable again. This may be for a few days or weeks or however long it takes. If this is what you want to do you should talk to the landlord or agent as soon as possible. While the landlord or agent can try to help you as an act of goodwill they are not obliged to find or pay for your temporary accommodation.

You and the landlord/agent can also decide to formally end the agreement and re-sign a new agreement after the repairs are complete. However, be aware that a higher rent could be included in the new agreement.

What happens about the rent

If the tenancy is ended permanently, no rent is payable from the day you move out. Any rent already paid in advance must be fully refunded.

If you move out temporarily or continue living in the partially damaged premises the rent should be waived or reduced. Whether any rent is payable at all and, if so, the level of reduction will depend on the extent of the damage and the amount of use you have of the premises. Any agreement in these situations about the rent, how long you may be away from the premises and what will happen to your possessions while you are away is best put in writing.

Repairs

If the tenancy is to continue, the first step is for the landlord or agent, preferably with you being present, to inspect the premises and document the repairs needed.

You should discuss with the landlord or agent the timetable for repairs, recognising that there may be unavoidable delays because of the demand for insurance assessments and qualified tradespeople in the area. A landlord is not obliged to compensate you for any damage to your furniture or personal belongings arising from a natural disaster.

Serious storm, fire or flood damage are all considered to be urgent repairs. Such repairs should be done as soon as possible. If you believe the landlord or agent is not acting quickly enough on needed repairs you can apply to the Tribunal or arrange for the work yourself and be reimbursed.

Access

After a natural disaster most repairs needed are likely to be classed as urgent repairs. The landlord or agent does not have to give you any minimum period of notice before sending tradespeople to do this work.

In normal situations you must be given at least 2 days notice if tradespeople need to access the premises to carry out non-urgent repairs. It may be in your best interest to talk to the landlord or agent and agree on a shorter period of notice in order to get the work completed as soon as possible.

Disclosure of previous disasters

The landlord or agent must tell you before you sign the tenancy agreement if the premises have been subject to flooding or bushfire in the previous 5 years. This only applies where they know of the event. If this information was not disclosed before you signed the agreement and it happens again you may be entitled to compensation.

Disputes

Any tenancy related disputes following a natural disaster can be taken to the Tribunal.

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